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Presidential Documents

Title 3—

The President

Executive Order 13572 of April 29, 2011

Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, BARACK OBAMA, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13338 of May 11, 2004, and relied upon for additional steps taken in Executive Order 13399 of April 25, 2006, and in Executive Order 13460 of February 13, 2008, finding that the Government of Syria's human rights abuses, including those related to the repression of the people of Syria, manifested most recently by the use of violence and torture against, and arbitrary arrests and detentions of, peaceful protestors by police, security forces, and other entities that have engaged in human rights abuses, constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, and I hereby order:

Section 1. All property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person, including any overseas branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) the persons listed in the Annex to this order; and

(b) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) to be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses in Syria, including those related to repression;

(ii) to be a senior official of an entity whose property and interests in property are blocked pursuant to this order;

(iii) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in subsection (b)(i) of this section or any person whose property and interests in property are blocked pursuant to Executive Order 13338, Executive Order 13460, or this order; or

(iv) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to Executive Order 13460 or this order.

Sec. 2. I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to section 1 of this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13338 and expanded in this order, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 3. The prohibitions in section 1 of this order include but are not limited to:

(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and

(b) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 4. The prohibitions in section 1 of this order apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order.

Sec. 5. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 6. For the purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term "Government of Syria" means the Government of the Syrian Arab Republic, its agencies, instrumentalities, and controlled entities.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render those measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13338 and expanded in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 9. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine that circumstances no longer warrant the blocking of the property and interests in property of a person listed in the Annex to this order, and to take necessary action to give effect to that determination.

Sec. 10. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

Sec. 11. This order is effective at 1:00 p.m. eastern daylight time on April 29, 2011.

THE WHITE HOUSE,
April 29, 2011.

Billing code 3195–W1–P

ANNEX

Individuals

1. Mahir AL-ASAD [Brigade Commander in the Syrian Army's Fourth Armored Division, born 1968]

2. Ali MAMLUK [director of the Syrian General Intelligence Directorate, born 1947]

3. Atif NAJIB [former head of the Syrian Political Security Directorate for Dar'a Province]

Entities

1. Syrian General Intelligence Directorate

2. Islamic Revolutionary Guard Corps – Qods Force

[FR Doc. 2011–10910
Filed 5–2–11; 8:45 am]
Billing code 4811–33–C

Presidential Documents

Notice of April 29, 2011

Continuation of the National Emergency With Respect to the Actions of the Government of Syria

On May 11, 2004, pursuant to his authority under the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003, Public Law 108–175, the President issued Executive Order 13338, in which he declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, Executive Order 13338 authorized the blocking of property of certain persons and prohibited the exportation or reexportation of certain goods to Syria. On April 25, 2006, and February 13, 2008, the President issued Executive Order 13399 and Executive Order 13460, respectively, to take additional steps with respect to this national emergency.

The President took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs, and undermining U.S. and international efforts with respect to the stabilization and reconstruction of Iraq.

The Syrian government has reduced the number of foreign fighters bound for Iraq—although the fighters have still created serious problems there—but its actions and policies, including continuing support for terrorist organizations, damaging the Lebanese government's ability to function, and pursuit of weapons of mass destruction and missile programs, continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. As a result, the national emergency declared on May 11, 2004, and the measures adopted on that date, on April 25, 2006, in Executive Order 13399, and on February 13, 2008, in Executive Order 13460, to deal with that emergency must continue in effect beyond May 11, 2011. Therefore, in accordance with section 202(d) of the National Emergencies Act, 50 U.S.C. 1622(d), I am continuing for 1 year the national emergency declared with respect to certain actions of the Government of Syria. In addition, the United States condemns the use of violence against peacefully demonstrating citizens in Syria, and calls on the Syrian government to respect human rights and to forge a credible path to a future

of greater freedom, democracy, opportunity, and justice. The United States will consider changes in the policies and actions of the Government of Syria in determining whether to continue or terminate this national emergency in the future and would welcome progress by the Government of Syria on these matters. This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
April 29, 2011.

[FR Doc. 2011–10912
Filed 5–2–11; 8:45 am]
Billing code 3195–W1–P

Rules and Regulations

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. APHIS–2006–0074]

RIN 0579–AC36

Highly Pathogenic Avian Influenza

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our interim rule that amended the regulations concerning the importation of animals and animal products to prohibit or restrict the importation of bird and poultry products from regions where any subtype of highly pathogenic avian influenza is considered to exist. The interim rule also imposed restrictions concerning importation of live poultry and birds that have been vaccinated for certain types of avian influenza, or that have moved through regions where any subtype of highly pathogenic avian influenza is considered to exist. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before May 18, 2011.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2006–0074* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2006–0074, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0074.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room 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.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Senior Staff Veterinarian, National Center for Import and Export, Animal Health Policy and Programs, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 2011, we published in the **Federal Register** (76 FR 4046–4056, Docket No. APHIS–2006–0074) an interim rule that amended the regulations governing the importation into the United States of specified animals and animal products and byproducts in order to prohibit or restrict the importation of bird and poultry products from regions where any subtype of highly pathogenic avian influenza is considered to exist. The interim rule was effective upon publication.

Comments on the interim rule were required to be received on or before March 25, 2011. We are reopening the comment period on Docket No. APHIS–2006–0074 for an additional 15 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between March 26, 2011, and the date of this notice.

Authority: 7 U.S.C. 450, 1622, 7701–7772, 7781–7786, 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 28th day of April 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–10715 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD; Amendment 39–16669; AD 2011–09–07]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–524 Series and RB211 Trent 500, 700, and 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During manufacture of a number of HP Compressor Stage 1 and 2 discs with axial dovetail slots, anomalies at the disc post corners have been found. Fatigue crack initiation and subsequent crack propagation at the disc post may result in release of two blades and the disc post. This may potentially be beyond the containment capabilities of the engine casings. Thus, these anomalies present at the disc posts constitute a potentially unsafe condition.

We are issuing this AD to detect cracks in the high-pressure compressor (HPC) Stage 1 and 2 disc posts, which could result in failure of the disc post and release of HPC blades, release of uncontained engine debris, and damage to the airplane.

DATES: This AD becomes effective June 7, 2011. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 7, 2011.

ADDRESSES: The Docket Operations office is located at Docket Management

Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 15, 2010 (75 FR 33738). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

> During manufacture of a number of HP Compressor Stage 1 and 2 discs with axial dovetail slots, anomalies at the disc post corners have been found. Fatigue crack initiation and subsequent crack propagation at the disc post may result in release of two blades and the disc post. This may potentially be beyond the containment capabilities of the engine casings. Thus, these anomalies present at the disc posts constitute a potentially unsafe condition.
>
> For the reasons described above, this AD requires repetitive inspections of the axial dovetail slots and follow-on corrective action, depending on findings.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Change the Definition of a Shop Visit

Five commenters request that we change the criteria for carrying out the inspections to be consistent with the European Aviation Safety Agency (EASA) AD. The commenters ask that we require performing the inspections at the first shop visit after accumulating 1,000 hours-since-new (HSN) and whenever a Level 3 (Refurbishment) or Level 4 (Overhaul) shop visit occurs. The commenters feel that requiring the inspections any time a major flange is separated would result in more inspections than required by the EASA AD. Some of the inspections would cost significantly more than what is estimated in the Costs of Compliance section of the proposed AD.

We partially agree. We agree that the current wording would result in more inspections than required by the EASA AD, and some of the inspections would cost significantly more than what we estimated in the Costs of Compliance section of the proposed AD. We do not agree with using the Level 3 or Level 4 criteria as a definition of "engine shop visit" for the purpose of this AD. The definitions of Level 3 and Level 4 are not specific enough to ensure the inspections are conducted frequently enough to prevent the unsafe condition. We changed the definition of shop visit in paragraph (f) of the proposed AD from "For * * * an "engine shop visit" is the induction of an engine into the shop for maintenance involving the separation of pairs of major mating engine flanges, * * *" to "For * * * an "engine shop visit" is whenever the engine high-pressure compressor module is separated from the intermediate case."

Request To Change the Summary of the Proposed AD

One commenter, RR, asks us to consider changing the Summary from "Thus, these anomalies present at the disc posts constitute a potentially unsafe condition" to "Thus, if these anomalies are present at the disc posts, they constitute a potentially unsafe condition." The commenter believes that the MCAI description implies that all discs have the anomalies in question. The AD does not assume that to be true.

We don't agree. The second paragraph of the Summary quotes the EASA AD. We did not change the AD.

Request To Correct a Disc Part Number

The same commenter asks us to change paragraph (c)(1) part number (P/N) "FK20195" to "FW20195." The commenter states that the NPRM contains a typographical error.

We agree. We changed the part number in paragraph (c)(1) of the proposed AD from "FK20195" to "FW20195."

Request To Change the Unsafe Condition Statement

The same commenter asks us to change the unsafe condition statement in the Summary and in paragraph (d) of the proposed AD from "* * * failure of the disc post, which could result in failure of the disc post and HPC blades, release * * * airplane" to "* * * failure of the disc post, resulting in release of HPC blades, release * * * airplane." The commenter states the NPRM implies that high-pressure compressor blades may themselves fail, when in fact they are released as a result of disk post failure.

We agree. We changed the unsafe condition statement in the Summary and in paragraph (d) of the proposed AD to "which could result in failure of the disc post, release of HPC blades, release of uncontained debris, * * * airplane."

Request To Ensure the Disc is Cleaned before Inspection

The same commenter asks us to change paragraph (e)(1) of the proposed AD from "Perform a * * * later. Use paragraph 3.E.(1) through 3.E.(10)(i) * * * inspections" to "Clean and perform * * * later. Use paragraph 3.A through 3.E.(10)(i) * * * inspections." The commenter believes the change will ensure adequate cleaning before inspection, which is essential to make sure the small cracks are visible.

We agree. Because the corrective action is looking for small cracks underneath a dry film lubricant coating, the cleaning procedure prior to fluorescent penetrant inspection (FPI) is critical to the corrective action. We changed paragraph (e)(1) of the proposed AD to "Clean and perform * * * later. Use paragraph 3.A through 3.E.(11) * * * inspections." We also added paragraph 3.E.(11) to ensure that the blades will be re-coated prior to re-installation.

Request To Change Nomenclature of HPC Rotor Shaft

One commenter, Hawaiian Airlines, asks us to change "HPC rotor shaft" to "HP compressor drum." The commenter states that the HPC drum in the Trent 700 engine is a six stage rotor and is referred to as the "HPC rotor shaft." Since each engine model has different nomenclature, they request that we use a common name when we refer to the subject part such as "HP compressor Drum." The commenter believes that this will ensure a common understanding of the parts involved.

We don't agree. While the service bulletin uses the term "HPC drum," the AD consistently refers to the HPC disks by stage number.

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD would affect about 371 products of U.S. registry. We also estimate that it would take about 20 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. No parts would be

required per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $630,700.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–09–07 Rolls-Royce plc (RR): Amendment 39–16669. Docket No. FAA–2010–0562; Directorate Identifier 2009–NE–29–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 7, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to RR model RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19; and RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, 560A2–61; RB211 Trent 768–60, 772–60, 772B–60; and RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines that have a high-pressure (HP) compressor stage 1 to 4 rotor disc with a part number (P/N) listed in Table 1 of this AD. These engines are installed on, but not limited to, Boeing 747, 767, and 777 series airplanes and Airbus A330 and A340 series airplanes.

TABLE 1—AFFECTED HP COMPRESSOR STAGE 1 TO 4 ROTOR DISC P/NS BY ENGINE MODEL

Engine model	HP compressor stage 1 to 4 rotor disc P/N
(1) RB211–524G2–T–19, –524G3–T–19, –524H–T–36, and –524H2–T–19.	FW20195, FK25502, or FW23711.
(2) RB211 Trent 553–61, 553A2–61, 556–61, 556A2–61, 556B–61, 556B2–61, 560–61, and 560A2–61.	FK30524.
(3) RB211 Trent 768–60, 772–60, and 772B–60	FK22745, FK24031, FK26185, FK23313, FK25502, FK32129, FW20195, FW20196, FW20197, FW20638, or FW23711.
(4) RB211 Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17.	FK24009, FK26167, FK32580, FW11590, or FW61622.

Reason

(d) This AD results from reports that:

During manufacture of a number of HP Compressor Stage 1 and 2 discs with axial dovetail slots, anomalies at the disc post corners have been found. Fatigue crack initiation and subsequent crack propagation at the disc post may result in release of two blades and the disc post. This may potentially be beyond the containment capabilities of the engine casings. Thus, these anomalies present at the disc posts constitute a potentially unsafe condition.

We are issuing this AD to detect cracks in the high-pressure compressor (HPC) Stage 1 and 2 disc posts, which could result in failure of the disc post and release of HPC blades, release of uncontained engine debris, and damage to the airplane.

Actions and Compliance

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

(1) Clean and perform a fluorescent penetrant inspection of the HP compressor stage 1 to 4 rotor discs at the first shop visit after accumulating 1000 cycles since new on the stage 1 to 4 rotor disks or at the next shop visit after the effective date of this AD, whichever occurs later. Use paragraph 3.A through 3.E.(11) of the Accomplishment Instructions of Rolls-Royce Alert Service Bulletin (ASB) RB.211–72–AF964, Revision 1, dated June 6, 2008 to do the inspections.

(2) Thereafter at every engine shop visit, perform the inspection specified by paragraph (e)(1) of this AD.

Definitions

(f) For the purpose of this AD, an "engine shop visit" is whenever the engine high-pressure compressor module is separated from the intermediate case.

Other FAA AD Provisions

(g) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve

AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) See European Aviation Safety Agency Airworthiness Directive 2009–0073R1, dated April 8, 2009, for related information.

(i) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Rolls-Royce Alert Service Bulletin RB.211–72–AF964, Revision 1, dated June 6, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: 011 44 1332 242424, fax: 011 44 1332 249936; e-mail: *tech.help@rolls-royce.com.*

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–10517 Filed 5–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1165; Directorate Identifier 2008–NE–38–AD; Amendment 39–16685; AD 2011–10–04]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During manufacture of high-pressure (HP) compressor stage 1 discs, a small number of parts have been rejected due to a machining defect that was found during inspection. Analysis of the possibility of less severe examples having been undetected and passed into service has concluded that action is required to reduce the risk of failure. It was therefore necessary to reduce the life limit.

The HP compressor stage 1 disc is part of the HP compressor stage 1–4 shaft, part number (P/N) FK32580. We are issuing this AD to prevent failure of the HP compressor stage 1 disc, uncontained engine failure, and damage to the airplane.

DATES: This AD becomes effective June 7, 2011.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) and a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 18, 2009 (74 FR 7563) and that SNPRM was published in the **Federal Register** on October 4, 2010 (75 FR 61114). That SNPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

During manufacture of high-pressure (HP) compressor stage 1 discs, a small number of parts have been rejected due to a machining defect that was found during inspection. Analysis of the possibility of less severe examples having been undetected and passed into service has concluded that action is required to reduce the risk of failure. It was therefore necessary to reduce the life limit.

The HP compressor stage 1 disc is part of the HP compressor stage 1–4 shaft, P/N FK32580. Since we issued the original NPRM on February 10, 2009 (74 FR 7563, February 18, 2009), EASA issued AD 2010–0087, dated May 5, 2010 (corrected May 6, 2010), which retains certain requirements of superseded EASA AD 2008–0099, and imposes more restrictive life limits in the Heavy Flight Profile Parts. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Revise the Compliance Times

Four commenters, American Airlines, Delta Airlines, Rolls-Royce plc, and The Boeing Company, request that we revise the compliance times to be consistent with the service bulletin and the airworthiness limitations section (ALS) of the engine manual. Doing this would account for the later AD release date and for the entire Trent 800 series fleet instead of just certain US operators' expected cyclic usage. The commenters state that the proposed requirements would have a severe adverse economic impact to operators relative to the service bulletin requirements. The simplified compliance requirements in the SNPRM relative to the service bulletin requirements, may not accurately reflect the risk of an uncontained event, and are confusing.

We do not agree. The requirements in the SNPRM were developed to minimize the risk of uncontained disc failure, based on the age of the parts in the field at the time the SNPRM was issued. The service bulletin requirements were developed at a time when the age of the parts in service was lower than when the SNPRM was issued. Because the risk of failure increases as the age of the parts in the field increase, any revision to the requirements of the SNPRM would again have to take the increased age of the parts in service into account. As such, an analysis would result in removal requirements more stringent than the requirements in the SNPRM, and a follow-on NPRM would be required. Therefore, we determined that it is in the public interest to keep the removal requirements the same as published in the SNPRM. We did not change the AD.

Request for Clarity and Interpretation

Delta Airlines states that it would be helpful if we could provide some clarity in the AD as to how an operator should interpret the differing information between the AD, the ALS of the Rolls-Royce Time Limits Manual, and the service bulletin. The commenter is concerned that there will be three locations where the life limit of the

shaft, P/N FK32580, is specified, and all three have different data.

We do not agree. The AD and the ALS take precedence over the service bulletin. Operators must comply with the AD and the ALS. We did not change the AD.

Question on Reworked Part

Delta Airlines asks for clarification as to whether a part reworked from P/N FK32580 to FW61622, is still required to be removed in accordance with paragraphs (e)(1) and (e)(2) of the AD. The commenter is unsure if a reworked part can be returned to service under the life limit of the new part number.

The AD applies only to P/N FK32580. If the part is reworked to a different P/N, the requirements of the new P/N would apply. We did not change the AD.

Request To Use the Service Bulletin Method

American Airlines requests that we revise the AD to use the service bulletin method of determining the number of cycles before removal is required; specifically, based on a date before the effective date of the AD. The commenter states that the simplified compliance in the SNPRM would result in early engine removal and a cumulative loss of about eleven engine-years of useful service to American Airlines.

We do not agree. The compliance thresholds in the AD are a function of usage, which is not directly related to calendar dates. We did not change the AD.

Request To Update Contact Information

Rolls-Royce plc requests that we update their contact information in the AD to: Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ, telephone: 011–44–1332–242424; fax: 011–44–1332–245418, or e-mail: *http://www.rolls-royce.com/contact/civil_team.jsp*.

We agree and changed the AD.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the change described previously.

Differences Between This AD and the MCAI

We have reviewed the MCAI and, in general, agree with its substance. But we have found it necessary to not incorporate the June 4, 2008 compliance date which is in EASA AD 2010–0087, dated May 5, 2010 (corrected May 6, 2010). We updated the compliance times in the AD based on a more recent assessment of the unsafe condition.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 78 products of U.S. registry. Required parts will cost about $15,095 per product. We estimate that no additional labor costs would be incurred to perform the actions, as we anticipate that the removal from service of the HP compressor stage 1–4 shafts will occur while the engine is inducted into the shop for routine maintenance. Based on these figures, we estimate the cost of the AD on U.S. operators to be $1,177,410.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–10–04 Rolls-Royce plc: Amendment 39–16685; Docket No. FAA–2008–1165; Directorate Identifier 2008–NE–38–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 7, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc models RB211–Trent 875–17, –Trent 877–17, –Trent 884–17, –Trent 884B–17, –Trent 892–17, –Trent 892B–17, and –Trent 895–17 turbofan engines, with high-pressure (HP) compressor stage 1–4 shafts, part number (P/N) FK32580, installed.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. European Aviation Safety Agency (EASA) AD 2010–0087, dated May 5, 2010 (corrected May 6, 2010) states the unsafe condition is as follows:

During manufacture of high-pressure (HP) compressor stage 1 discs, a small number of parts have been rejected due to a machining defect that was found during inspection. Analysis of the possibility of less severe examples having been undetected and passed into service has concluded that action is required to reduce the risk of failure. It was therefore necessary to reduce the life limit.

The HP compressor stage 1 disc is part of the HP compressor stage 1–4 shaft, P/N FK32580. We are issuing this AD to prevent failure of the HP compressor stage 1 disc, uncontained engine failure, and damage to the airplane.

Actions and Compliance

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

Multiple Flight Profile Monitoring Parts

(1) For RB211–Trent 800 series engines being monitored by "Multiple Flight Profile Monitoring," remove the HP compressor stage 1–4 shaft, P/N FK32580, before accumulating 5,580 standard duty cycles (SDC) since-new or within 960 SDC from the effective date of this AD, whichever occurs later.

Heavy Flight Profile Parts

(2) For RB211–Trent 800 series engines being monitored by "Heavy Flight Profile," remove the HP compressor stage 1–4 shaft, P/N FK32580, before accumulating 5,280 flight cycles since new or within 860 flight cycles from the effective data of this AD, whichever occurs later.

FAA Differences

(f) We have found it necessary to not incorporate the June 4, 2008 compliance date which is in EASA AD 2010–0087, dated May 5, 2010 (corrected May 6, 2010). We also updated the compliance times in the AD based on a more recent assessment of the unsafe condition.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to EASA Airworthiness Directive 2010–0087, dated May 5, 2010 (corrected May 6, 2010), and Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AF825, Revision 3, dated August 25, 2009 for related information. Contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ, telephone: 011–44–1332–242424; fax: 011–44–1332–245418; or e-mail via: *http://www.rolls-royce.com/contact/civil_team.jsp,* for a copy of this service information.

(i) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on April 25, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–10520 Filed 5–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0821; Directorate Identifier 2010–NE–30–AD; Amendment 39–16657; AD 2011–08–07]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

In January 2009 a Trent 895 powered Boeing 777–200 aircraft experienced release of a low pressure (LP) compressor blade which failed due to fatigue cracking in the root section of the blade. The released blade (undercut root standard) had received a part life processing to apply a compression layer to the blade root (Service Bulletin SB 72–D672—Introduction of Laser Shock Peening (LSP)) and also a part life upgrade to the retention feature lubrication system. Investigation has revealed that the effectiveness of this upgraded blade root lubrication coating system may be reduced dependant on the extent of previous running with the earlier standard, leading to increased blade root stress levels. In the specific case of the released blade, a review of its in-service modification history has shown that it operated for a relatively high number of flight cycles prior to the compression layer processing and the new retention feature lubrication system. A review of the Engine Health Monitoring data has also identified it operated at high N1 speeds compared to the Trent 800 fleet average N1 speeds. The combination of these factors has resulted in increased fatigue life usage which is considered to have led to crack initiation and propagation prior to reaching the blades declared life limit. A review of all in-service undercut/LSP standard Trent 800 LP compressor blades has identified specific blades that carry a similar increased susceptibility to cracking.

This AD is issued to mitigate the risk of possible multiple fan blades failure affecting those blades identified as described above which could lead to high energy non contained debris from the engine.

We are issuing this AD to prevent LP compressor blades from failing due to blade root cracks, which could lead to uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective June 7, 2011. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 7, 2011.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 14, 2011 (76 FR 2605). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

In January 2009 a Trent 895 powered Boeing 777–200 aircraft experienced release of a low pressure (LP) compressor blade which failed due to fatigue cracking in the root section of the blade. The released blade (undercut root standard) had received a part life processing to apply a compression layer to the blade root (Service Bulletin SB 72–D672—Introduction of Laser Shock Peening (LSP)) and also a part life upgrade to the retention feature lubrication system. Investigation has revealed that the effectiveness of this upgraded blade root lubrication coating system may be reduced dependant on the extent of previous running with the earlier standard, leading to increased blade root stress levels. In the specific case of the released blade, a review of its in-service modification history has shown that it operated for a relatively high number of flight cycles prior to the compression layer processing and the new retention feature lubrication system. A review of the Engine Health Monitoring data has also identified it operated at high N1 speeds compared to the Trent 800 fleet average N1 speeds. The combination of these factors has resulted in increased fatigue life usage which is considered to have led to crack initiation and propagation prior to reaching the blades declared life limit. A review of all in-service undercut/LSP standard Trent 800 LP compressor blades has identified specific blades that carry a similar increased susceptibility to cracking.

This AD is issued to mitigate the risk of possible multiple fan blades failure affecting those blades identified as described above which could lead to high energy non contained debris from the engine.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Ensure Cyclic Requirements Are Equivalent to Calendar-Based Requirements

Two commenters, the Boeing Company and American Airlines, request that we ensure that the cyclic requirements in the AD are equivalent to the calendar-based requirements in the MCAI and Alert Service Bulletin (ASB) No. RB.211–72–AG244, Revision 1, dated January 26, 2010. American Airlines' engine serial number (S/N) 51137 is identified as having an allowable inspection threshold of 1,680 cycles from the effective date of the proposed AD. Based on American Airlines' cyclic usage, the FAA AD would allow the blades to operate until March 1, 2014, while the RR ASB would only allow the blades to operate until January 1, 2013. The proposed AD appears to be less conservative for the blades in engine S/N 51137.

We agree. We moved engine S/N 51137 from being listed with the 1,680 cycles threshold, to being listed with a 1,027 cycles threshold in row 3C of Table 1 of the AD.

Recommendation To Retain Compliance Calendar Date Format

One commenter, RR, recommends that the FAA retain the calendar date format as specified in the referenced ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010 for compliance, rather than converting to cycles for the inspection threshold for the sub-population of fan sets. At the request of the National Transportation Safety Board, RR analyzed the modification and installation data for each fan set using both hours and cycles. For some operators, the highest risk value was based on hours and for others it was cycles. Whichever gave the highest risk value, together with the average utilization, was then used to determine the dates at which the blades need to have their initial inspection. Therefore, converting to cycles may not be correct for some operators. Rolls-Royce states that it will monitor N1 speed usage. A higher N1 speed usage could result in the risk values being affected and result in RR ASB No. RB.211–72–AG244, being revised and re-issued. Any change to that ASB would necessitate changing the FAA AD. By retaining the date format and the FAA AD referencing that SB then any future changes to the dates in the Appendices of the SB will not affect the AD. The SB is clear and simple, making it easy for the operators to monitor their affected fan blades. Monitoring a number of fan blades using cycles would make the monitoring more difficult for the operator.

We do not agree. We determined the cycles listed in Table 1 of the AD based on projected operator usage, from the calendar dates in the RR ASB. The SB dates were developed based on the logic given in the first justification paragraph above. The cyclic requirements in the AD are inherently consistent with each operator's risk values. We did not change the AD.

Request for Clarification of Incorporation by Reference Requirements

One commenter, Delta Airlines, states that the proposed AD requires use of Appendix 1 of RR ASB No. RB.211–72–AG244 to determine whether blades should be rejected after inspection. Appendix 1 only applies to blades that have been removed from the engine. Delta Airlines requests that the AD be changed so it is clear that the blades can be inspected either in or out of the engine, with appropriate rejection criteria for each method.

We agree. Our intent is not to restrict the inspections to blades removed from the engine. We added Appendix 2 to the incorporation by reference, to include blades not removed.

Delta Airlines also requests that we change the incorporation-by-reference requirement, to state that when re-applying dry film lubricant (DFL) to the fan blades after inspection, either Aircraft Maintenance Manual (AMM) task 72–31–11–400–801–R00, or RR SB No. RB.211–72–D347, may be used. The commenter states that the latest information from RR SB No. RB.211–72–D347 is already in AMM task 72–31–11–400–801–R00.

We partially agree. We agree with specifying in the AD, that blades that pass inspection need to have DFL applied before installing the blades. We do not agree that the AMM or RR No. RB.211–72–D347 need to be incorporated by reference in this AD, as this equates to standard maintenance. Under paragraph (e)(3), we added a paragraph that states, for blades that pass inspection, re-apply dry film lubricant, and install all blades in their original position.

Request for Previous Credit

Delta Airlines requests that we give previous credit for previous accomplishments of inspections using the original issue of RR ASB No. RB.211–72–AG244, before the effective date of the AD.

We agree. We changed the AD to add previous credit for that ASB.

Request To Eliminate Reporting Requirements

Delta Airlines requests that we eliminate the reporting requirements from the AD, which were required by default since the proposed AD required using all of paragraph 3 of RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010, and all of Appendix 1, of that AD. The commenter states that these are administrative tasks that do not need to be part of the AD. Each operator is required to document maintenance and AD compliance per the applicable regulations, and each has their own approved processes for doing so.

We agree and eliminated the reporting requirements by specifying only the paragraphs needed to perform the inspections in the AD.

Concern That AD Compliance May Be Misinterpreted

Delta Airlines requests that we revise the AD to state that after the effective date of this AD, blade serial numbers that are listed in RR No. RB.211–72–AG244, which have reached or are within 100 cycles of the initial inspection thresholds of Table 1 of the proposed AD, may only be installed as replacement blades in other engines if they have been successfully inspected per paragraph (e)(3) of this AD before installation. However, they may be removed and reinstalled in the same engine without paragraph (e)(3) inspections provided they do not exceed the initial and repetitive inspection intervals of paragraphs (e)(1) and (e)(2).

Also, Delta Airlines requests that we revise the AD to state that blades that have been ultrasonically inspected prior to the AD effective date, but which have not yet reached Table 1 thresholds, should be considered not yet "initially inspected," and thus not subject to the repetitive inspection requirements of paragraph (e)(2) until they reach the Table 1 inspection thresholds. On the same subject, American Airlines requests that the AD include a note similar to the SB to the same effect as the above recommendation. Delta Airlines and American Airlines are concerned that the AD might be interpreted that serviceable spare blades

in stock (or blades being swapped from one engine to another) with serial numbers listed in RR ASB No. RB.211–72–AG244, must have ultrasonic inspection (UI) accomplished before being installed even if they do not require initial inspection for thousands of cycles into the future. Delta Airlines also states that the existing UI requirements in the AD may lead to confusion as to whether the paragraph (e)(2) repetitive requirements apply to blades that have been inspected for other reasons prior to the Table 1 threshold.

We agree with the comments that the AD could be more clear as to when the inspections must start, and whether UI for other reasons prior to the thresholds in Table 1 would trigger the repetitive inspection requirements of paragraph (e)(2). We do not agree with the wording of the proposed change because it is simpler to define the phrase, "affected blade." The requirement of paragraph (e)(5) of the proposed AD, does not require inspections more often than every 100 cycles for any affected blade, since proposed AD paragraph (e)(5) refers to paragraph (e)(2) (repetitive UIs required by this AD). We added a definition to the AD compliance to state for the purpose of this AD, an affected blade is a blade listed in Table 1 of this AD that has accumulated cycles within 100 cycles, of the initial inspection thresholds in Table 1 of this AD.

Engine Serial Numbers Are for Reference Only

Delta Airlines and American Airlines request that we add a statement to the AD, stating that the engine serial numbers in Table 1 of the proposed AD are for reference only, and that the AD requirements apply to the blade serial numbers, not the engine serial numbers. The Table 1 listing of engine serial numbers could imply the engine requires initial and repetitive inspections even if blades were replaced with non-affected blades.

We agree. We intend for the AD to apply to the specific fan blade serial numbers listed in RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010. The engine serial numbers are listed for convenience only. We changed Table 1 to state that engine serial numbers are provided for reference only.

Request To Correct Table 1

American Airlines states that engine serial number 51280 appears to be in the wrong row of Table 1 of the proposed AD. They request that we correct the Table by moving the serial number from the top of row 3E to the bottom of row 3D, in that table.

We partially agree. We reviewed the proposed AD, as published in the **Federal Register**, and found it to be correct. We reviewed the proposed AD version in the FAA Regulatory Library (RGL), and found that Table 1 had the error you found. We contacted the staff that oversees the RGL, and they corrected Table 1.

Request That All Thresholds Be Given the Same Index

Delta Airlines requests that all thresholds in Table 1 of the proposed AD be the same for a given index. Delta Airlines noticed that most fan blade serial numbers being used in their engines were singled out with a lower threshold than the rest of the blades listed in corresponding appendices of the SB.

We do not agree. We changed the inspection requirements in the proposed AD from calendar-based requirements to cycle-based requirements. Because the intent of the AD is to have the same level of safety as the EASA AD, the cyclic usage of each operator was taken into account when converting from calendar to cyclic thresholds. The intent is for the number of cycles quoted to equate to the calendar times shown in the EASA AD. Since operators fly on different routes and have different procedures, the number of cycles accumulated in a given calendar period will vary as a consequence. We did not change the AD.

Request To Verify Row Identifiers in Table 1

American Airlines requests that the FAA verify that the row identifiers in Table 1 of the AD, correspond to the Appendix identifiers in RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010, to ensure that operators properly understand the AD requirements.

We partially agree. We agree with ensuring that Table 1 is clearly understood, to avoid operators from having problems complying with the AD. We do not agree with changing the AD, because Table 1 of the AD provides sufficient clarity in defining the compliance time criteria and what the appropriate sections of the ASB are, to be used. The row identifiers in Table 1 of the AD do correspond to the Appendix identifiers in RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010. We did not change the AD.

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 20 engines installed on airplanes of U.S. registry. We also estimate that it will take about 18 work-hours per engine to perform the inspections in one year's time. The average labor rate is $85 per work-hour. We estimate that one LP compressor blade per year will need replacement, at a cost of about $82,000. Based on these figures, we estimate the annual cost of the AD on U.S. operators to be $112,600. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–08–07 Rolls-Royce plc: Amendment 39–16657. Docket No. FAA–2010–0821; Directorate Identifier 2010–NE–30–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 7, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 turbofan engines.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent low-pressure (LP) compressor blades from failing due to blade root cracks, which could lead to uncontained engine failure and damage to the airplane.

Actions and Compliance

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

(1) Using the corresponding compliance threshold in Table 1 of this AD, perform an initial ultrasonic inspection (UI) of the affected LP compressor blades identified by serial number (S/N) in Appendices 3A through 3F of RR Alert Service Bulletin (ASB) No. RB.211–72–AG244, Revision 1, dated January 26, 2010.

TABLE 1—INITIAL INSPECTION THRESHOLDS

Appendix Number of RR ASB No. RB.211–72–AG244, Revision 1, that identifies affected LP compressor blades by S/N	Initial Inspection Threshold (Engine Serial Nos. (ESN) are for reference only)
3A	120 flight cycles after the effective date of this AD.
3B	Blades shown in RR ASB No. RB.211–72–AG244, Revision 1 as fitted to ESN 51039—802 flight cycles after the effective date of this AD. ESNs 51146, 51177, 51145, and 51149—380 flight cycles after the effective date of this AD.
3C	Blades shown in RR ASB No. RB.211–72–AG244, Revision 1 as fitted to ESN 51001 and blade S/N RGG16694—1,680 flight cycles after the effective date of this AD. ESN 51145, 51149, 51150 and 51204—796 flight cycles after the effective date of this AD. ESN 51160—1,160 flight cycles after the effective date of this AD. ESN 51137—1,027 flight cycles after the effective date of this AD.
3D	Blades shown in RR ASB No. ASB RB.211–72–AG244, Revision 1 as fitted to ESN 51193 and blade S/N RGG20216—1,212 flight cycles after the effective date of this AD. ESN 51200—1,237 flight cycles after the effective date of this AD. ESN 51280—1,551 flight cycles after the effective date of this AD.
3E	Blades shown in RR ASB No. RB.211–72–AG244, Revision 1 as fitted to ESN 51004, “na” and blade S/Ns RGG12590, RGG14081, and RGG15419—3,433 flight cycles after the effective date of this AD. ESN 51156—1,627 flight cycles after the effective date of this AD.
3F	Blades shown in RR ASB No. RB.211–72–AG244, Revision 1 as fitted to ESN 51175, 51194, 51201, 51205, and 51228—2,042 flight cycles after the effective date of this AD. ESN 51264—4,309 flight cycles after the effective date of this AD. ESN 51443—2,636 flight cycles after the effective date of this AD. Blade S/N RGG15698—2,638 flight cycles after the effective date of this AD.

(2) Thereafter, perform repetitive UIs of the affected LP compressor blades within every 100 flight cycles.

(3) Use paragraphs 3.A.(1) through 3.A.(2) of Accomplishment Instructions of RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010, paragraphs 1 through 3.B. of Appendix 1, and paragraphs 1 through 3.C. of Appendix 2, of that ASB, to perform the UIs.

(4) Remove blades from service before further flight that fail the inspection criteria in Appendix 1 of RR ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010.

(5) For blades that pass inspection, re-apply dry film lubricant, and install all blades in their original position.

(6) After the effective date of this AD, do not install any affected LP compressor blade unless it has passed the initial and repetitive UIs required by this AD.

Previous Credit

(f) An initial UI performed before the effective date of this AD using RR ASB No. RB.211–72–AG244, dated August 7, 2009, satisfies the initial UI requirements of this AD.

FAA AD Differences

(g) This AD differs from European Aviation Safety Agency (EASA) AD 2010–0097, dated May 26, 2010. The EASA AD uses calendar

dates for initial inspection thresholds. This AD uses flight cycles.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to EASA AD 2010–0097, dated May 26, 2010, for related information.

(j) Contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *alan.strom@faa.gov;* telephone (781) 238–7143; fax (781) 238–7199.

Definition

(k) For the purpose of this AD, an affected blade is a blade listed in Table 1 of this AD that has accumulated cycles within 100 cycles, of the initial inspection thresholds in Table 1 of this AD.

Material Incorporated by Reference

(l) You must use Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AG244, Revision 1, dated January 26, 2010, Appendix 1, Appendix 2, and Appendices 3A through 3F of that ASB, to do the actions required by this AD.

(1) For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 1332 242424; fax 44 1332 249936; e-mail: *tech.help@rolls-royce.com.*

(2) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts, on April 1, 2011.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–10521 Filed 5–2–11; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 405, 416, and 422

[Docket No. SSA–2008–0015]

RIN 0960–AG80

Eliminating the Decision Review Board

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are eliminating the Decision Review Board (DRB) portions of part 405 of our rules, which we currently use as the final step in our administrative review process for adjudicating initial disability claims in our Boston region. As of the effective date of this regulation, we will replace the DRB step with review by the Appeals Council. The Appeals Council will follow most of the rules in parts 404 and 416 that we use in the rest of the country to adjudicate disability claims at the Appeals Council level, with some differences needed to accommodate the rules that govern administrative law judge (ALJ) hearings in the Boston region. We will also authorize attorney advisors in the Boston region to conduct certain prehearing proceedings and make fully favorable decisions as they do in the rest of the country. We are making these changes to improve service to claimants and to increase consistency in our program rules.

DATES: These final rules are effective June 13, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Kryglik, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3735 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2006, we published final rules in the **Federal Register** that implemented a number of changes in our process for handling initial disability claims.[1] We referred to those regulations collectively as the Disability Service Improvement process (DSI). We intended DSI to improve the way we handle initial disability claims. DSI added rules that implemented a Quick Disability Determination (QDD) process at the initial level of our administrative review process. It also replaced the reconsideration step of the administrative review process with review by a Federal Reviewing Official (FedRO), established the Office of Medical and Vocational Expertise (OMVE), and made changes to some of the procedures in our ALJ hearing-level process. DSI also eliminated review by the Appeals Council, the final step in our administrative review process. We replaced the Appeals Council with the DRB, which reviewed certain ALJ decisions before those decisions became final. On August 1, 2006, we implemented the DSI rules in our Boston region, which consists of the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. At that time, we planned to implement the DSI rules in our remaining regions over a period of several years.

We have continually monitored the DSI process and made appropriate changes when necessary. For example, we published final rules on September 6, 2007, that implemented the QDD process nationally.[2] In other final rules, we suspended new claims processing through the Office of the Federal Reviewing Official (OFedRO) and the OMVE under subpart C of part 405 on March 23, 2008, so that we could reallocate those resources to reduce the backlog at the ALJ hearing level.[3] In November 2008, the OFedRO issued a decision on the last of the claims it had accepted for review.[4] Thus, in accordance with our March 2008 final rules, the States in the Boston region returned to some of the processes they followed before August 2006, including using either the process for reconsideration of an initial determination in 20 CFR 404.907 and 416.1407 or the testing procedures in 20 CFR 404.906 and 416.1406.

On December 4, 2009, we published a notice of proposed rulemaking (NPRM), *Reestablishing Uniform National Disability Adjudication Provisions,* which proposed to eliminate DSI and return the Boston region to the rules in parts 404 and 416 that we use to adjudicate disability claims in the rest of the country.[5] We are adopting some of our proposed revisions in these final rules.

Explanation of Changes

In these final rules, we are eliminating the DRB and restoring the Boston region to most of the same rules and procedures at the Appeals Council level under parts 404 and 416 that we currently follow in the rest of the country. We will continue to use our rules about hearings before ALJs under part 405 in the Boston region, including our rules that provide 75-day notice of a hearing and require a claimant to submit all evidence 5 days prior to his or her hearing unless he or she shows good cause. We are eliminating the existing rules that require claimants to ask an ALJ to vacate the ALJ's dismissal of a hearing request. Instead, under our new rules, claimants may appeal an ALJ's dismissal of a hearing request

[1] 71 FR 16424. Many of the changes are found in 20 CFR part 405.

[2] 72 FR 51173.

[3] 73 FR 2411 (Jan. 15, 2008), corrected at 73 FR 10381 (Feb. 27, 2008).

[4] 73 FR at 2412.

[5] 74 FR 63688.

directly to the Appeals Council, as is our current practice in the rest of the country.

Although we closed a claimant's official record once an ALJ issued his or her decision under the DSI rules,[6] the ALJ could consider new evidence submitted afterwards under certain conditions.[7] The DRB could also consider new evidence under certain conditions. In these final rules, we are eliminating the rule that allowed an ALJ to consider new evidence and adding final section 405.401, which restricts the conditions under which the Appeals Council can accept new evidence in DSI claims. If a claimant appeals an ALJ's dismissal of a hearing request, the Appeals Council will consider additional evidence about the dismissal and decide whether it provides a basis for granting review, as also described in final section 405.401.

With the other changes that we have already made to the DSI process, we no longer need many of the DSI rules in part 405 and are removing references to the FedRO from our rules. These final rules do not affect our Disability Prototype and Single Decisionmaker demonstration projects.

The DRB has not functioned as we originally intended; its workload has grown quickly and become overwhelming. We had intended to use an automated predictive model to select the most error-prone cases for DRB review. However, because we were unable to implement this predictive model, the DRB processed 100% of the unfavorable and partially favorable decisions, requiring significantly more resources than we had anticipated.

The DRB is composed of selected ALJs and administrative appeals judges from the Appeals Council. As members of the DRB, they were unavailable for their regular work, and our efforts to reduce the hearing backlog suffered. Before we implemented DSI, requests for review from the Boston region represented a small fraction of the Appeals Council's total requests for review. Because the DRB processed 100% of the unfavorable and partially favorable cases, there were more cases to review. At the same time, we had an increased number of requests for review by the Appeals Council in other areas of the country as we continued to work down our disability hearings backlog and increased the number of ALJ adjudications nationwide. In fiscal year (FY) 2010, the Appeals Council received 20% more requests for review than in FY 2009, up from 106,965 in FY 2009 to 128,703 in FY 2010.

The DRB's workload also reduced needed resources at the ALJ hearing level, as those ALJs who worked full-time on the DRB were unavailable to hold hearings. If we continued the DRB, we would need to assign even more ALJs to the DRB's workload as the number of DRB receipts rose due to our hearings backlog reduction plan. Consequently, the continued use of the DRB adversely affected our ability to reduce the hearings backlog.

We also are adding a new section 405.342 to allow attorney advisors to conduct prehearing proceedings and issue fully favorable decisions on cases that arise in the Boston region in the same manner as they do in the rest of the country. In our proposed rules, we proposed to follow in the Boston region the same hearings-level procedures we use in the rest of the country, including the rules that apply to our attorney advisor program. Even though these final rules do not adopt for the Boston region all of the hearings-level procedures we use in the rest of the country, we are adding this rule to help us reduce the backlog of cases awaiting a hearing.

Conforming Changes

We are making a number of conforming changes to sections in parts 404, 405, 416, and 422 to reflect this removal of the DRB rules. Some sections in these final rules differ from the language we proposed in the December 4, 2009 NPRM because these final rules retain the part 405 rules about the ALJ hearing level and include changes made after that date by our final rules "Disability Determinations by State Agency Disability Examiners," which we published in the **Federal Register** on October 13, 2010.[8] We have already published final rules in parts 404 and 416 that either removed some aspects of the DSI process or extended them nationally.[9] With the changes to the DSI process in this final rule, we are making a number of conforming changes consistent with the 2010 final rules.

Technical Change

We also are making a technical change to the heading of 20 CFR 416.926(e). The former heading was "Responsibility for determining medical equivalence." We are changing the heading to "Who is responsible for determining medical equivalence?" This change will make the heading consistent with its counterpart in 20 CFR 404.1526(e) and the format of headings in surrounding sections.

Public Comments

We published an NPRM in the **Federal Register** on December 4, 2009, and we gave the public 60 days to comment on it.[10] The comment period closed on February 2, 2010. We received comments from six individuals and organizations. The comments are available for public viewing at *http://www.regulations.gov.* The commenters supported most of the proposed changes but were concerned about three issues, which we discuss below. We carefully considered the comments. Because some of the comments were long, we have condensed, summarized, and paraphrased them. We have tried to summarize the commenters' views accurately, and to respond to the significant issues raised by the commenters that were within the scope of these rules.

Comment: Several of the commenters wanted attorney advisors in our Office of Disability Adjudication and Review to be able to conduct prehearing proceedings and issue fully favorable decisions in the Boston region as they do in the rest of the country.[11] These commenters noted that we precluded attorney advisors from deciding DSI cases.

Response: We are adopting this comment. As the commenters correctly noted, the attorney advisor program is available only to disability claims processed under parts 404 and 416 of our rules, and it does not apply to claims processed under the DSI rules in part 405.[12] We agree with the commenters that we should extend the attorney advisor prehearing process to claims processed in the Boston region as we continue our efforts to reduce the number of disability claims that are awaiting a hearing. Therefore, beginning on the effective date of these final rules, we will allow attorney advisors to conduct prehearing proceedings and issue fully favorable decisions on cases that arise in the Boston region in the same manner as they do in the rest of the country. We are adding this authority in new section 405.342.

Comment: Most of the commenters asked us to extend DSI's 75-day advance notice of a hearing rule in 20 CFR 405.315 to our national rules in 20 CFR 404.938 and 416.1438, which require 20 days advance notice.

[6] Current 20 CFR 405.360.

[7] Current 20 CFR 405.373.

[8] 75 FR 62676.

[9] As stated above, under the final rules we published in March 2008 that ended the FedRO and OMVE initiatives, subpart C of part 405 is no longer in effect. *See* 20 CFR 405.10(d).

[10] 74 FR 63688.

[11] *See* 20 CFR 404.942 and 416.1442.

[12] 73 FR 11349, 11350 (March 3, 2008).

Response: We are not adopting this comment. The rules we proposed on December 4, 2009 addressed only rule changes related to our proposal to eliminate the remaining DSI rules in part 405 of our rules. The commenters' suggestion would make a substantive change to our rules in parts 404 and 416, which is beyond the scope of this rulemaking. We issued for public comment a separate NPRM that proposed to make several substantive changes to our rules in parts 404 and 416, including the change the commenters recommended, on October 29, 2007.[13] We will consider the commenters' suggestion in the context of that rulemaking proceeding.

Comment: All of the commenters expressed concern about our plan to transfer cases pending at the DRB to the Appeals Council on the effective date of these final rules. The commenters believed that claimants whose cases we would transfer would be disadvantaged because they would have to wait longer for the Appeals Council to take action than DSI's 90-day limit for DRB review. Some commenters believed that this proposed procedure would be especially problematic in cases that involve partially favorable decisions. Under DSI, the DRB reviews those decisions before we effectuate them, while in non-DSI States, we first effectuate a partially favorable decision before we send it to the Appeals Council to consider the claimant's request for review. Some of the commenters suggested that we handle pending DRB cases as we handled cases pending review by a FedRO when we suspended FedRO case reviews in 2008. In that situation, we stopped sending new cases for FedRO review but kept the rules for such review in place until a FedRO issued a decision on the last pending case.

Response: We understand the commenters' concerns about longer processing times at the Appeals Council. To help allay concerns about processing times at the Appeals Council, we will put the transferred cases at the front of the Appeals Council queue. We believe that this approach will result in the best use of our resources and will result in the best service to claimants.

We decided not to use a process similar to the one we used for FedRO cases because the rapid growth in the DRB's workload, the unanticipated need for adjudicative resources, and the impact on other workloads both at the ALJ hearing level and at the Appeals Council are adversely affecting our ability to serve the public. Transferring all pending DRB cases to the Appeals Council on the effective date of these rules will help us use our resources more effectively and provide the best service to claimants.

We will process partially favorable ALJ decisions transferred to the Appeals Council under these final rules in the following manner. The Appeals Council will send partially favorable ALJ decisions that it receives from the DRB to a processing component, and we will effectuate these decisions in the same manner that we do for cases that arise in other parts of the country. In addition, the Appeals Council will notify those claimants whose claims we have transferred that we have deemed that they have filed a request for Appeals Council review of the ALJ's decision. That notice will inform the claimants that they have a right to file a written request for withdrawal of the deemed request for review. If the Appeals Council grants review of a partially favorable ALJ decision, it will review the entire record and may affirm, modify, or reverse the ALJ's decision.

When will we start to use these rules?

We will start to use these final rules on the effective date stated above. Until then, we will continue to use our current rules.

On the effective date of these final rules, we will transfer all cases pending before the DRB to the Appeals Council and treat these cases as if the claimant had requested Appeals Council review of the hearing decision. The Appeals Council will notify each of these claimants that we have deemed that he or she has filed a request for Appeals Council review of the ALJ's decision and that he or she has the right to file a written request for withdrawal of the deemed request for Appeals Council review. For cases in which a claimant has appealed a dismissal by an ALJ under the procedures in part 405, we will treat the pending request as a request for Appeals Council review of the ALJ's dismissal. We will transfer to the Appeals Council any cases remanded by a Federal court that we assigned to the DRB. We will immediately begin effectuating partially favorable decisions when we forward them for Appeals Council review.

Regulatory Procedures

Executive Order 12866, as Supplemented by Executive Order 135653

We consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB reviewed them.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain reporting requirements in the regulation sections listed below. For some sections in these rules, we previously accounted for the public reporting burdens in the Information Collection Requests for the various forms the public uses to submit the information to us. Consequently, we are not reporting those sections below. The sections below pose new public reporting burdens not covered by an existing OMB-approved form, and we provide burden estimates for them.

Regulation Section 20 CFR	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
405.1(b)(5), 405.372(b).	If applicants have pursued their claims through all levels of the administrative process and are dissatisfied with SSA's final decision, they (or parties acting on their behalf) may request judicial review by filing an action in Federal district court within the stated time period.	833	1	30	417

[13] 72 FR 61218.

Regulation Section 20 CFR	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
405.1(c)(2)	Applicants appealing SSA's decisions must provide evidence to support their claims.	5,310	1	10	885
405.20	If one wants an extension past the deadline to request administrative or judicial review, one must establish there is good cause for missing the deadline.	5,310	1	10	885
405.372(c)	If applicants want to submit additional evidence to the Appeals Council, the Council will only consider it if it meets certain criteria.	5,310	1	10	885
405.505	If one files for an extension of time to file a civil action, one must file that request with the Appeals Council.	833	1	30	417
Total		17,596			3,489

We are also seeking comment on our information collections in our current rule sections listed below. We are updating the public reporting burdens for the information collection requirements under OMB control number 0960–0710. The following are updated burden estimates:

Regulation section 20 CFR	Description of public reporting requirement	Number of respondents (annually)	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
404.961, 416.1461, 405.330, and 405.366.	An individual may request a pre-hearing or post-hearing conference.	12,220	1	20	4,073
404.950, 416.1450, and 405.332.	An individual has the right to present evidence at a hearing, including the subpoena process.	1,040	1	20	347
404.949 and 416.1449	An individual (or designated representative) may appear before an administrative law judge to present an oral or written statement of a case.	2,868	1	60	2,868
405.334	An individual (or designated representative) may, at any time before the hearing begins, submit a pre-hearing statement with an explanation of the alleged disability.	20	1	60	20
404.957, 416.1457, and 405.380.	Explain the conditions under which an administrative law judge may dismiss a request for hearing.	21,041	1	10	3,507
405.381	Outlines the contents of the notice of dismissal and the procedures for requesting Appeals Council review of the dismissal decision.	37	1	30	19
405.401	Explains procedures for requesting review of a hearing decision or a dismissal of a hearing request and the conditions under which the Appeals Council will consider new evidence.	5,310	1	10	885
404.982 & 416.1482	Pertains to the extension of time for filing an action in a Federal district court.	1,687	1	30	844
404.987 & 404.988 and 416.1487 & 416.1488 and 405.601.	Outlines the conditions under which we may reopen a final decision or determination.	12,425	1	30	6,213
Totals		56,648			18,776

We submitted an Information Collection Request for clearance to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize the burden on respondents, including the use of automated techniques or other forms of information technology. If you would like to submit comments, please send them to the following locations:

Office of Management and Budget, *Attn:* Desk Officer for SSA, *Fax Number:* 202–395–6974, *E-mail address: OIRA_Submission@omb.eop.gov.*

Social Security Administration, Attn: Reports Clearance Officer, 1333 Annex, 6401 Security Blvd, Baltimore, MD 21235–0001, *Fax Number:* 410–965–6400, *E-mail: OPLM.RCO@ssa.gov.*

You can submit comments until July 5, 2011, which is 60 days after the publication of these rules. However, your comments will be most useful if you send them to us by June 2, 2011, which is 30 days after publication. To receive a copy of the OMB clearance package, contact the SSA Reports Clearance Officer using any of the above contact methods. We prefer to receive comments by e-mail or fax.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social

Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Blind; Disability benefits; Old-Age, Survivors, and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

20 CFR Part 405

Administrative practice and procedure; Blind, Disability benefits; Old-Age, Survivors, and Disability Insurance; Public assistance programs; Reporting and recordkeeping requirements; Social Security; Supplemental Security Income (SSI).

20 CFR Part 416

Administrative practice and procedure; Aged, Blind, Disability benefits, Public Assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

20 CFR Part 422

Administrative practice and procedure; Organization and functions (Government agencies); Reporting and recordkeeping requirements; Social Security.

Dated: April 26, 2011.

Michael J. Astrue,

Commissioner of Social Security.

For the reasons set out in the preamble, we amend subparts J, P, and Q of part 404, part 405, subparts I, J, and N of part 416, and subparts B and C of part 422 of chapter III of title 20 Code of Federal Regulations as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—[Amended]

■ 1. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend § 404.906 by removing the third and fourth sentences of paragraph (b)(4).

■ 3. Amend § 404.930 by removing paragraph (c).

Subpart P—[Amended]

■ 4. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a)–(b), and (d)–(h), 216(i), 221(a), (i), and (j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b), and (d)–(h), 416(i), 421(a), (i), and (j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 5. Amend § 404.1502 by revising the definition of "nonexamining source" to read as follows:

§ 404.1502 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. *See* § 404.1527.

* * * * *

■ 6. Amend § 404.1512 by revising paragraph (b)(8) to read as follows:

§ 404.1512 Evidence.

* * * * *

(b) * * *

(8) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record. *See* §§ 404.1527(f)(2)–(3).

* * * * *

■ 7. Amend § 404.1513 by revising the first sentence of paragraph (c) to read as follows:

§ 404.1513 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants, and other program physicians and psychologists to be "statements about what you can still do" made by nonexamining physicians and psychologists based on their review of the evidence in the case record. * * *

* * * * *

■ 8. Amend § 404.1519k by revising paragraph (a) to read as follows:

§ 404.1519k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) The rate of payment for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. *See* §§ 404.1624 and 404.1626 of this part.

* * * * *

■ 9. Amend § 404.1519m by revising the third sentence to read as follows:

§ 404.1519m Diagnostic tests or procedures.

* * * A State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

■ 10. Amend § 404.1519s by revising paragraph (c) to read as follows:

§ 404.1519s Authorizing and monitoring the consultative examination.

* * * * *

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

■ 11. Amend § 404.1520a by revising the third sentence and removing the fourth sentence of paragraph (d)(2), and revising paragraphs (e) introductory text, (e)(1), (e)(4), and (e)(5) to read as follows:

§ 404.1520a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision). * * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record

how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision. The following rules apply:

(1) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 404.1615(c)(1) of this part, the State agency medical or psychological consultant has overall responsibility for assessing medical severity. A State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence.

* * * * *

(4) At the administrative law judge hearing and Appeals Council levels, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(5) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 404.941 of this part, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 404.941(d) or (e) of this part. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

■ 12. Amend § 404.1526 by revising the first sentence of paragraph (d) and paragraph (e) to read as follows:

§ 404.1526 Medical equivalence.

* * * * *

(d) *Who is a designated medical or psychological consultant?* A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. * * *

(e) *Who is responsible for determining medical equivalence?* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (*see* § 404.1616 of this part) has the overall responsibility for determining medical equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 404.918 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the administrative law judge or Appeals Council.

■ 13. Amend § 404.1527 by revising the first sentence of paragraph (f)(1) and removing paragraph (f)(4), to read as follows:

§ 404.1527 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant may make the determination of disability together with a State agency disability examiner or provide one or more medical opinions to a State agency disability examiner when the disability examiner makes the initial or reconsideration determination alone (*see* § 404.1615(c) of this part). * * *

* * * * *

■ 14. Amend § 404.1529 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 404.1529 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings under §§ 404.914 through 404.918 of this part and in fully favorable determinations made by State agency disability examiners alone under § 404.1615(c)(3) of this part), a State agency medical or psychological consultant or other medical or psychological consultant designated by the Commissioner directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the administrative law judge hearing or Appeals Council level of the administrative review process, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

■ 15. Amend § 404.1546 by revising the first sentence of paragraph (a) and paragraph (c), and removing paragraph (d), to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency medical or psychological consultant and a State agency disability examiner make the disability determination as provided in § 404.1615(c)(1) of this part, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity. * * *

* * * * *

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level or at the Appeals Council review level, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

Subpart Q—[Amended]

■ 16. The authority citation for subpart Q of part 404 continues to read as follows:

Authority: Secs. 205(a), 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), 421, and 902(a)(5)).

■ 17. Amend § 404.1601 by removing the third sentence of the introductory text.

■ 18. Amend § 404.1616 by removing the third sentence of paragraph (b), and removing paragraph (e)(4).

■ 19. Amend § 404.1624 by revising the first sentence to read as follows:

§ 404.1624 Medical and other purchased services.

The State will determine the rates of payment for purchasing medical or other services necessary to make determinations of disability. * * *

PART 405—ADMINISTRATIVE REVIEW PROCESS FOR ADJUDICATING INITIAL DISABILITY CLAIMS

■ 20. The authority citation for part 405 continues to read as follows:

Authority: Secs. 201(j), 205(a)–(b), (d)–(h), and (s), 221, 223(a)–(b), 702(a)(5), 1601, 1602, 1631, and 1633 of the Social Security Act (42 U.S.C. 401(j), 405(a)–(b), (d)–(h), and (s), 421, 423(a)–(b), 902(a)(5), 1381, 1381a, 1383, and 1383b).

Subpart A—[Amended]

■ 21. Amend § 405.1 by adding a third sentence to paragraph (b)(1) and revising paragraphs (b)(2), (b)(3), (b)(4), (b)(5), the first sentence of (c)(2), and (c)(3) to read as follows:

§ 405.1 Introduction.

* * * * *

(b) * * *

(1) * * * We use the procedures in part 404 subpart J of this chapter, part 416 subpart N of this chapter, or both, for your initial determination.

(2) *Reconsideration.* If you are dissatisfied with the initial determination, you may ask us to reconsider it. We use the procedures in part 404 subpart J of this chapter, part 416 subpart N of this chapter, or both, for your reconsideration determination. You must follow the procedure in §§ 404.909 or 416.1409 of this chapter to request reconsideration.

(3) *Hearing before an administrative law judge.* If you are dissatisfied with the reconsidered determination, you may request a hearing before an administrative law judge. The administrative law judge will use the procedures in subpart D of this part.

(4) *Appeals Council review.* If you or any other party to the hearing is dissatisfied with the administrative law judge's decision or with the administrative law judge's dismissal of a hearing request, you may request that the Appeals Council review that action. The Appeals Council also may initiate review on its own motion. The Appeals Council will use the procedures in subparts E through G of this part for its review.

(5) *Federal court review.* If you have pursued your claim through all levels of our administrative process and are dissatisfied with our final decision, you may request judicial review by filing an action in Federal district court.

(c) * * *

(2) *Evidence considered and right to representation.* Subject to §§ 405.331 and 405.430, you may present and we will consider information in support of your claim. * * *

(3) *Evidentiary standards applied.* When we make a determination or decision on your disability claim, we will apply a preponderance of the evidence standard, except that the Appeals Council will review findings of fact under the substantial evidence standard.

* * * * *

■ 22. Revise § 405.5 to read as follows:

§ 405.5 Definitions.

As used in this part:

Act means the Social Security Act, as amended.

Administrative law judge means an administrative law judge appointed pursuant to the provisions of 5 U.S.C. 3105 who is employed by the Social Security Administration.

Commissioner means the Commissioner of Social Security, or his or her designee.

Date you receive notice means five days after the date on the notice, unless you show us that you did not receive it within the five-day period.

Day means calendar day, unless otherwise indicated.

Decision means the decision made by an administrative law judge, attorney advisor, or the Appeals Council.

Disability claim or *claim* means:

(1) An application for benefits that is based on whether you are disabled under title II of the Act, or

(2) An application for supplemental security income payments that is based on whether you are disabled or blind under title XVI of the Act.

(3) For purposes of this part, the terms "disability claim" or "claim" do not include a continuing disability review or age-18 redetermination.

Document includes books, records, correspondence, papers, as well as forms of electronic media such as video tapes, CDs, and DVDs.

Evidence means evidence as defined under §§ 404.1512 and 416.912 of this chapter.

Preponderance of the evidence means such relevant evidence that as a whole shows that the existence of the fact to be proven is more likely than not.

Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

Vacate means to set aside a previous action.

We, us, or *our* refers to the Social Security Administration.

You or *your* refers to the person who has filed a disability claim and, where appropriate, his or her authorized representative.

■ 23. Remove and reserve § 405.10.

■ 24. Amend § 405.20 by revising the first sentence of paragraph (a) to read as follows:

§ 405.20 Good cause for extending deadlines.

(a) If you want us to extend the deadline to request administrative or judicial review, you must establish that there is good cause for missing the deadline. * * *

* * * * *

Subparts B and C— [Removed and Reserved]

■ 25. Remove and reserve subparts B and C.

Subpart D—[Amended]

■ 26. Amend § 405.301 by revising the first sentence of paragraph (a) to read as follows:

§ 405.301 Hearing before an administrative law judge—general.

(a) This subpart explains what to do if you are dissatisfied with a reconsidered determination or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter. * * *

* * * * *

■ 27. Revise § 405.305 to read as follows:

§ 405.305 Availability of a hearing before an administrative law judge.

You may request a hearing before an administrative law judge if you are dissatisfied with the reconsidered determination on your disability claim or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of §§ 404.906(b)(4) or 416.1406(b)(4) of this chapter.

■ 28. Amend § 405.310 by revising paragraph (a)(3) and the first sentence of paragraph (b) to read as follows:

§ 405.310 How to request a hearing before an administrative law judge.

(a) *Written request.* * * *

(3) The specific reasons you disagree with the previous determination,

* * * * *

(b) *Time limit for filing request.* An administrative law judge will conduct a hearing if you request one in writing no later than 60 days after the date you receive notice of the reconsidered determination or an initial determination subject to a hearing by an administrative law judge under the procedures in this part as a result of § 404.906(b)(4) or § 416.1406(b)(4) of this chapter (or within the extended time period if we extend the time as provided in paragraph (d) of this section). * * *

* * * * *

■ 29. Amend § 405.320 by removing the last sentence of paragraph (b).

■ 30. Add § 405.342 to read as follows:

§ 405.342 Prehearing proceedings and decisions by attorney advisors.

After a hearing is requested but before it is held, an attorney advisor may conduct prehearing proceedings as set out in §§ 404.942(c) or 416.1442(c) of this chapter. If, after the completion of these proceedings, we can make a decision that is fully favorable to you and all other parties based on the preponderance of the evidence, an attorney advisor, instead of an administrative law judge, may issue the decision. We use the procedures §§ 404.942 or 416.1442 of this chapter when we conduct prehearing proceedings or issue decisions under this section.

■ 31. Amend § 405.360 by revising the last sentence to read as follows:

§ 405.360 Official record.

* * * Subject to § 405.401(c), the official record closes once the administrative law judge issues his or her decision regardless of whether it becomes our final decision.

■ 32. Amend § 405.365 by revising paragraph (a)(2) to read as follows:

§ 405.365 Consolidated hearing before an administrative law judge.

(a) * * *

(2) If the administrative law judge consolidates the claims, he or she will decide both claims, even if we have not yet made an initial determination or a reconsidered determination on the other claim.

* * * * *

■ 33. Amend § 405.370 by removing the third sentence of paragraph (a) and revising the third sentence of paragraph (b) to read as follows:

§ 405.370 Decisions by the administrative law judge.

* * * * *

(b) * * * Within five days after the hearing, if there are no subsequent changes to the analysis in the oral decision, we will send you a written decision that incorporates such oral decision by reference. * * *

■ 34. Amend § 405.371 by revising the second and third sentences to read as follows:

§ 405.371 Notice of the decision of an administrative law judge.

* * * The notice accompanying the decision will explain your right to representation. It also will explain your right to request review of the decision by the Appeals Council.

■ 35. Revise § 405.372 to read as follows:

§ 405.372 Effect of an administrative law judge's decision.

The decision of the administrative law judge is binding on all parties to the hearing unless—

(a) You or another party requests a review of the decision by the Appeals Council within the stated time period, and the Appeals Council reviews your case;

(b) You or another party requests a review of the decision by the Appeals Council within the stated time period, the Appeals Council denies your request for review, you seek judicial review of your case by filing an action in a Federal district court, and the Federal court reverses the decision or remands it for further administrative action;

(c) An administrative law judge or the Appeals Council revises the decision under § 405.601 of this part;

(d) You use the expedited appeals process described in §§ 404.923 through 404.928 or 416.1423 through 416.1428 of this chapter;

(e) The ALJ decided the case after a Federal court remanded your case to us, and the Appeals Council follows the procedures in §§ 404.984 or 416.1484 of this chapter to assume jurisdiction of your case; or

(f) The Appeals Council reviews the claim on its own motion.

■ 36. Remove and reserve § 405.373.

■ 37. Amend § 405.381 by revising the second and third sentences to read as follows:

§ 405.381 Notice of dismissal of a request for a hearing before an administrative law judge.

* * * The notice will tell you that you may ask the Appeals Council to review the dismissal and will explain your right to representation. Your request for review by the Appeals Council must be in writing and must be filed within 60 days after the date that you receive notice of the dismissal.

■ 38. Remove and reserve § 405.382.

■ 39. Revise § 405.383 to read as follows:

§ 405.383 Effect of dismissal of a request for a hearing before an administrative law judge.

The administrative law judge's dismissal of a request for a hearing is binding and not subject to further review, unless an administrative law judge or the Appeals Council vacates it.

Subpart E—[Amended]

■ 40. Revise the heading of subpart E of part 405 to read as follows:

Subpart E—Appeals Council Review

■ 41. Revise § 405.401 to read as follows:

§ 405.401 Appeals Council review.

(a) If you (or any other party) are dissatisfied with the hearing decision or with the dismissal of a hearing request under this part, you may request that the Appeals Council review that action. The Appeals Council may also initiate review on its own motion. Except as specifically provided in this subpart, we will follow our rules for Appeals Council review in §§ 404.966 through 404.984 and 416.1466 through 416.1484 of this chapter.

(b) If you seek Appeals Council review, you must file your request within the time period and in accordance with the procedures in §§ 404.968 and 416.1468 of this chapter. The Appeals Council will consider additional evidence only in accordance with paragraph (c) of this section.

(c) If you submit additional evidence, the Appeals Council will consider the additional evidence only where it relates to the period on or before the date of the hearing decision, and only if you show that there is a reasonable probability that the evidence, alone or when considered with the other evidence of record, would change the outcome of the decision, and

(1) Our action misled you;

(2) You had a physical, mental, educational, or linguistic limitation(s) that prevented you from submitting the evidence earlier; or

(3) Some other unusual, unexpected, or unavoidable circumstance beyond your control prevented you from submitting the evidence earlier.

■ 42. Remove and reserve §§ 405.405, 405.410, 405.415, 405.420, 405.425, and 405.427.

■ 43. Revise § 405.430 to read as follows:

§ 405.430 Record before the Appeals Council.

Subject to § 405.401(c), the record is closed as of the date of the administrative law judge's decision, and the Appeals Council will base its action on the same evidence that was before the administrative law judge.

■ 44. Remove and reserve §§ 405.440, 405.445, and 405.450.

Subpart F—[Amended]

■ 45. Amend § 405.505 by revising the third sentence to read as follows:

§ 405.505 Extension of time to file a civil action.

* * * You must file your request with the Appeals Council. * * *

■ 46. Revise § 405.510 to read as follows:

§ 405.510 Claims remanded by a Federal court.

When a Federal court remands a claim decided under this part for further agency consideration, the Appeals Council may make a decision based upon the evidence in the record, or it may remand the claim to an administrative law judge. If the Appeals Council remands a claim to an administrative law judge, the Appeals Council will send you a notice of remand.

Subpart H — [Removed and Reserved]

■ 47. Remove and reserve subpart H.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 48. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 221(m), 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1), and (p), and 1633 of the Social Security Act (42 U.S.C. 421(m), 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383b); secs. 4(c) and 5, 6(c)-(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, and 1382h note).

■ 49. Amend § 416.902 by revising the definition of "nonexamining source" to read as follows:

§ 416.902 General definitions and terms for this subpart.

* * * * *

Nonexamining source means a physician, psychologist, or other acceptable medical source who has not examined you but provides a medical or other opinion in your case. At the administrative law judge hearing and Appeals Council levels of the administrative review process, it includes State agency medical and psychological consultants, other program physicians and psychologists, and medical experts or psychological experts we consult. See § 416.927.

* * * * *

■ 50. Amend § 416.912 by revising paragraph (b)(8) to read as follows:

§ 416.912 Evidence.

* * * * *

(b) * * *

(8) At the administrative law judge and Appeals Council levels, findings, other than the ultimate determination about whether you are disabled, made by State agency medical or psychological consultants and other program physicians or psychologists, or other medical specialists, and opinions expressed by medical experts or psychological experts that we consult based on their review of the evidence in your case record. See §§ 416.927(f)(2)-(3).

* * * * *

■ 51. Amend § 416.913 by revising the first sentence of paragraph (c) to read as follows:

§ 416.913 Medical and other evidence of your impairment(s).

* * * * *

(c) * * * At the administrative law judge and Appeals Council levels, we will consider residual functional capacity assessments made by State agency medical and psychological consultants and other program physicians and psychologists to be "statements about what you can still do" made by nonexamining physicians and psychologists based on their review of the evidence in the case record. * * *

* * * * *

■ 52. Amend § 416.919k by revising paragraph (a) to read as follows:

§ 416.919k Purchase of medical examinations, laboratory tests, and other services.

* * * * *

(a) The rate of payment for purchasing medical or other services necessary to make determinations of disability may not exceed the highest rate paid by Federal or public agencies in the State for the same or similar types of service. See §§ 416.1024 and 416.1026 of this part.

* * * * *

■ 53. Amend § 416.919m by revising the third sentence to read as follows:

§ 416.919m Diagnostic tests or procedures.

* * * A State agency medical consultant must approve the ordering of any diagnostic test or procedure when there is a chance it may involve significant risk. * * *

■ 54. Amend § 416.919s by revising paragraph (c) to read as follows:

§ 416.919s Authorizing and monitoring the consultative examination.

* * * * *

(c) Consistent with Federal and State laws, the State agency administrator will work to achieve appropriate rates of payment for purchased medical services.

* * * * *

■ 55. Amend § 416.920a by revising the third sentence and removing the fourth sentence of paragraph (d)(2) and revising paragraphs (e) introductory text, (e)(1), (e)(4), and (e)(5) to read as follows:

§ 416.920a Evaluation of mental impairments.

* * * * *

(d) * * *

(2) * * * We will record the presence or absence of the criteria and the rating of the degree of functional limitation on a standard document at the initial and reconsideration levels of the administrative review process, or in the decision at the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision). * * *

* * * * *

(e) *Documenting application of the technique.* At the initial and reconsideration levels of the administrative review process, we will complete a standard document to record how we applied the technique. At the administrative law judge hearing and Appeals Council levels (in cases in which the Appeals Council issues a decision), we will document application of the technique in the decision. The following rules apply:

(1) When a State agency medical or psychological consultant makes the determination together with a State agency disability examiner at the initial or reconsideration level of the administrative review process as provided in § 416.1015(c)(1) of this part, the State agency medical or psychological consultant has overall

responsibility for assessing medical severity. A State agency disability examiner may assist in preparing the standard document. However, our medical or psychological consultant must review and sign the document to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence.

* * * * *

(4) At the administrative law judge hearing and Appeals Council levels, the written decision must incorporate the pertinent findings and conclusions based on the technique. The decision must show the significant history, including examination and laboratory findings, and the functional limitations that were considered in reaching a conclusion about the severity of the mental impairment(s). The decision must include a specific finding as to the degree of limitation in each of the functional areas described in paragraph (c) of this section.

(5) If the administrative law judge requires the services of a medical expert to assist in applying the technique but such services are unavailable, the administrative law judge may return the case to the State agency or the appropriate Federal component, using the rules in § 416.1441 of this part, for completion of the standard document. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is warranted, it will process the case using the rules found in § 416.1441(d) or (e) of this part. If, after reviewing the case file and completing the standard document, the State agency or Federal component concludes that a determination favorable to you is not warranted, it will send the completed standard document and the case to the administrative law judge for further proceedings and a decision.

■ 56. Amend § 416.924 by revising paragraph (g) to read as follows:

§ 416.924 How we determine disability for children.

* * * * *

(g) *How we will explain our findings.* When we make an initial or reconsidered determination whether you are disabled under this section or whether your disability continues under § 416.994a (except when a disability hearing officer makes the reconsideration determination), we will complete a standard form, Form SSA–538, Childhood Disability Evaluation Form. The form outlines the steps of the sequential evaluation process for individuals who have not attained age 18. The State agency medical or psychological consultant (see § 416.1016 of this part) or other designee of the Commissioner has overall responsibility for the content of the form and must sign the form to attest that it is complete and that he or she is responsible for its content, including the findings of fact and any discussion of supporting evidence. Disability hearing officers, administrative law judges, and the administrative appeals judges on the Appeals Council (when the Appeals Council makes a decision) will not complete the form but will indicate their findings at each step of the sequential evaluation process in their determinations or decisions.

■ 57. Amend § 416.926 by revising the first sentence of paragraph (d) and revising paragraph (e) to read as follows:

§ 416.926 Medical equivalence for adults and children.

* * * * *

(d) *Who is a designated medical or psychological consultant?* A medical or psychological consultant designated by the Commissioner includes any medical or psychological consultant employed or engaged to make medical judgments by the Social Security Administration, the Railroad Retirement Board, or a State agency authorized to make disability determinations. * * *

(e) *Who is responsible for determining medical equivalence?* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (*see* § 416.1016 of this part) has the overall responsibility for determining medical equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining medical equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding medical equivalence rests with the administrative law judge or Appeals Council.

■ 58. Amend § 416.926a by revising paragraph (n) to read as follows:

§ 416.926a Functional equivalence for children.

* * * * *

(n) *Responsibility for determining functional equivalence.* In cases where the State agency or other designee of the Commissioner makes the initial or reconsideration disability determination, a State agency medical or psychological consultant or other designee of the Commissioner (*see* § 416.1016 of this part) has the overall responsibility for determining functional equivalence. For cases in the disability hearing process or otherwise decided by a disability hearing officer, the responsibility for determining functional equivalence rests with either the disability hearing officer or, if the disability hearing officer's reconsideration determination is changed under § 416.1418 of this part, with the Associate Commissioner for Disability Programs or his or her delegate. For cases at the administrative law judge or Appeals Council level, the responsibility for deciding functional equivalence rests with the administrative law judge or Appeals Council.

■ 59. Amend § 416.927 by revising the first sentence of paragraph (f)(1) and removing paragraph (f)(4), to read as follows:

§ 416.927 Evaluating opinion evidence.

* * * * *

(f) * * *

(1) In claims adjudicated by the State agency, a State agency medical or psychological consultant may make the determination of disability together with a State agency disability examiner or provide one or more medical opinions to a State agency disability examiner when the disability examiner makes the initial or reconsideration determination alone (*See* § 416.1015(c) of this part). * * *

* * * * *

■ 60. Amend § 416.929 by revising the third and fifth sentences of paragraph (b) to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

* * * * *

(b) * * * In cases decided by a State agency (except in disability hearings under §§ 416.1414 through 416.1418 of this part and in fully favorable determinations made by State agency disability examiners alone under § 416.1015(c)(3) of this part), a State agency medical or psychological consultant or other medical or psychological consultant designated by the Commissioner directly participates in determining whether your medically determinable impairment(s) could reasonably be expected to produce your alleged symptoms. * * * At the

administrative law judge hearing or Appeals Council level of the administrative review process, the adjudicator(s) may ask for and consider the opinion of a medical or psychological expert concerning whether your impairment(s) could reasonably be expected to produce your alleged symptoms. * * *

* * * * *

■ 61. Amend § 416.946 by revising the first sentence in paragraph (a) and paragraph (c), and removing paragraph (d), to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency medical or psychological consultant and a State agency disability examiner make the disability determination as provided in § 416.1015(c)(1) of this part, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity. * * *

* * * * *

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level or at the Appeals Council review level, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

Subpart J—[Amended]

■ 62. The authority citation for subpart J of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614, 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382c, 1383, and 1383b).

■ 63. Amend § 416.1001 by removing the third sentence of the introductory text.

■ 64. Amend § 416.1016 by removing the third sentence of paragraph (b) and removing paragraph (e)(4).

■ 65. Amend § 416.1024 by revising the first sentence to read as follows:

§ 416.1024 Medical and other purchased services.

The State will determine the rates of payment for purchasing medical or other services necessary to make determinations of disability. * * *

Subpart N—[Amended]

■ 66. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 67. Amend § 416.1406 by removing the third and fourth sentences of paragraph (b)(4).

■ 68. Amend § 416.1430 by removing paragraph (c).

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

■ 69. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13), and sec. 7213(a)(1)(A) of Pub. L. 108–458.

■ 70. Amend § 422.130 by revising the first sentence of paragraph (b) and the second sentence of paragraph (c) to read as follows:

§ 422.130 Claim procedure.

* * * * *

(b) * * * An individual who files an application for monthly benefits, the establishment of a period of disability, a lump-sum death payment, or entitlement to hospital insurance benefits or supplementary medical insurance benefits, either on his own behalf or on behalf of another, must establish by satisfactory evidence the material allegations in his application, except as to earnings shown in the Social Security Administration's records (*see* subpart H of part 404 of this chapter for evidence requirements in nondisability cases and subpart P of part 404 of this chapter for evidence requirements in disability cases). * * *

(c) * * * Section 404.1503 of this chapter has a discussion of the respective roles of State agencies and the Administration in the making of disability determinations and information regarding initial determinations as to entitlement or termination of entitlement in disability claims. * * *

■ 71. Revise § 422.140 to read as follows:

§ 422.140 Reconsideration of initial determination.

If you are dissatisfied with an initial determination with respect to entitlement to monthly benefits, a lump-sum death payment, a period of disability, a revision of an earnings record, with respect to any other right under title II of the Social Security Act, or with respect to entitlement to hospital insurance benefits or supplementary medical insurance benefits, you may request that we reconsider the initial determination. The information in § 404.1503 of this chapter as to the respective roles of State agencies and the Social Security Administration in making disability determinations is also generally applicable to the reconsideration of initial determinations involving disability. However, in cases in which a disability hearing as described in §§ 404.914 through 404.918 and §§ 416.1414 through 416.1418 of this chapter is available, the reconsidered determination may be issued by a disability hearing officer or the Associate Commissioner for Disability Programs or his or her delegate. After the initial determination has been reconsidered, we will mail you written notice and inform you of your right to a hearing before an administrative law judge (*see* § 422.201).

Subpart C—[Amended]

■ 72. Revise the heading of subpart C of part 422 to read as follows:

Subpart C—Procedures of the Office of Disability Adjudication and Review

■ 73. The authority citation for subpart C of part 422 continues to read as follows:

Authority: Secs. 205, 221, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 421, and 902(a)(5)); 30 U.S.C. 923(b).

■ 74. Amend § 422.201 by revising the first and third sentences of the introductory text to read as follows:

§ 422.201 Material included in this subpart.

This subpart describes in general the procedures relating to hearings before an administrative law judge of the Office of Disability Adjudication and Review, review by the Appeals Council of the hearing decision or dismissal, and court review in cases decided under the procedures in parts 404, 405, 408, 410, and 416 of this chapter. * * * Procedures related to hearings before an administrative law judge, review by the Appeals Council, or court review in claims adjudicated under the procedures in part 405 of this chapter are explained in subparts D, E, and F of part 405 of this chapter. * * *

* * * * *

[FR Doc. 2011–10486 Filed 5–2–11; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9520]

RIN 1545–BG13

Withdrawal of Regulations Related to Validity and Priority of Federal Tax Lien

Correction

In rule document 2011–7933 appearing on pages 18384–18388 in the issue of Monday, April 4, 2011, make the following correction:

§ 301.6323(b)–1 [Corrected]

On page 18385, in the third column, in § 301.6323(b)–1(g)(1), on the fifth line, "lien or" should read "lienor".

[FR Doc. C1–2011–7933 Filed 5–2–11; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0034]

RIN 1625–AA00

Safety Zone; Fourth Annual Offshore Challenge, Sunny Isles Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Atlantic Ocean east of Sunny Isles Beach, Florida for the Fourth Annual Offshore Challenge. The Fourth Annual Offshore Challenge will consist of a series of high-speed boat races. The boat races are scheduled to take place from Friday, June 17, 2011 through Sunday, June 19, 2011. The temporary safety zone is necessary for the safety of race participants, participant vessels, spectators, and the general public during the races. Persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative.

DATES: This rule is effective from 8 a.m. on June 17, 2011 through 5 p.m. on June 19, 2011. This rule will be enforced daily from 8 a.m. until 5 p.m. on June 17, 2011 through June 19, 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–2011–0034 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0034 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 final rule, call or e-mail Lieutenant Paul A. Steiner, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Paul.A.Steiner@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 February 17, 2011, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Fourth Annual Offshore Challenge, Sunny Isles Beach, FL in the **Federal Register** (76 FR 9278). We received no comments on the proposed rule. A public meeting was not requested, and none was held.

Background and Purpose

Offshore Events, LLC is hosting the Fourth Annual Offshore Challenge, a series of high-speed boat races. The Fourth Annual Offshore Challenge will commence on June 17, 2011 and conclude on June 19, 2011. The boat races will be held in the Atlantic Ocean offshore of Sunny Isles Beach, Florida. Approximately 50 offshore power boats will be participating in the boat races. These vessels will be traveling at high speeds. Approximately 200 spectator vessels are expected to observe the races. The high speed of the participant vessels poses a safety hazard to race participants, participant vessels, spectators, and the general public. The temporary safety zone is necessary to protect race participants, participant vessels, spectators, and the general public from the hazards associated with the high-speed boat races.

Discussion of Comments and Changes

There were no comments to the NPRM, and we made no changes to the regulation.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The economic impact of this rule is not significant for the following reasons: (1) The rule will be in effect for three days but will only be enforced for a total of nine hours each day; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Miami or a designated representative; and (4) advance notification of the safety zone will be made to the local maritime community via local notice to mariners, marine safety information bulletins, and broadcast notice to mariners.

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 for the reasons discussed in the Regulatory Planning and Review section above.

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 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 effect 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). We are also issuing a marine event permit for this event. Because the issuance of the marine permit for this event is not an action that is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment, we conducted an environmental assessment for both the issuance of the marine event permit and the establishment of this temporary safety zone. After conducting the environmental assessment for the issuance of the marine event permit and the establishment of this temporary safety zone, we have concluded these actions will not significantly affect the human environment. The environmental assessment and finding of no significant impact 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 a temporary § 165.T07–0034 to read as follows:

§ 165.T07–0034 Safety Zone; Fourth Annual Offshore Challenge, Sunny Isles Beach, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the Atlantic Ocean east of Sunny Isles Beach, FL encompassed within an imaginary line connecting the following points: starting at Point 1 in position 25°57′45″ N, 80°07′05″ W; thence east to Point 2 in position 25°57′43″ N, 80°05′59″ W; thence south to Point 3 in 25°54′03″ N, 80°05′59″ W; thence west to Point 4 in position 25°54′04″ N, 80°07′18″ W; thence north back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard

Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami via telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to seek permission. If permission to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such permission must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated area via local notice to mariners, marine safety information bulletins, broadcast notice to mariners, and by on-scene designated representatives.

(d) *Effective Date and Enforcement Periods.* The rule is effective from 8 a.m. on June 17, 2011 through 5 p.m. on June 19, 2011. The rule will be enforced daily from 8 a.m. until 5 p.m. on June 17, 2011 through June 19, 2011.

Dated: March 25, 2011.

C.P. Scraba,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2011–10662 Filed 5–2–11; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 76, No. 85
Tuesday, May 3, 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.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Government Employees Serving in Official Capacity in Nonprofit Organizations; Sector Unit Investment Trusts

AGENCY: Office of Government Ethics (OGE).

ACTION: Proposed rule.

SUMMARY: The Office of Government Ethics is issuing a proposed rule amendment that would permit Government employees to participate in particular matters affecting the financial interests of nonprofit organizations in which they serve in an official capacity, notwithstanding the employees' imputed financial interest. This document also proposes an amendment that would clarify that the existing exemptions for interests in the holdings of sector mutual funds also apply to interests in the holdings of sector unit investment trusts.

DATES: Comments are invited and must be received on or before July 5, 2011.

ADDRESSES: You may submit comments, in writing, to OGE on this proposed rule, identified by RIN 3209–AA09, by any of the following methods:

E-Mail: usoge@oge.gov. Include the reference "Proposed Rule Exemption and Amendment Under 18 U.S.C. 208(b)(2)" in the subject line of the message.

Fax: 202–482–9237.

Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917, Attention: Richard M. Thomas, Associate General Counsel.

Instructions: All submissions must include OGE's agency name and the Regulation Identifier Number (RIN), 3209–AA09, for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Richard M. Thomas, Associate General Counsel, Office of Government Ethics; *telephone:* 202–482–9300; *TTY:* 800–877–8339; *Fax:* 202–482–9237.

SUPPLEMENTARY INFORMATION:

I. Background

Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity in particular Government matters in which, to their knowledge, they or certain other persons specified in the statute have a financial interest, if the particular matter would have a direct and predictable effect on that interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

On August 28, 1995, the Office of Government Ethics published its first interim rule, with request for comments, promulgating certain miscellaneous exemptions under 18 U.S.C. 208(b)(2). 60 FR 44705 (August 28, 1995). On December 18, 1996, the Office of Government Ethics published a comprehensive final rule, "Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)," codified at 5 CFR part 2640, which promulgated several additional exemptions and also adopted as final, with some modifications, the exemptions promulgated in the earlier interim rule. 61 FR 66829 (December 18, 1996) (final rule); 60 FR 47207 (September 11, 1995) (proposed rule). OGE subsequently has added and amended exemptions by interim rule, with request for comment, 65 FR 16511 (March 29, 2000) (adopted as final, 65 FR 47830 (August 4, 2000)), by final rule (after a proposed rule, 65 FR 53942 (September 6, 2000)), 67 FR 12443 (March 19, 2002), and by interim rule, with request for comment, 70 FR 69041 (November 14, 2005).

The Office of Government Ethics is proposing to amend part 2640 by adding a new regulatory exemption and clarifying the scope of an existing exemption, as explained below. This proposed rule is being published after obtaining the concurrence of the Department of Justice pursuant to section 201(c) of Executive Order 12674. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on this rule.

II. Analysis of the Proposed Changes

The proposed rule would add a new regulatory exemption, section 2640.203(m), which would permit employees to participate in particular matters affecting the financial interests of nonprofit organizations in which they participate, in their official Government capacity, as officers, directors or trustees. The proposed rule also would clarify that the existing regulatory exception for certain interests in sector mutual funds, at section 2640.201(b), also covers interests in sector unit investment trusts.

A. Proposed Section 2640.203(m)—Official Participation in Nonprofit Organizations

Proposed section 2640.203(m) addresses a situation that was not generally thought to be covered by 18 U.S.C. 208 until the mid-1990s. Until that time, a number of agencies had a practice of assigning employees to participate on the boards of directors of certain outside nonprofit organizations, where such service was deemed to further the statutory mission and/or personnel development interests of the agency. The nonprofit organizations included such entities as professional associations, scientific societies, and health information promotion organizations. At the time, neither the agencies involved nor the Office of Government Ethics viewed such official participation in nonprofit organizations as being prohibited by 18 U.S.C. 208.

However, in 1996, the Office of Legal Counsel (OLC) at the Department of Justice issued an opinion concluding that section 208 generally prohibits an employee from serving, in an official capacity, as an officer, director or trustee of a private nonprofit organization. Memorandum of Deputy Assistant Attorney General, OLC, for General Counsel, Federal Bureau of Investigation, November 19, 1996, *http://www.justice.gov/olc/fbimem.2.htm.* This conclusion was premised in large part on the fact that officers, directors and trustees of an outside organization owe certain

fiduciary duties to the organization under state law, which may conflict with the primary duty of loyalty that all Federal employees owe to the United States. As a consequence of this interpretation, employees are no longer permitted to serve in their official capacity as officer, director or trustee of an outside nonprofit organization, absent an individual waiver under 18 U.S.C. 208(b) or some specific statutory authority permitting such service.[1]

Since the 1996 OLC opinion, some agencies have continued to assign employees to serve on such outside boards by granting the employees individual waivers under 18 U.S.C. 208(b)(1). Other agencies have declined to issue individual waivers (or have done so rarely), often because of discomfort about waiving the application of a criminal statute. OGE has fielded numerous inquiries and has held many meetings with agencies and nonprofit organizations, mostly professional and scientific societies, concerning the application of section 208 to prevent official participation on outside boards. Several of the agencies and nonprofit organizations have argued that the application of section 208 has created unfortunate barriers to professional development and meaningful exchange between Federal and non-Federal experts in certain professions and areas of expertise. Moreover, some of the organizations have pointed out that there is a lack of uniformity within the Executive Branch, owing to the willingness of some agencies to grant waivers and the unwillingness of other agencies to do so, often with respect to participation in the same organization.

Additionally, the Office of Government Ethics has noted the potential for confusion in some instances when employees are permitted to serve only in a private, rather than official, capacity. Especially where the agency has policy interests that overlap with those of the nonprofit organization, it can be very difficult for the employee to avoid the mistaken impression that he or she is acting in an official capacity when participating in the organization. Employees may be uncertain about the extent to which they are permitted to make reference to their official position or to use official time or agency resources. *See* 5 CFR 2635.702(b); 2635.704; 2635.705. Such confusion no doubt could be reduced by clearer agency instructions concerning such matters as excused absence and limited use of agency resources in support of outside professional and other organizations. *See* 5 CFR 251.202. Nevertheless, the fact remains that sometimes there is considerable continuity in subject matter between an employee's official duties and the employee's activities in an outside nonprofit organization, and some agencies believe it would be clearer to permit the latter to occur while the employee is on official duty, without the impediment of section 208.[2]

For all of the above reasons, the Office of Government Ethics in 2006 recommended to the President and Congress that section 208 be amended "to specify that the financial interests of an organization are not imputed to an employee who serves as an officer or director of such organization in his or her official capacity." OGE, *Report to the President and to Congressional Committees on the Conflict of Interest Laws Relating to Executive Branch Employment* 33 (2006) (2006 Report), *http://www.usoge.gov/ethics_docs/publications/reports_plans.aspx*.[3] In the 2006 Report, OGE recognized that it had "regulatory authority to exempt financial interests arising from official service on boards of directors," but OGE opted at that time to place the issue before Congress first. No legislative changes to section 208 were enacted in response to the report, however, and OGE has continued to receive expressions of concern about this matter, both from agencies and from nonprofit organizations.

Then, on March 9, 2009 President Obama issued a Memorandum for the Heads of Executive Departments and Agencies on the topic of scientific integrity. 74 FR 10671, 3 CFR, 2009 Comp., p. 354. In this memorandum, he specifically requested that the Office of Science and Technology Policy (OSTP) provide recommendations to address, among other things, the retention of staff in scientific and technical positions within the Executive branch. In response, the Director of OSTP issued a memorandum urging all agencies to establish policies that promote and facilitate the professional development of Government scientists and engineers. John P. Holdren, Director, OSTP, "Scientific Integrity," Memorandum for the Heads of Executive Departments and Agencies, at 3, December 17, 2010. The OSTP memorandum specifically calls for policies to "[a]llow full participation in professional or scholarly societies, committees, task forces and other specialized bodies of professional societies, *including removing barriers for serving as officers or on governing boards of such societies*." *Id.* at 4 (emphasis added).

In response to parallel initiatives, in August of 2010, the Director of the Office of Personnel Management (OPM) wrote to OGE to express several concerns about the application of section 208 to employees serving in their official capacity as officers and directors of scientific and professional organizations. Letter of John Berry, Director, OPM, to Robert I. Cusick, Director, Office of Government Ethics, August 16, 2010 (OPM Letter). Among other things, the Director of OPM wrote:

> Policies restricting Federal scientists' and professionals' involvement in professional organizations negatively impact the agencies employing such individuals. Restrictions act as a barrier to employees achieving professional stature in their respective fields, which may discourage scientists and professionals from considering Federal employment. Restrictions also serve to isolate scientists and professionals from the full exchange of knowledge and ideas necessary to stay current and participate fully as members of the greater scientific community. As a result, Federal scientists and professionals are hampered in their ability to provide the best possible advice and service to their respective agencies. These restrictions are particularly burdensome for the "research-grade" scientists whose retention and promotion evaluations depend in part on the recognition of stature by one's scientific peers. U. S. Office of Personnel Management's *Research Grade Evaluation Guide,* Factor 4; Contributions, Impact, and Stature, September, 2006; *http://www.opm.gov/Fedclass/gsresch.pdf.*

OPM Letter at 2. The Director of OPM asked OGE to consider exercising its authority under 18 U.S.C. 208(b)(2) to exempt the financial interests of organizations in which employees serve in their official capacity, on the ground that such interests are "too remote and inconsequential to warrant disqualification pursuant to section 208." *Id.* at 3. In response, the Director of OGE wrote that OGE takes "very seriously" OPM's "concerns about the impact that the current bar has on the

[1] In rare instances, an employee also may be able to serve pursuant to a waiver of fiduciary duties by the organization, if such a waiver is permitted by state law. *See* Memorandum of Deputy Assistant Attorney General, OLC, to General Counsel, General Services Administration, August 7, 1998, *http://www.justice.gov/olc/gsa208fn.htm.*

[2] Nothing in the proposed rule limits the ability of an employee to serve as officer, director or trustee of a nonprofit organization as a personal outside activity, where the agency has not assigned the employee to serve in an official capacity. Moreover, nothing in the proposed rule is intended to affect the current ability of agencies to assign employees to serve as official liaisons or to serve in similar nonfiduciary positions that do not implicate 18 U.S.C. 208. *See* OGE Informal Advisory Letter 95 x 8.

[3] OGE was required to issue this report, in consultation with the Department of Justice, by section 8403(d) of the Intelligence Reform and Terrorism Prevention Act of 2004, Public Law 108–458 (December 17, 2004).

professional development of employees." Letter of Robert I. Cusick, Director, OGE, to John Berry, Director, OPM, September 23, 2010.

To address OPM's concerns, as well as the concerns raised by other agencies and outside organizations since 1996, and consistent with Administration efforts designed to ensure scientific integrity, OGE has concluded that it is now appropriate to exercise its authority under 18 U.S.C. 208(b)(2) to exempt the imputed financial interests of nonprofit organizations in which employees serve as officers, directors or trustees in their official capacity. OGE has determined that such financial interests are too remote or inconsequential to affect the integrity of employees' services, for several reasons. As explained in OGE's 2006 Report, which was issued after consultation with the Department of Justice:

> OGE believes that the conflict identified by OLC [between the employee's duty of loyalty to the Government and the employee's fiduciary duties to the outside organization] may be more theoretical than real, particularly because employees assigned to serve on outside boards remain subject to important Federal controls, such as the authority to review and approve (or deny) the official activity in the first place, and the authority to order the individual to limit the activity, or even resign the position, in the event of a true conflict with Federal interests. In addition, an agency generally approves such activities only where the organization's interests are in consonance with the agency's own interests. In an era when 'public/private partnerships' are promoted as a positive way for Government to achieve its objectives more efficiently, ethics officials find it difficult to explain and justify to agency employees why a waiver is required for official board services that have been determined by the agency to be proper. 2006 Report at 33.

In short, the potential for a real conflict of interest is too remote or inconsequential to affect the integrity of an employee's services under these circumstances.

That is not to say, however, that agencies would be precluded from imposing meaningful controls and limits on employees serving in nonprofit organizations. As made clear in the Note following proposed section 2640.203(m), agencies must satisfy themselves that they have authority to assign employees to serve in such organizations in the first place; the proposed exemption does not itself constitute such authority, but simply removes the bar of the conflict of interest law. Moreover, agency decisions to permit (or not permit) official participation in any particular outside organization will be informed by numerous legal, policy, and managerial considerations, such as: the degree to which the activity will further the agency's statutory mission; the availability of agency funds and other resources to support such activities; the degree to which the agency is able and willing to assign employees to serve in other, similar organizations without appearing to single out one organization unreasonably; and the demands of the agency's workload and the particular employee's other assignments.[4] Even where an agency does permit an employee to serve as officer, director or trustee of a nonprofit organization, the agency has discretion to limit or condition the official duty activity in a manner consistent with the needs and interests of the agency. This may include limits on participation in lobbying, fundraising, regulatory, investigational, or representational activities, as determined by the agency. For example, where agencies have granted individual waivers in the past, under section 208(b)(1), some agencies have required employees to refrain from participating in the fundraising activities of the outside organization or from participating in agency decisions to award grants or contracts to the organization; agencies will remain free to impose similar limits as they deem appropriate in the future.[5] *See* OGE Memorandum DO–07–006, *http://www.usoge.gov/ethics_guidance/daeograms/dgr_files/2007/do07006.html* In other words, nothing in the proposed regulatory exemption is intended to interfere with the discretion of agencies to assign duties and describe the limits of official assignments, including assignments that involve outside nonprofit organizations.

Finally, OGE notes that the proposed rule refers generally to "nonprofit" organizations. *See, e.g.* "Black's Law Dictionary" 1080 (1999) ("group organized for a purpose other than to generate income or profit"). The exemption thus is not limited to scientific organizations, but rather is intended to provide agencies with discretion to determine which nonprofit entities would further agency interests and would be appropriate for employee participation, including professional and other nonprofit groups focused on issues pertaining to legal practice, law enforcement, various social sciences, and other disciplines and public policy areas.

B. Proposed Clarifying Amendment to Section 2640.201(b)—Sector Unit Investment Trusts

Among the regulatory exemptions currently found in subpart B of part 2640 are several that exempt certain financial interests in mutual funds and unit investment trusts. The Office of Government Ethics has promulgated exemptions for interests in the holdings of diversified mutual funds and diversified unit investment trusts (5 CFR 2640.201(a)), in the non-sector holdings of sector mutual funds (5 CFR 2640.201(b)(1)), and in the sector holdings of sector mutual funds when the aggregate market value of the employee's interest in the sector fund or funds does not exceed $50,000 (5 CFR 2640.201(b)(2)). Most recently, the Office of Government Ethics has promulgated one for interests in mutual funds and unit investment trusts other than interests arising from the holdings of such vehicles (5 CFR 2640.201(d)). This exemption is limited to particular matters of general applicability, as defined in 5 CFR 2640.102(m).

In promulgating these exemptions, the Office of Government Ethics recognized that pooled investment vehicles such as mutual funds and unit investment trusts generally pose fewer concerns that the financial interests will affect the integrity of the services of Government employees. The Office of Government Ethics has noted that usually "only a limited portion of the fund's assets [are] placed in the securities of any single issuer" and that "an employee's interest in any one fund is only a small portion of the fund's total assets." 60 FR 47211 (September 11, 1995) (preamble to proposed rule).

The Office of Government Ethics is proposing to amend the language of the exemptions for the interests in sector mutual funds to include explicitly the interests of sector unit investment trusts. The current regulation, 5 CFR 2640.201(b), does not include the language "sector unit investment trusts." At the time that the sector fund exemptions were promulgated, the Office of Government Ethics contemplated that the exemptions would also extend to those investment vehicles organized as sector unit investment trusts. In practice, the Office of Government Ethics has permitted executive branch employees to apply the exemptions for interests in sector

[4] Even prior to the 1996 OLC opinion, some agencies rarely if ever permitted employees to serve as officers, directors or trustees of outside organizations in an official capacity, because of fiscal, policy or managerial concerns. Notwithstanding the proposed regulatory exemption, some agencies may continue to decline to assign employees to serve in an official capacity for similar reasons.

[5] In any event, agency decisions to permit an employee to engage in official fundraising for a nonprofit organization must take into account the requirements of 5 CFR 2635.808(b) and 5 CFR part 950.

mutual funds to interests in sector unit investment trusts.

Therefore, OGE is proposing to add specific references to sector unit investment trusts to 5 CFR 2640.201(b) in order to clarify that the exemptions for interests in the holdings of sector mutual funds also apply to the interests in the holdings of sector unit investment trusts. OGE also is proposing conforming amendments to the definition in § 2640.102(q), which would define both sector mutual fund and sector unit investment trust.

III. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this proposed rule would not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this proposed regulation would not contain information collection requirements that require approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this proposed rule would not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

The Office of Government Ethics has determined that this proposed involves rulemaking involves a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and will, before the future final rule takes effect, submit a report thereon to the U.S. Senate, House of Representatives and General Accounting Office in accordance with that.

Executive Order 12866

In proposing this rule amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This proposed rule has also been reviewed by the Office of Management and Budget under that Executive order. Moreover, in accordance with section 6(a)(3)(B) of E.O. 12866, the preamble to this proposed amendment notes the legal basis and benefits of, as well as the need for, the regulatory action. There should be no appreciable increase in costs to OGE or the executive branch of the Federal Government in administering this proposed regulation, since it only adds to OGE's financial interests regulation a new regulatory exemption and a clarification of an existing exemption. Finally, this rulemaking is not economically significant under the Executive order and would not interfere with State, local or tribal governments.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this proposed amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: April 21, 2011.

Robert I. Cusick,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend 5 CFR part 2640 as follows:

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

1. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart A—General Provisions

2. In § 2640.102, paragraph (q) is revised to read as follows:

§ 2640.102 Definitions.

* * * * *

(q) *Sector mutual fund or sector unit investment trust* means a mutual fund or unit investment trust that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single State within the United States.

* * * * *

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

3. In § 2640.201, paragraphs (b)(1) and (2) are revised to read as follows:

§ 2640.201 Exemptions for interests in mutual funds, unit investments trusts, and employee benefit plans.

* * * * *

(b) *Sector mutual funds and sector unit investment trusts.* (1) An employee may participate in any particular matter affecting one or more holdings of a sector mutual fund or a sector unit investment trust where the affected holding is not invested in the sector in which the fund or trust concentrates, and where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund or unit investment trust.

(2)(i) An employee may participate in a particular matter affecting one or more holdings of a sector mutual fund or a sector unit investment trust where the disqualifying financial interest in the matter arises because of ownership of an interest in the fund or the unit investment trust and the aggregate market value of interests in any sector fund or funds and any sector unit investment trust or trusts does not exceed $50,000.

(ii) For purposes of calculating the $50,000 de minimis amount in paragraph (b)(2)(i) of this section, an employee must aggregate the market value of all sector mutual funds and sector unit investment trusts in which he has a disqualifying financial interest and that concentrate in the same sector and have one or more holdings that may be affected by the particular matter.

* * * * *

4. Section 2640.203 is amended by adding paragraph (m) to read as follows:

§ 2640.203 Miscellaneous exemptions.

* * * * *

(m) *Official participation in nonprofit organizations.* An employee may participate in any particular matter where the disqualifying financial interest is that of a nonprofit organization in which the employee serves, solely in an official capacity, as an officer, director or trustee.

Note to paragraph (m): Nothing in this paragraph shall be deemed independent authority for an agency to assign an employee to serve in an official capacity with a particular nonprofit organization. Agencies will make such determinations based on an evaluation of their own statutory authorities and missions. Individual agency decisions to permit (or not permit) an employee to serve in an official capacity necessarily involve a range of legal, policy, and managerial considerations, and nothing in this paragraph

is intended to interfere with an agency's discretion to assign official duties and limit such assignments as the agency deems appropriate.

[FR Doc. 2011–10629 Filed 5–2–11; 8:45 am]

BILLING CODE 6345–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 275

RIN 0584–AD86

Supplemental Nutrition Assistance Program: Review of Major Changes in Program Design and Management Evaluation Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) proposes to amend the Supplemental Nutrition Assistance Program (SNAP) (formerly the Food Stamp Program) regulations to implement Section 4116 of the Food, Conservation, and Energy Act of 2008 (the Farm Bill). Section 4116 of the Farm Bill, *Review of Major Changes in Program Design,* requires the United States Department of Agriculture (the Department) to identify standards for major changes in operations of State agencies' administration of SNAP. The provision also requires State agencies to notify the Department if they implement a major change in operations and to collect data that can be used to identify and correct problems relating to integrity and access, particularly by certain vulnerable households.

This NPRM proposes criteria for changes that would be considered "major changes" in program operations and identifies the types of data State agencies must collect in order to identify problems relating to integrity and access. It also proposes when and how State agencies must report on implementation of a major change.

This NPRM proposes to amend the Management Evaluation (ME) Review regulations by modifying the requirements for Federal and State reviews of State agency operations. It also proposes to revise the definitions of large, medium and small project areas. Finally, it proposes to remove sections of the regulations pertaining to coupons and coupon storage since they are obsolete.

DATES: Comments must be received on or before July 5, 2011.

ADDRESSES: The Food and Nutrition Service (FNS) invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: Preferred method. Go to *http://www.regulations.gov;* follow the online instructions for submitting comments on Docket FNS–2011–0035.

Fax: Submit comments by facsimile transmission to (703) 305–2486, attention: Moira Johnston.

Mail: Send comments to Moira Johnston, Branch Chief, Program Design Branch, Program Development Division, Supplemental Nutrition Assistance Program, Food and Nutrition Service, 3101 Park Center Drive, Room 810, Alexandria, Virginia 22302, (703) 305–2501.

Hand Delivery or Courier: Deliver comments to Ms. Johnston at the above address. All comments on 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 submissions will be available for public inspection at the office of FNS during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Room 810, Alexandria, Virginia 22302–1594.

FOR FURTHER INFORMATION CONTACT: For further information concerning this NPRM you may contact Moira Johnston, Branch Chief, Program Development Division, Supplemental Nutrition Assistance Program, 3101 Park Center Drive, Room 800, Alexandria, Virginia 22302, (703) 305–2501, or by e-mail at *Moira.Johnston@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

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 a "significant regulatory action," although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Regulatory Impact Analysis Summary

Need for Action

This action is needed to implement section 4116 of the Farm Bill (Pub. L. 110–234). Section 4116, *Review of Major Changes in Program Design,* amends Section 11 of the Food and Nutrition Act of 2008 (the Act) (7 U.S.C. 2020). It requires the Department to develop standards for identifying major changes in the operations of State agencies that administer SNAP; State agencies to notify the Department upon implementing a major change in operations; and State agencies to collect any information required by the Department to identify and correct any adverse effects on program integrity or access, including access by vulnerable households. The provision identifies four major changes in operations: (1) Large or substantially-increased numbers of low-income households that do not live in reasonable proximity to a SNAP office; (2) substantial increases in reliance on automated systems for the performance of responsibilities previously performed by merit pay personnel; (3) changes that potentially increase the households' difficulty in reporting information to the State; and (4) changes that may disproportionately increase the burdens on specific vulnerable households. In addition, the provision gives the Department the discretion to identify other major changes that a State agency would be required to report as well as to identify the types of data the State agencies would have to collect to identify and correct adverse effects on integrity and access.

In addition, the Department proposes to modify the requirements for Federal and State reviews of State agency operations, which will result in the more efficient use of staff and resources. This rule proposes several changes to the ME review regulations: (1) Remove the requirements that FNS conduct an annual review of a State agency's operation of SNAP and a biennial review of a State agency's ME system; (2) modify the regulations to reflect the elimination of the use of paper coupons and the nationwide implementation of the Electronic Benefit Transfer System (EBT); (3) redefine the terms, large project area, medium project area, and small project area.

Benefits

This rule will require State agencies to report on the impacts of implementing major changes in State agency operations and to identify and correct problems caused by implementing these changes. This rule will benefit State agencies by requiring them to identify and correct problems before they cause hardships for applicants or recipients or the integrity of the program is compromised. This rule will benefit applicants, recipients or individuals otherwise eligible for SNAP by requiring State agencies to identify and correct adverse impacts.

This rule will modify the requirements for Federal and State reviews of State agency operations. It will allow FNS the flexibility to put resources where the risks are greatest and to conduct more effective reviews. It will benefit State agencies by allowing them more time to conduct higher quality reviews.

Costs

The proposed rule will have a minimal cost in FY 2011 and over the 5 years FY 2011 through FY 2015. To estimate the cost impact, we multiplied the total burden hours by the average hourly wage of the staff likely to fulfill the reporting requirements. We assumed 70 percent of the work would be completed by a GS–11 employee, 20 percent by a GS–12 employee, and 10 percent by a GS–13 employee. We used the Step 5 hourly wages in the Rest of U.S. locality pay area. Seventy percent of the 7,696 burden hours are completed by a GS–11 employee with an hourly wage of $31.17 at a cost of $167,919. Twenty percent are completed by a GS–12 employee with an hourly wage of $37.37 at a cost of $57,520, and ten percent are completed by a GS–13 employee with an hour wage of $44.43 at a cost of $34,193. The annual cost is estimated at $259,632 ($167,919 + $57,520 + $34,193) or approximately $1.3 million over the 5 years FY 2011 through FY 2015.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on small entities. Pursuant to that review, it is certified that this proposed rule would not have a significant impact on small entities. State agencies that administer SNAP will be affected to the extent they implement major changes in program operations. State agencies will also be affected to the extent they perform ME reviews of large, medium and small project areas.

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. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Impact Statement

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. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have federalism implications. This 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.

Prior Consultation With State Officials

After the Farm Bill was enacted on June 18, 2008, FNS held a series of conference calls with State agencies and FNS regional offices to explain the SNAP provisions included in the law and to answer questions that State agencies had about implementing the changes to the program. On July 3, 2008, FNS issued an implementation memorandum that described each SNAP-related provision in the Farm Bill and provided basic information to assist State agencies in meeting statutorily mandated implementation timeframes. FNS responded to additional questions that State agencies submitted and posted the answers on the FNS Web site. Another forum for consultation with State officials on implementation of the Farm Bill provisions included various conferences hosted by FNS regional offices, State agency professional organizations, and program advocacy organizations. During these conferences, held in the latter part of 2008 and early months of 2009, FNS officials responded to a range of questions posed by State agency officials related to implementation of Farm Bill provisions.

Nature of Concerns and the Need To Issue This Rule

Recently many State agencies have redesigned how they operate SNAP. Some of these changes have been small and have predominately impacted internal State agency operations. Some of the changes have included major overhauls of the State agency operations and how they interact with the public. As States face rising caseloads and shrinking budgets as well as the availability of new technologies that could help streamline State agency operations, the Department anticipates that more State agencies will implement major changes in their operations of SNAP. The provisions of this rule will require States to closely monitor the impact of the changes and to correct any problems before they have a negative effect on applicants and recipients or on the payment error rates of State agencies.

In addition, the regulations concerning Federal monitoring of State agency operations are very prescriptive concerning the nature and frequency of Federal reviews, whereas the Act is not. As resources have become scarce, it has become clear that by regulating itself in this manner FNS is restricting its ability to adapt the nature of Federal reviews to changes in staffing and resource

levels. Therefore, the Department is proposing to remove the regulations concerning the frequency of Federal reviews of State agency operations. In addition, the regulations proscribe the frequency with which States are required to review large, medium and small project areas in relation to their caseload size. Large project areas are required to be reviewed more frequently. In response to rising caseloads and decreasing State budgets, the Department is proposing to modify the definition of large, medium and small project area. This will reduce the number of reviews State agencies are required to conduct on an annual basis and enable them to use their limited resources to conduct more targeted reviews. Finally, with statewide implementation of electronic benefit transfer (EBT) and the elimination of paper coupons, many of the provisions in this section have become obsolete. The Department is proposing to eliminate outdated and obsolete regulations pertaining to issuance and storage of paper coupons.

Extent to Which We Meet Those Concerns

In drafting this NPRM, FNS considered the impact of the proposed rule on State and local agencies. In addition, the Department is seeking comments on those areas of discretion and will use those comments to inform its decision making before issuing final regulations. This NPRM is required to implement changes required by the Farm Bill, which were effective on June 18, 2008.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule, when published final, 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. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In SNAP, the administrative procedures are as follows: For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) of the Act and regulations at § 273.15; for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 of the Act and regulations at § 276.7 (for rules related to non-Quality Control liabilities) or Part 283 (for rules related to Quality Control liabilities); for Program retailers and wholesalers—administrative procedures issued pursuant to Section 14 of the Act (7 U.S.C. 2023) and regulations at 7 CFR 279.

Civil Rights Impact Analysis

FNS has reviewed this 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 an important impact of this rule will be to help identify and correct the adverse effects of changes in program operations on certain protected classes. 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 race, color, national origin, gender, age, disability, marital or family status (SNAP's 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.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR part 1320) requires that the Office of Management and Budget (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 new requirements that are subject to review and approval by OMB; therefore, FNS is seeking public comment on the changes in the information collection burden that would result from adoption of the proposals in the rule, and will submit a request to OMB for approval of a new information collection package covering the requirements in Section 272.12. Once approved, FNS will publish a separate announcement in the **Federal Register.**

Comments on the information collection pursuant to this proposed rule must be received by July 5, 2011.

Send comments to Moira Johnston, Branch Chief, Program Design Branch, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. For further information, or for copies of the information collection package, please contact Moira Johnston at the above address or via e-mail at *Moira.Johnston@fns.usda.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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 notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. For further information, or for copies of the information collection requirements, please contact Moira Johnston at the address indicated above.

Title: Review of Major Changes in Program Design.

OMB Number: [0584–NEW].

Expiration Date: Not Yet Determined.

Type of Request: NEW.

Abstract: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Food and Nutrition Service is submitting a copy of this section to the Office of Management and Budget (OMB) for its review. Section 4116, *Review of Major Changes in Program Design,* amends Section 11 of the Food and Nutrition Act of 2008 (the Act) (7 U.S.C. 2020). It requires the United States Department of Agriculture (the Department) to develop standards for identifying major changes in the operations of State agencies that administer the Supplemental Nutrition Assistance Program (SNAP). Section 272.12 of this proposed rule requires State agencies to notify the Department when planning to implement a major change in operations; and State agencies to collect any information required by the Department to identify and correct any adverse effects on program integrity or access, including access by vulnerable households. Since decisions to make major changes to program operations rest with each individual

State agency, the frequency and timing of the changes can only be estimated. The proposed rule will require that State agencies provide descriptive information regarding the major change together with an analysis of its projected impacts on program operations. Based upon this information and analysis, FNS may require that the State collect and report additional information regarding the impact of implementing the major change. The reports would be monthly or quarterly depending upon the nature of the change and data availability. Reporting would continue for up to a year after the change is completely implemented. It is not uncommon for a State to pilot a change prior to statewide implementation. FNS could require information from the pilot and then after full implementation, similar information regarding the statewide impacts of the change.

Respondents: The 53 State agencies that administer SNAP.

Estimated Number of Responses per Respondent: Although by the time this rule is implemented in fiscal year 2012 the current budget crises facing many States may have abated, there is no reason to expect that the pressures and opportunities that contribute to States' decisions to modernize will change significantly. The rule proposes five categories of major changes: replacement of the States automated system, contracting for use of non-merit pay personnel, office closings, and significant reductions in State SNAP staff, and changes that may make it more difficult for households to report. Such changes in operations are made by States based upon a variety of interrelated factors, but there is no evidence that the States size (population), or regional location predict when or what type of changes States will make.

In examining the first of the above criterion, it is reasonable to expect States may continue to replace automated systems at one or two per year, but with so many States running older systems and the delays required by their budget difficulties, we are more likely to see three per year beginning in fiscal year 2011. However, it is likely that we will see several more States look into using call centers and developing on-line applications that will be used by larger proportions of their applicants. Since it appears that as many as 30 States will have on-line applications in place and perhaps 20 States will be using phone centers by fiscal year 2012, the number of additional States that might implement these systems in a year is most likely no more than five. The estimate would then be eight States per year would report major changes under this criterion.

With regard to the second criterion, to date only two States have implemented a process that uses non-merit personnel in the certification process. It is unlikely that many more States will pursue this course of action, and while one State exploring such a change every three years would be the most reasonable estimate, one per year will be used in estimating reporting burden to avoid underestimation.

The third criterion, office closings, may become more common with the expanded use of call centers and on-line applications. A fair estimate would be three per year.

The fourth criterion is staff reductions and this tends to fluctuate with States' budgetary situations, caseloads and other changes they make in their program design. We estimate that there would be three significant staff reductions per year.

The fifth criteria would occur in conjunction with or as a result of changes in the States administration. This is the most difficult to predict, but as States continue to take advantage of new technology and streamlined processes, changes of this type may become more common. An estimate of five such changes per year would appear to be reasonable.

Criterion	Responses per year
Replacement of automated system	8
Contracting for use of non-merit pay staff	1
Office closings	3
Significant reductions in SNAP staff	3
Changes that may make it more difficult for households to report	5
Total	20

The second step in the major change process is FNS determining what, if any, additional data the State will be required to collect and report. FNS believes that most often, the ongoing data collection tools it employs will be sufficient to provide the needed information on a major change. Additional data will sometimes need to be generated from States' automated eligibility systems. In more limited cases, FNS may require the State to gather data by conducting additional case review surveys.

Estimated Total Annual Burden on Respondents

Section 272.12(3) requires that States provide both descriptive and analytic information regarding the major change. FNS believes that States will have completed the majority of the analysis in the normal course of their own planning and decisionmaking. The descriptive information should also be readily available and require minimal data gathering since it is the State's decision to make the major change. We estimate that it will take 8 hours to describe the change and 32 hours to repackage and complete the required analysis for a total of 40 hours per response. Thus, with 20 States reporting one major change per year, the initial reporting and analysis aspect of the rulemaking would be 20 annual responses × 40 hours per State = an estimated 800 burden hours per year (20 States × 1 response per respondent = 20 annual responses × 40 hours per respondent to respond = 800 annual burden hours).

FNS believes that for 30 percent of the major changes States report, no additional reporting will be necessary. In another 35 percent of the major changes some additional reporting of already available information will be necessary and that additional data collection will be required for the final 35 percent of the reported major changes. Therefore for six of the 20 major changes there would be no reporting burden.

For the seven major changes requiring additional reporting without additional data collection, some automated system reprogramming to generate the data will be necessary. At 24 hours per reprogramming effort, this would be 168 hours per year (7 × 24). The reports themselves would be estimated to require 8 hours and that out of 53 States (including Puerto Rico, the Virgin Islands, and Guam), four States would be required to report monthly and three States quarterly.

Respondents	Estimated annual responses	Responses per year	Hours per response	Total hours per year
4 States monthly	12	48	8	384
3 States quarterly	4	12	8	96
7 States	16	60	8	480

The total for these seven States would be 168 + 480 hours = 648 total hours for reporting divided by the seven states = (92.6 hours per State per year).

For the last seven States the 648 hours from the above would be required in addition to the time needed to collect additional data. Such data will generally be collected through a sample of case reviews. While the required sample sizes may vary based on the type of major change and the proportion of the State's SNAP caseload it may affect, 200 cases per quarter would likely be an upper limit on what FNS could ask of a State. At an estimated one hour to review and report on a case, this would require 800 hours per year per State. Seven States times 800 hours yields 5,600 hours. (7 State respondents × 1 response per respondent = 7 annual responses × 800 hours per respondent to respond = 5,600 annual burden hours). When the 648 hours is added for the non-sample information, the total for these seven States is 6,248 (892.6 per State per year). With four States reporting monthly and three of the Sates reporting quarterly, there would be 60 responses. (4 States × 12 = 48 annual responses) + (3 states × 4 response per respondent = 12 annual responses) = 60 annual responses. Twenty eight of the 60 reports would contain information from sample data since it would all be reported quarterly from all seven States).

Section	Requirement	States responding per year	Responses per respondent	Number of responses	Hours per response	Total burden hours
272.12(a)(3)	Initial analysis of Major Change	20	1	20	40	800
272.12(b)(1)	Reports required without additional data collection.	7	[a] 8.57	60	10.8	648
272.12(b)(1)	Reports required with additional data collection.	7	[a] 8.57	60	104	6,248
Totals		20	[a] 7	140	54.9	7,696

[a] (Average).

Note: Although this proposed rule contains amendments to section 275.3, Federal Monitoring, there are no changes in the burden based on these changes. All required burden for this section is already approved under OMB No. 0584–0010, Performance Reporting System, Management Evaluation, expiration date 4/30/2013.

E-Government Act Compliance

FNS is committed to complying with the E-Government Act of 2002 (Pub. L. 107–347), in order 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.

Background

Section 4116 of the Farm Bill amended Section 11 of the Act to require the Department to define "major changes" in SNAP (or Program) operations, State agencies to notify the Department when they implement a major change in Program operations, and to collect data for use in identifying and correcting problems with Program integrity and access, particularly among vulnerable populations. Many State agencies have changed or are in the process of changing the way they operate SNAP. Some of these changes have been small and have predominately impacted internal State agency operations. Some of the changes have included major overhauls of the State agency operations and how the State interacts with applicants and participants. While the goal of such changes is to improve the efficiency and the effectiveness of the States' operations, some of these changes have adversely impacted the States' payment accuracy rates as well as access to the Program. With most States facing rising caseloads and restricted budgets, many are likely to make use of new technologies that could help streamline their SNAP operations. Section 4116 of the Farm Bill anticipates this and provides the Department the authority to better provide States with technical assistance and monitor implementation of major changes in their operation of SNAP.

We are proposing to update the Management Evaluation (ME) regulations to allow FNS greater flexibility to target its monitoring resources to those States/situations that constitute the greatest risk. In addition we propose to update the States ME requirements to allow States more time to conduct more effective reviews. With limited resources the proposed changes will allow FNS and States to streamline operations while maintaining the integrity of the Program.

What acronyms or abbreviations are used in this supplementary discussion of the proposed provisions?

In the discussion of the proposed provisions in this rule, we use the following acronyms or other abbreviations to stand in for certain words or phrases:

Phrase	Acronym, abbreviation, or symbol
Code of Federal Regulations.	CFR.
Federal Register	FR.
Federal Fiscal Year	FY.
Food and Nutrition Act of 2008.	Act.
Food and Nutrition Service	FNS.
Food, Conservation, and Energy Act of 2008.	Farm Bill.
Supplemental Nutrition Assistance Program.	SNAP.
U.S. Department of Agriculture.	the Department.

What is a major change in the operation of SNAP?

The Farm Bill requires the Secretary to develop standards for identifying

major changes in the operation of a State agency's SNAP and provides general guidance on what changes are to be included in those standards. The four major changes that were identified by legislation are:

- Large or substantially-increased numbers of low-income households that do not live in reasonable proximity to an office performing the major functions described in Section 11(e) of the Act (Section 11(e) enumerates the procedural requirements States must adhere to in the certification of households and operation of the Program);
- Substantial increases in reliance on automated systems for the performance of responsibilities previously performed by personnel described in Section 11(e)(6)(B) of the Act (this subsection requires that State agency personnel utilized in the certification process shall be employed in accordance with the standards for a Merit System of Personnel Administration);
- Changes that potentially increase the difficulty of reporting information under Section 11(e) or Section 6(c) of the Act (7 U.S.C. 2015(c)). Section (6)(c) specifies the options and requirements States must implement that govern a household's responsibility to report changes while Section 11(e) requires that each State identify the reporting requirements it has implemented in its plan of operation); and
- Changes that may disproportionately increase the burdens on any of the types of households described in Section 11(e)(2)(A) of the Act. (Section 11(e)(2)(A) of the Act includes elderly households, households living in rural areas, households containing a disabled member, homeless households, non-English speaking households, and households living on a reservation).

The Department is proposing to include the first three types of changes described above as major changes (with additional specificity). The Department believes that the fourth criteria is a critical factor in considering the impact of any major changes and is consequently proposing that it be considered and analyzed in relation to all major changes. The Department proposes to add a fourth and fifth type of change to the definition. The Department includes these changes based upon past experience that demonstrates that they can have a significant impact on State operations:

- The use of non-merit pay staff to perform functions previously performed by merit personnel described in Section 11(e)(6)(B) of the Act (again, this subsection requires that State agency personnel utilized in the certification process shall be employed in accordance with the standards for a Merit System of Personnel Administration); and
- Independent of any other change in operation, significant reductions in the number of State or local staff involved in the operation of SNAP.

The criteria for defining a major change are general rather than specific. How does the Department propose to clarify when States are to report major changes?

To assist States in evaluating if they are making a major change, the Department proposes the following additional guidance for each of the six criteria that would better define when a major change would need to be reported:

(1) Large or substantially-increased numbers of low-income households that do not live in reasonable proximity to an office performing the major functions described in Section 11(e) of the Act. States would report a major change under this criterion when an office is closed that serves 500 or more SNAP households and there is not another office available to the affected households within 25 miles, or that can be reached via public transportation. For the purposes of this section an "office performing major functions" would be defined as an office where people can file an application in person.

(2) Substantial increases in reliance on automated systems for the performance of responsibilities previously performed by personnel described in Section 11(e)(6)(B) of the Act. Since any new system that States would build would add functionality to the certification process, States would report a major change whenever the primary automated systems used by caseworkers during the certification process to determine eligibility are replaced. Additions to the States existing systems that automate tasks previously performed by caseworkers in the certification of applicant households would also be reported as a major change. This would include the establishment of an online application process through the Internet or the use of call centers to accept applications if it is expected that these would account for 5 percent or more of the State's SNAP applications. States would report a major change if they projected that 5 percent or more of the applications would be submitted through the call center or on-line system during the year following full implementation. The use of document imaging would not be considered a major change if that were the only change the State is making. Reporting a major change as required under this authority does not relieve States of meeting the requirements for new system approvals in § 277.18.

(3) Changes that potentially increase the difficulty of reporting information under Section 11(e) or Section 6(c) of the Act. While call centers and other innovations are designed to make reporting changes more efficient, such changes can also make reporting more difficult for some households. Therefore, any change a State makes to the way households are allowed or required to report changes in their circumstances would be considered major and be evaluated as explained later in this preamble. This would include implementation of a call center for change reporting, a major modification to any forms that households use to report changes or the discontinuation of an existing avenue for reporting changes, e.g., households can no longer call the local office to report a change. Major changes would not include altering change reporting policy options, or the implementation of policy waivers.

(4) The establishment of a contract to use non-merit pay staff to perform functions previously performed by merit personnel described in Section 11(e)(6)(B) of the Act. Section 11(e)(6) reads as follows: "(A) the State agency shall undertake the certification of applicant households in accordance with the general procedures prescribed by the Secretary in the regulations issued pursuant to this Act; and (B) the State agency personnel utilized in undertaking such certification shall be employed in accordance with the current standards for a Merit System of Personnel Administration * * * ". Under this proposal, when a State contracts with a private entity to perform SNAP work that is currently being handled by State employees, a major change in operations would occur and would have to be reported to FNS. While the interview and the eligibility decision functions must be performed by merit personnel (unless FNS approves a waiver request under Section 17(b) of the Act 7 U.S.C. 2025(b)), other functions can be performed by non-merit staff. These other functions could include obtaining verification of household circumstances, accepting reports of changes in household circumstances, accepting applications and screening households for expedited service. In each of these instances non-merit pay staff would be interacting directly with households which have the potential of increasing the burden on households applying for and

participating in SNAP. In addition, FNS has determined that use of non-merit pay staff in these functions can have a detrimental impact on the efficient and effective operation of the program and, as a consequence, must approve States' use of such staff before sharing in the costs of non-merit pay staff in the performance of the above functions.

Because functions such as data entry and document imaging do not involve interaction with households, the use of non-merit pay staff in activities of this type would not constitute a major change. If a State obtains a waiver from FNS under Section 17 of the Act to allow non-merit pay Staff to conduct interviews or the eligibility decision functions reserved for merit pay staff in the Act and regulations, this would not be reported as a major change since the waiver approval would specify all necessary reporting and evaluation requirements.

(5) Significant reductions in the number of State or local staff involved in the certification of SNAP households. While changes in States' staffing levels are not unusual, reductions can have a significant impact on SNAP operations and household participation. Since there are no staffing standards or baselines for determining what minimum level of staffing is necessary, and States are generally operating as efficiently as they can, almost any decrease has the potential of adversely affecting operations and pursuant to this proposed rulemaking would have to be reported as a major change. We propose that any decrease in staffing levels from one year to the next of more than five percent would have to be reported as a major change. This would include decreases resulting from State budget cuts or hiring freezes, but it would not include loss of staff through resignation, retirement or release when the State is seeking to replace the staff unless it were with non-merit pay personnel as discussed above. While the Department believes that the reduction in State staffing levels has as much potential to impact State operations as any other change, it recognizes that this is a difficult change to define and analyze. Therefore, the Department is particularly interested in comments on this proposal.

The Department recognizes that Section 11(a)(4)(iv) of the Act also identifies "changes that may disproportionately increase the burdens on any of the types of households described in Section (e)(2)(A) [7 U.S.C. 2020 (e)(2)(A)] of the Act", as a major change. The Department believes that this is such a critical consideration that any major change a State makes needs to be examined to determine if it would have such an effect. Therefore, rather than including this as a major change in and of itself, the Department is requiring that the analysis of the impact of any major change include a determination of whether the major change has such a disproportionate effect on vulnerable households, as defined in Section 11(e)(2)(a) of the Act.

When will States be required to report major changes in their operation of SNAP?

The Department realizes that the specifics of many changes evolve over time and plans for changes are often modified. Many plans for change are never realized because of funding issues or a shift in State leadership and its priorities. Since any properly planned major change would be approved by State leadership well in advance of implementation, the Department proposes that States report any major change to FNS as soon as it is approved by State leadership, but no less than 120 days prior to implementation. If the plans for the major change are modified after the States initial report to FNS, the State would update its report to FNS. The Department is interested in hearing from States on whether some major changes are approved and implementation begun in less than 120 days.

What information must be included in States' initial reports to FNS regarding a major change?

The Department proposes that the initial report to FNS include a description of the change and an analysis of its anticipated impacts on select measures of program performance. The description would explain the change the State is implementing, the schedule for implementation, if the change is State-wide or, if not, it will identify the jurisdictions it will encompass, and what the change is intended to accomplish. It would also include answers to the following questions as they apply to the type of change being implemented.

- How will the change affect recipients? How will they be informed?
- How will the change affect caseworkers? How will they be trained?
- How will the change be tested? Will it be piloted?
- How will impacts of the change be monitored?
- How will the change affect the State automated system?
- If the change in operations creates significant problems, what is the State's contingency plan?

The Department proposes that the analysis portion of the report include the expected impact of the change on:

- Payment accuracy;
- Program access—impact on applicants in filing initial applications and reapplications;
- Negative error rates;
- Application timeliness, including both the households entitled to 7-day expedited service and 30-day processing standards;
- The types of households described in Section 11(e)(2)(A) of the Act (the determination of whether the major change disproportionally increases the burden on these households would include the difficulty these types of households would have: obtaining SNAP information, filing an initial application, providing verification, being interviewed, reporting changes and reapplying for benefits); and
- Customer service. The Department believes that States should measure the impact on customer service depending upon the nature of the major change, but at a minimum the time it takes for a household to contact the State, be interviewed and report changes would need to be evaluated.

In addition, the analysis must include an evaluation of the impact of the change during implementation (pilot/rollout) versus its expected long term impact. The Department believes that it is important to understand States' plans for implementation because even changes that are meant to be beneficial to SNAP operations can often have unintended consequences during long term implementation that can be difficult for States to correct.

The Department believes that much of the information and analysis it is requesting in this proposal will be readily available to most States since they will have thoroughly planned the change and evaluated its potential impacts prior to implementation. If this assumption is correct, the burden on States in developing reports should be minimal. To the extent that this proposal requires additional analysis of the potential impact of the change, this should generally be helpful to the State in its planning and implementation and, in the longer run, beneficial to its SNAP participants. The Department recognizes that, depending upon the nature of the major change, there may be minimal or no impact on one or more of the above areas.

What format should States use to report a major change?

The Department is not proposing any standard format for the initial report required by this rule. The types of

changes can vary significantly and without prior experience, the Department has no preference on format. So long as the required information is clear and complete, FNS should be able to understand and evaluate the major change. Initial reports should be sent to FNS Regional Offices.

What data will FNS require States to report regarding the impact of its major change?

Section 11(a)(4)(B)(ii) of the Act provides that States implementing major changes, "collect such information as the Secretary shall require to identify and correct any adverse effects on program integrity or access, including access by any of the types of households described in Section (e)(2)(A)." FNS will evaluate the initial report provided by a State to determine if it agrees that the change is in fact, "major" and if so will propose what additional information it will require from the State. While the Department reserves the right provided by the Act to require the information it needs to determine the impact of a major change on integrity and access in SNAP, as States make major changes the Department intends to work with States to determine what information is practicable and require only the data that is necessary and not otherwise available. SNAP standard reports provide a good deal of information, but depending on the nature of the major change and how it is implemented, more specific or timely data may be required. States also obtain performance data as part of Program management and monitoring and when possible the Department will meet its needs by obtaining already existing data.

For any major change the Department needs some level of information on the effect of the change on one or more of the five areas States must include in their evaluation of the impact of the change. Within these areas, the Department will require additional, more specific or more timely data as explained below:

- *Payment accuracy*—The quality control (QC) system provides sound information on payment accuracy on a statewide basis, but the data is not as reliable at the county level. In addition, the data is not available for several months and would not be specific to the effects of the major change. FNS intends to use QC generated data as much as possible, but is likely to need data from focused case reviews with local reliability and/or more timely data.
- *Negative error rates*—The QC system provides sound information on negative error rates on a statewide basis, but the data is not as reliable at the county level. In addition, the data is not available for several months and would not be specific to the effects of the major change. FNS intends to use QC generated data as much as possible, but is likely to need data from focused case reviews with local reliability and/or more timely data. Where QC data is not sufficient, FNS may require a State to report on applications and reapplications filed and processed with a breakout of approvals and denials.
- *Application timeliness*—The QC system provides sound information on application processing timeliness on a statewide basis, but the data is not as reliable at the county level. In addition, the data is not available for several months and would not be specific to the effects of the major change. FNS intends to use QC generated data as much as possible, but is likely to need data from focused case reviews with local reliability and/or more timely data. In addition FNS may request information on the timeliness of processing re-certifications. As noted below this information could be required to be reported by mode of intake: paper, on-line or call center.
- *Impact on the types of households described in Section 11(e)(2)(A) of the Act*—For any major change that could disproportionately impact the vulnerable households with special needs as defined in Section 11(e)(2)(A), information on the number of applications received from such households and the number certified or recertified would be needed. It is likely that the nature of the change and its potential impact would dictate how this information would need to be reported, e.g., broken out between applications filed on-line and on paper.
- *Customer service*—In many instances, customer satisfaction can help determine if a change is having an adverse effect or simply provide information for improvements in process. States would define customer service as best addresses the major change with a focus of the change's effect on program access.

What are other data elements may the Department ask States to report depending on the type of major change?

Following are examples of additional data that could be required depending upon the type of major change being implemented.

If a State were to implement a change that allowed or required households to report changes in their individual circumstances through a change center, the following general data could be required:

- The number of changes received;
- The average time to process a change; and
- The number of changes processed.

If a State were to implement a change that allows applicants to apply on-line the following data could be required:

- Number of applications submitted, approved, denied;
- Number of expedited versus regular 30-day processing cases;
- Number of applications abandoned/terminated before completion;
- Processing time for approved applications including those subject to the expedited time frames; and
- Demographic information on the households using on-line applications.

FNS recognizes that States and their call center software are measuring performance using a variety of different definitions and statistics. If a State were to implement a major change that allows applicants to apply through the use of call centers, FNS would expect to negotiate the exact definitions and reporting requirements, but believes the following data elements would be central to understanding the call center's performance:

- Volume of calls to the center;
- Average hold time from the time the request is made to speak to an agent;
- Percentage of calls with excessive total waiting times to speak with a caseworker (e.g. 15 minutes combined time spent waiting for an initial response and holding after the initial response);
- Percentage of calls abandoned prior to and after the initial response; and
- Customer satisfaction based upon survey results.

If a State were to implement a change that allows applicants to apply on-line and through the use of a call center, the following general data could also be required:

- The number of applications and recertifications submitted by paper including faxing; and mailing; online; and call center; and
- The number of applications and recertifications approved by paper including faxing; and mailing; online; and call center.

Under what circumstances would FNS require separate reports regarding the impact of the major change on the types of households described in Section 11(e)(2)(A) of the Act, particularly the elderly and disabled?

Whenever FNS believes that the major change has the potential to have a disproportionate impact on these households, specific reports on these households would be required. The decision that such potential exists could

be based upon the State or FNS analysis of the major change.

How often will States be required to report?

Depending on the type of major change and its implementation schedule, FNS would work with the State to establish either a monthly or quarterly reporting schedule.

How long after implementation would reports continue to be required?

While dependent on the type of major change, FNS would need reports for a minimum of one year after the change had been fully implemented. Based upon FNS' assessment of the reports submitted by the State, it may find it necessary to extend the reporting timeframe beyond the one-year minimum. The rule provides FNS with this discretion.

What is the process if FNS believes that a State is implementing a major change, but the State has not reported the change?

If it came to FNS' attention that a State appeared to be implementing a major change that had not been formally reported, FNS would contact the State about the change, determine if it were major and proceed as specified above.

When will FNS notify the State of that data that must be reported?

FNS will evaluate the State's analysis of the impact of its change, and determine if it is a major change that requires additional reporting and if so, what data is necessary to identify potential adverse effects on SNAP access and integrity. While the nature and extent of the change will impact the time necessary to complete its evaluation, FNS intends to respond within 90 days. During this 90-day period FNS will be in communication with appropriate State officials and, to the extent possible, negotiate with them regarding the most efficient way to obtain the needed information.

If the data a State submits regarding its major change indicates an adverse impact on SNAP access or integrity, what action will FNS take?

As with any problem FNS identifies, FNS would work with the State to correct the cause of the problem and provide whatever technical assistance it can. Some problems can be addressed quickly through a simple adjustment to the State operations. In other instances, the cause and/or the solution is more difficult to determine and a formal corrective action plan would be needed. In either case FNS would intend to work in partnership with the State to resolve the issue(s).

Where does FNS propose revising the regulations to include Major Changes in Program Design?

FNS proposes to codify these provisions in a new § 272.12.

Why is the Department proposing to update the Management Evaluation (ME) Reviews regulations?

The proposed regulation will amend the regulations at §§ 275.3 through 275.7. While the Act does not require Federal monitoring of SNAP in the form of annual or biennial reviews, current regulations are very proscriptive about the type and frequency of reviews. For example, the regulations at 7 CFR 275.3(a) and (b) require FNS to conduct an annual review of certain functions performed at the State agency level and a biennial review of each State agency's management evaluation system. However, since the regulations were published, FNS has experienced reductions in staff and resources. Consequently, over time FNS has adjusted its expectations concerning how often and the methods to be used to conduct reviews of the State agency operations of SNAP. In the course of developing program specific ME review guides and in light of the current reality of reduced resources, FNS has recognized the need to redefine what constitutes a Federal review of a State agency's operation of SNAP and change the frequency of reviews. Revising the regulations to modify how often FNS conducts reviews of State agency operations will allow FNS the flexibility to put resources where the risks are greatest and to conduct more effective reviews.

What changes to the regulations is the Department proposing that affect FNS?

Current regulations at 7 CFR 275.3(a) provide that FNS shall conduct an annual review of State agency operations of SNAP. This review has been called informally a State Agency Operations Review or SAOR. The Department is proposing to remove the requirement that such a review be conducted on an annual basis. In addition, FNS is proposing to use one term to define any Federal review of State agency operations. The use of the term "State Agency Operations Review" will be discontinued and the term Management Evaluation or ME is proposed to cover all future reviews. Since these terms were so often interchanged we believe this change will improve communication across the Program. The Department proposes to revise the regulations at 7 CFR 275.3(a) to reflect these changes.

The Department proposes to remove the regulations at 7 CFR 275.3(b) which requires FNS to review a State agency's ME system on a biennial basis. Removing this requirement will provide FNS the flexibility to conduct reviews of State agencies' ME systems on an at-risk basis resulting in more efficient allocation of staff and resources. In keeping with current practice, FNS will continue to identify national target areas that Regional Offices are required to review each year, which will generally include reviews of State agency ME systems, and will communicate what these areas are via memorandum. In accordance with § 275.8, FNS will also continue to notify State agencies of the national target areas to be incorporated into their reviews of local agencies.

What changes is the Department proposing to make that affect State agencies?

Current regulations at § 275.7 provide for the selection of sub-units for review. Paragraphs 275.7(a)(2) through 275.7(a)(5) define sub-units as issuance offices, data management units, bulk storage points and reporting points. All of these sub-units deal with the issuing or storage of paper coupons and therefore are outdated and obsolete. The regulations at 7 CFR 275.7(b), (c), and (d) also refer to these out-dated sub-units. The Department proposes to remove these paragraphs in their entirety to reflect the elimination of the use of paper coupons and the nationwide implementation of the Electronic Benefit Transfer System (EBT). The Department also proposes to remove 7 CFR 275.7(a)(1) and to modify 7 CFR 275.7(a) to provide that sub-units are the physical locations of organizational entities within project areas responsible for operating various aspects of the SNAP and include but are not limited to certification offices, call centers, and employment and training offices. The Department proposes to renumber 7 CFR 275.7(e) to 7 CFR 275.7(b) and modify it to remove the term "on-site." The term "on-site'' is outdated since current technology and the availability of data allows many aspects of a review to be conducted effectively off-site. Current regulations at 7 CFR 275.9(b)(1)(iii) and (b)(1) (iv) provide that the State agency review plan shall identify the issuance offices and reporting points selected for review. The Department is proposing to revise the regulations at 7 CFR 275.9(b)(1)(iii) and (b)(1) (iv) to reflect the elimination of the use of paper coupons and the nationwide implementation of the EBT.

Under current regulations at 7 CFR 275.5(b) State agencies are required to conduct a review of large project areas once a year, a review of medium project areas once every two years and a review of small project areas once every three years. Current rules at § 271.2 define the term large project area as project areas with monthly active caseloads of more than 15,000 households; medium project area as project areas with caseloads of 2001 to 15,000 households and small project area as project areas with caseloads of 2,000 households or less.

The Department proposes to modify § 271.2 to redefine the term large project area as those project areas with monthly active caseloads of more than 25,000 households; medium project area as project areas with caseloads of 5000 to 25,000 households; and small project area as project areas with caseloads of 4,999 households or less. The proposed changes will recognize the growth of SNAP over the last 25 years (about 30 percent) and allow States more time to conduct higher quality reviews.

List of Subjects

7 CFR Part 271

Food stamps, Grant programs—social program, Reporting and recordkeeping.

7 CFR Part 272

Alaska, Civil rights, SNAP, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Unemployment compensation, Wages.

7 CFR Part 275

Administrative practice and procedure, SNAP, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 271, 272 and 275 are proposed to be amended as follows:

1. The authority citation for parts 271, 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 Definitions.

2. In § 271.2:

a. Amend the definition of *Large project area* by removing the word "15,000" and adding in its place the word "25,000".

b. Amend the definition of *Medium project area* by removing the words "2,001 to 15,000" and adding in their place the words "5,000 to 25,000".

c. Amend the definition of *Small project area* by removing the word "2,000" and adding in its place the word "4,999".

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

3. A new § 272.12 is added to read as follows:

§ 272.12 Major changes in program design.

(a) *State's reporting of major changes.* (1) State agencies shall notify FNS when they make major changes in their operation of SNAP. State agencies shall notify FNS when the plans for the change are approved by State leadership, but no less than 120 days prior to beginning implementation of the change.

(2) Major changes shall include the following:

(i) Closure of one or more local offices that perform major functions for 500 or more SNAP households and there is not another office available to serve the affected households within 25 miles or that can be reached via public transportation. An office performing major functions includes any office where households can file an application for SNAP in person.

(ii) Substantial increased reliance on automated systems for the performance of responsibilities previously performed by State merit personnel (as described in Section 11(e)(6)(B) of the Act). This includes the replacement of the State's primary automated systems used by caseworkers during the certification process to determine eligibility and additions to the States' existing system that automate tasks previously performed by caseworkers in the certification of applicant households. Establishment of an online application process through the Internet or the use of call centers to accept applications would not be a major change unless one of these methods is expected to account for 5 percent or more of the State's SNAP applications. Reporting a major change as required in this section does not relieve States of meeting the requirements for new system approvals in § 277.18.

(iii) Changes in operations that potentially increase the difficulty of households reporting required information. This includes implementation of a call center for change reporting, a major modification to any forms that households use to report changes or the discontinuation of an existing avenue for reporting changes, e.g., households can no longer call the local office to report a change. Modifying selected change reporting policy options, or the implementation of policy waivers would not be major changes.

(iv) Use of non-merit pay staff to perform functions previously performed by merit personnel. While the interview and the eligibility decision functions must be performed by merit personnel (unless FNS approves a waiver request under Section 17 of the Act), other functions including obtaining verification of household circumstances, accepting reports of changes in household circumstances, accepting applications and screening households for expedited service may be performed by non-merit personnel (although FNS must approve a State's use of non-merit pay staff before matching funds will be provided for the performance of these functions). Functions such as data entry and document imaging do not involve interaction with households, and consequently, the use of non-merit pay staff in activities of this type would not constitute a major change. If a State obtains a waiver from FNS to allow non-merit Staff to conduct interviews or the eligibility decision functions reserved for merit staff in the Act and regulations, this would not be reported as a major change since the waiver approval would specify all necessary reporting and evaluation requirements.

(v) Any decrease in staffing levels from one year to the next of more than five percent in the number of State or local staff involved in the certification of SNAP households. This would include decreases resulting from State budget cuts or hiring freezes, but not include loss of staff through resignation, retirement or release when the State is seeking to replace the staff.

(3) When a State initially reports a major change to FNS as required in paragraph (a)(1) of this section an analysis of the expected impact of the major change shall accompany the report. The initial report to FNS that the State is making one of the major changes identified in paragraph (a)(2) of this section shall include a description of the change and an analysis of its anticipated impacts on program performance.

(i) The description of the change shall include the following:

(A) Identification of the major change the State is implementing,

(B) An explanation of what the change is intended to accomplish,

(C) The schedule for implementation,

(D) How the change will be tested and whether it will be piloted,

(E) Whether the change is Statewide or identification of the jurisdictions it will encompass,

(F) How the major change is expected to affect recipients and how recipients will be informed,

(G) How the change will affect caseworkers and as applicable how they will be trained,

(I) How the impact of the major change will be monitored,

(J) How the major change will affect operation of the State automated system, and

(K) The State's backup plans if the major change creates significant problems in one or more of the program measures in paragraph (a)(3)(ii) of this section.

(ii) The analysis portion of the State's initial report shall include the projected impact of the major change on:

(A) The State's payment error rate,

(B) Program access, including the impact on applicants filing initial applications and reapplications,

(C) The State's negative error rate,

(D) Application processing timeliness including both the households entitled to 7-day expedited service and those subject to the 30-day processing standards;

(E) Whether the major change will disproportionately increase the difficulty elderly households, households living in rural areas, households containing a disabled member, homeless households, non-English speaking households, and households living on a reservation will have obtaining SNAP information, filing an initial application, providing verification, being interviewed, reporting changes and reapplying for benefits;

(F) Customer service as defined by the State agency, but shall include the time it takes for a household to contact the State, be interviewed, and report changes.

(G) The State's performance as measured by paragraphs 272.12(a)(3)(ii)(A) through (a)(3)(ii)(F) of this section during implementation of the major change.

(b) *FNS action on State's reports.* (1) FNS will evaluate the initial report provided by a State to determine if it agrees that the change is, in fact, major and, if so, will propose what information it will require from the State. While FNS reserves the right to require the information it needs to determine the impact of a major change on integrity and access in SNAP, FNS will work with States to determine what information is practicable and require only the data that is necessary and not otherwise available from ongoing reporting mechanisms. Depending upon the nature of the major change, FNS will require specific or more timely information concerning the impact of the major change within the following general areas.

(i) *Payment accuracy.* FNS will use QC generated data as much as possible, but may need data from focused case reviews with local reliability or more timely data.

(ii) *Negative error rates.* FNS will use QC generated data as much as possible, but may need data from focused case reviews with local reliability or more timely data. Where annual statewide QC data is not sufficient, FNS will require a State to report on applications and reapplications filed and processed with a breakout of approvals and denials.

(iii) *Application processing timeliness.* FNS will use QC generated data as much as possible, but is likely to need data from focused case reviews with local reliability, more timely data and/or information on the timeliness of actions to re-certify households. As noted in paragraph (b)(2) of this section, this information could be required to be reported by mode of intake: paper, on-line or call center.

(iv) *Impact on the types of households identified in paragraph (a)(3)(ii)(E) of this section.* For any major change that could disproportionately impact these households, information on the number of applications received from such households and the number certified or recertified would be needed. It is likely that the nature of the change and its potential impact would dictate how this information would need to be reported.

(v) *Customer service.* States should define and measure customer service in a manner that best indicates if the major change is having an adverse affect on program access.

(2) Additional data that States could be required to provide depending upon the type of major change being implemented includes, but are not be limited to the following:

(i) If a State were to implement a major change that allows applicants to apply on-line, the following data could be required:

(A) Number of applications submitted, approved, denied,

(B) Number of expedited versus regular 30-day processing cases,

(C) Number of applications abandoned/terminated before completion,

(D) Processing time for approved applications including those subject to the expedited time frames, and

(E) Demographic information on the households using on-line applications.

(ii) If a State were to implement a major change that allowed or required households to report changes in their individual circumstances through a change center, the following data could be required:

(A) The number of changes received,

(B) The average time to process change, and

(C) The number of changes processed.

(iii) If a State were to implement a major change that allows applicants to apply through the use of call center, the following data could be required:

(A) Volume of transactions and calls to the center;

(B) Average hold time from the time the request is made to speak to an agent;

(C) Percentage of calls with excessive total waiting times to speak with a caseworker (e.g. 15 minutes combined time spent waiting for an initial response and holding after the initial response);

(D) Percentages of calls abandoned prior to and after the initial response; and

(E) Customer satisfaction based upon survey results.

(iv) If a State were to implement a major change that allows applicants to apply on-line and through the use of a call center, the following additional data could be required:

(A) The number of applications and recertifications submitted by paper including faxing and mailing; online; and call center, and

(B) The number of applications and recertifications approved by paper including faxing and mailing, online, call center.

(3) Depending on the type of major change, its implementation schedule, and negotiations with FNS, States shall submit reports on their major changes either monthly or quarterly.

(4) States shall submit reports for one year after the major change is fully in place. FNS may extend this timeframe as it deems necessary.

(5) If FNS becomes aware that a State appeared to be implementing a major change that had not been formally reported, FNS would work with the State to determine if it is a major change, and if so proceed as required by this section.

(6) If the data a State submits regarding its major change or other information FNS obtains indicates an adverse impact on SNAP access or integrity, FNS would work with the State to correct the cause of the problem and provide whatever technical assistance it can. Depending upon the severity of the problem, FNS may require a formal corrective action plan as identified in § 275.16 and § 275.17 of this chapter.

PART 275—PERFORMANCE REPORTING SYSTEM

4. In § 275.3:

a. Revise paragraph (a).

b. Remove paragraph (b).

c. Redesignate paragraph (c) as paragraph (b).

d. Redesignate paragraph (d) as paragraph (c).

The revision reads as follows:

§ 275.3 Federal monitoring.

* * * * *

(a) *Management Evaluation Reviews of State Agency's Administration/Operation of SNAP.* FNS shall conduct management evaluation reviews of certain functions performed at the State agency level in the administration/operation of the program. FNS will designate specific areas required to be reviewed each fiscal year.

* * * * *

5. In § 275.7:

a. Revise paragraph (a).

b. Remove paragraph (b).

c. Remove paragraph (c).

d. Remove paragraph (d).

e. Redesignate paragraph (e) as paragraph (b).

f. Amend newly redesignated paragraph (b) by removing the word "on-site".

The revision reads as follows:

§ 275.7 Selection of sub-units for review.

(a) *Definition of sub-units.* Sub-units are the physical locations of organizational entities within project areas responsible for operating various aspects of the SNAP and include but are not limited to certification offices, call centers, and employment and training offices.

* * * * *

6. In § 275.9:

a. Revise paragraph (b)(1)(iii).

b. Amend paragraph (b)(1)(iv) by removing the first sentence.

The revision reads as follows:

§ 275.9 Review process.

* * * * *

(b) * * *

(1) * * *

(iii) Identification of the sub-units selected for review and the techniques used to select them;

* * * * *

Dated: April 22, 2011.

Kevin Concannon,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 2011–10541 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–30–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150–AI94

[NRC–2011–0058]

Alternative to Minimum Days Off Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; correction.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is correcting a proposed rule that appeared in the **Federal Register** on April 26, 2011 (76 FR 23208). The NRC is proposing to amend its regulations governing the fitness for duty of workers at nuclear power plants. This document corrects a typographical error in a Web site address.

FOR FURTHER INFORMATION CONTACT: Howard Benowitz, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; *telephone:* 301–415–4060; *e-mail: Howard.Benowitz@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 23216, in the first column, the second sentence of the third paragraph is corrected to read: "The NRC Form 670 and proposed rule are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html* for 30 days after the signature date of this notice.

Dated at Rockville, Maryland, this 27th day of April 2011.

For the Nuclear Regulatory Commission.

Cindy Bladey,

Chief, Rules, Announcements and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2011–10647 Filed 5–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

RIN 3150–AI92

[NRC–2011–0012]

Site-Specific Analyses for Demonstrating Compliance With Subpart C Performance Objectives

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of preliminary proposed rule language and public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require low-level radioactive waste disposal facilities to conduct site-specific analyses to demonstrate compliance with the performance objectives. While the existing regulatory requirements are adequate to protect public health and safety, these amendments would enhance the safe disposal of low-level radioactive waste. The NRC is proposing additional changes to the regulations to reduce ambiguity, facilitate implementation, and to better align the requirements with current health and safety standards. In addition, the NRC is making available the rulemaking's associated regulatory basis documents. The NRC will conduct a public meeting on May 18, 2011, to discuss the preliminary proposed rule language and its associated regulatory basis documents. The availability of the preliminary proposed rule language and its associated regulatory basis documents are intended to inform stakeholders of the current status of the NRC's activities and solicit early public comments.

DATES: Comments on the preliminary proposed rule language and the regulatory basis documents should be postmarked no later than June 18, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

See **SUPPLEMENTARY INFORMATION** section for public meeting information.

ADDRESSES: Please include Docket ID NRC–2011–0012 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–2011–0012. Address questions about NRC dockets to Carol Gallagher; *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov.*

• *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.

• *E-mail comments to: Rulemaking.Comments@nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

• *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (telephone: 301–415–1677).

• *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You can access publicly available documents related to this proposed rule using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The preliminary proposed rule language is available electronically under ADAMS Accession Number ML111150205, the regulatory basis is available under ADAMS accession number ML111040419, and the "Technical Analysis Supporting Definition of Period of Performance for Low-Level Waste Disposal." is available under ADAMS Accession Number ML111030586.

• *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice, including the preliminary proposed rule language and regulatory basis documents, can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0012.

FOR FURTHER INFORMATION CONTACT: Andrew Carrera, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1078, e-mail *Andrew.Carrera@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The NRC is proposing to amend its regulations to require low-level radioactive waste disposal facilities to conduct site-specific analyses to demonstrate compliance with the performance objectives in Title 10 of the *Code of Federal Regulations* (10 CFR) part 61. The purpose of these amendments would be to enhance the safe disposal of low-level radioactive waste. The NRC is also proposing additional changes to the regulations in 10 CFR part 61 to reduce ambiguity, facilitate implementation, and to better align the requirements with current health and safety standards.

The NRC is making available a preliminary version of the proposed rule language and its associated regulatory basis documents to inform stakeholders of the current status of this proposed rulemaking. The NRC is inviting stakeholders to comment on the preliminary proposed rule language and its associated regulatory basis documents. The preliminary proposed rule language may be subject to additional significant revisions during the rulemaking process prior to publication for formal comment as a proposed rule.

The NRC will review and consider any comments received on the preliminary proposed rule language and regulatory basis documents; however, the NRC will not formally respond to comments. As appropriate, the Statements of Consideration for the proposed rule may briefly discuss any substantive changes made to the proposed rule language as a result of comments received on this preliminary version. Stakeholders will also have an additional opportunity to comment on the rule language when it is published as a proposed rule in accordance with the provisions of the Administrative Procedures Act. The NRC will respond to any such comments in the Statements of Consideration for the final rule.

The NRC may post updates to the preliminary rule language on the Federal rulemaking Web site under Docket ID NRC–2011–0012. The *Regulations.gov* Web site allows members of the public to set-up e-mail alerts so that they may be notified when documents are added to a docket. Users are notified via e-mail at an e-mail address provided at the time of registration for the notification. Directions for signing up for the e-mail alerts can be found at *http://www.regulations.gov.* To do so, navigate to a docket folder you are interested in and then click the "Sign up for E-mail Alerts" link.

Public Meeting

The NRC plans to conduct a public meeting on May 18, 2011, to discuss the preliminary proposed rule language and the regulatory basis documents. The public meeting will be held from 8:30 a.m. to 4:30 p.m. at The Legacy Hotel and Meeting Centre, 1775 Rockville Pike, Rockville, Maryland 20852. The meeting will provide an opportunity for stakeholders to ask clarifying questions to help formulate written comments. The meeting agenda can be viewed and downloaded electronically from the NRC's Public Meeting Web site.

Attendees are requested to notify Mr. Andrew Carrera at (301) 415–1078 or e-mail *Andrew.Carrera@nrc.gov* of their planned attendance and if special services are necessary, such as for the hearing impaired. In addition, interested individuals may also request to participate via teleconference or Webinar by contacting Mr. Carrera prior to the meeting day.

Dated at Rockville, Maryland, this 27th day of April, 2011.

For the Nuclear Regulatory Commission.

Deborah Jackson,

Deputy Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2011–10711 Filed 5–2–11; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0387; Directorate Identifier 2010–NM–222–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, and –243 Airplanes, A330–300 Series Airplanes, A340–200 Series Airplanes, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of

another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

> Surface defects were visually detected on the rudder of * * * [an] in-service aeroplane during scheduled maintenance.
>
> Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the surface defects were a result of de-bonding between the skin and honeycomb core.
>
> * * * * *
>
> An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.
>
> * * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 17, 2011.

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

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

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2011–0387; Directorate Identifier 2010–NM–222–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0127, dated June 23, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Surface defects were visually detected on the rudder of one A319 and one A321 in-service aeroplane during scheduled maintenance.
>
> Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the surface defects were a result of de-bonding between the skin and honeycomb core.
>
> Such reworks were also performed on some rudders fitted on A330 and A340–200/–300 aeroplanes.
>
> An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.
>
> To address this unsafe condition, EASA issued AD 2010–0021, superseding EASA AD 2009–0156, to require inspections of specific areas and, depending on findings, the accomplishment of corrective actions for those rudders where production reworks have been identified.
>
> In addition, this AD addresses the rudder population that has also been reworked in production but is not part of EASA AD 2010–0021 applicability.

Required actions include vacuum loss and elasticity laminate checker inspections for damage including de-bonding between the skin and honeycomb core of the rudder on certain areas of the rudder, and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletins A330–55–3042 and A340–55–4038, both dated April 22, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 55 products of U.S. registry. We also estimate that it would take

about 6 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $28,050, or $510 per product.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this 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); and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Airbus: Docket No. FAA–2011–0387; Directorate Identifier 2010–NM–222–AD.

Comments Due Date

(a) We must receive comments by June 17, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes and Model A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category, all manufacturer serial numbers, if equipped with rudders having part numbers and serial numbers as identified in table 1, table 2, or table 3 of this AD.

TABLE 1—RUDDER PART NUMBER (P/N) AND AFFECTED RUDDER SERIAL NUMBER (S/N)

Rudder P/N	Affected rudder S/N
F554–70000–000–00	TS–2045
F554–70000–000–00	TS–2046
F554–71000–000–00–0000	TS–3013
F554–71000–000–00–0000	TS–3014
F554–71000–000–00–0000	TS–3020
F554–71000–000–00–0000	TS–3022
F554–71000–000–00–0000	TS–3023
F554–71000–000–00–0000	TS–3027
F554–71000–000–00–0000	TS–3031
F554–71000–000–00–0000	TS–3034
F554–71000–000–00–0000	TS–3036
F554–71000–000–00–0000	TS–3038
F554–71000–000–00–0000	TS–3041
F554–71000–000–00–0000	TS–3046
F554–71000–000–00–0000	TS–3054
F554–70005–000–00–0000	TS–3102
F554–71002–000–00–0002	TS–4018
F554–71002–000–00–0002	TS–4022
F554–71002–000–00–0002	TS–4031

TABLE 2—RUDDER P/N AND AFFECTED RUDDER S/N

Rudder P/N	Affected Rudder S/N
A554–71500–024–00	TS–1014
A554–71500–030–00	TS–1042
F554–70000–000–00	TS–2004
F554–70000–000–00	TS–2005
F554–70000–000–00	TS–2008
F554–70000–000–00	TS–2009
F554–70000–000–00	TS–2010
F554–70000–000–00	TS–2022
F554–70000–000–00	TS–2023
F554–70000–000–00	TS–2028
F554–70000–000–00	TS–2029
F554–70000–000–00	TS–2030
F554–70000–000–00	TS–2032
F554–70000–000–00	TS–2033
F554–70000–000–00	TS–2034
F554–70000–000–00	TS–2041
F554–70000–000–00	TS–2044
F554–70000–000–00	TS–2048
F554–70000–000–00	TS–2049
F554–70000–000–00	TS–2050
F554–70000–000–00	TS–2057
F554–70000–000–00	TS–2067
F554–70000–002–00	TS–2068
F554–70000–002–00	TS–2071
F554–71000–000–00–0000	TS–3001
F554–71000–000–00–0000	TS–3010
F554–71000–000–00–0000	TS–3012
F554–71000–000–00–0000	TS–3017
F554–71000–000–00–0000	TS–3018
F554–71000–000–00–0000	TS–3019
F554–71000–000–00–0000	TS–3021
F554–71000–000–00–0000	TS–3024
F554–71000–000–00–0000	TS–3025
F554–71000–000–00–0000	TS–3026
F554–71000–000–00–0000	TS–3028
F554–71000–000–00–0000	TS–3029
F554–71000–000–00–0000	TS–3030
F554–71000–000–00–0000	TS–3032
F554–71000–000–00–0000	TS–3035
F554–71000–000–00–0000	TS–3037
F554–71000–000–00–0000	TS–3039
F554–71000–000–00–0000	TS–3040
F554–71000–000–00–0000	TS–3042
F554–71000–000–00–0000	TS–3047
F554–71000–000–00–0000	TS–3049
F554–71000–000–00–0000	TS–3055
F554–71000–000–00–0000	TS–3058
F554–71000–000–00–0000	TS–3062
F554–71000–000–00–0000	TS–3063
F554–71000–000–00–0000	TS–3065
F554–71000–000–00–0000	TS–3067
F554–71000–000–00–0000	TS–3069
F554–71000–000–00–0000	TS–3070
F554–71000–000–00–0000	TS–3077
F554–71000–000–00–0000	TS–3078
F554–71000–000–00–0000	TS–3080
F554–71000–000–00–0000	TS–3081
F554–71000–000–00–0000	TS–3086
F554–71000–000–00–0000	TS–3089
F554–71000–000–00–0000	TS–3092
F554–71000–000–00–0000	TS–3093
F554–71000–000–00–0000	TS–3095
F554–71000–000–00–0000	TS–3096
F554–70005–000–00–0000	TS–3098
F554–70005–000–00–0000	TS–3099
F554–70005–000–00–0000	TS–3101
F554–70005–000–00–0000	TS–3103
F554–70005–000–00–0000	TS–3104
F554–70005–000–00–0000	TS–3105
F554–70005–000–00–0000	TS–3108

TABLE 2—RUDDER P/N AND AFFECTED RUDDER S/N—Continued

Rudder P/N	Affected Rudder S/N
F554–70005–000–00–0000	TS–3109
F554–70005–000–00–0000	TS–3110
F554–70005–000–00–0000	TS–3111
F554–70005–000–00–0000	TS–3112
F554–70005–000–00–0000	TS–3114
F554–70005–000–00–0000	TS–3116
F554–70005–000–00–0000	TS–3117
F554–70005–000–00–0000	TS–3120
F554–70005–000–00–0000	TS–3131
F554–70005–000–00–0000	TS–3132
F554–70005–000–00–0000	TS–3212
F554–70005–000–00–0002	TS–3323
F554–70005–000–00–0002	TS–3330
F554–71002–000–00–0002	TS–4009
F554–71002–000–00–0002	TS–4010
F554–71002–000–00–0002	TS–4012
F554–71002–000–00–0002	TS–4013
F554–71002–000–00–0002	TS–4014
F554–71002–000–00–0002	TS–4015
F554–71002–000–00–0002	TS–4016
F554–71002–000–00–0002	TS–4017
F554–71002–000–00–0002	TS–4020
F554–71002–000–00–0002	TS–4023
F554–71002–000–00–0002	TS–4025
F554–71002–000–00–0002	TS–4026
F554–71002–000–00–0002	TS–4027
F554–71002–000–00–0002	TS–4029
F554–71002–000–00–0002	TS–4030
F554–71002–000–00–0002	TS–4038
F554–71002–000–00–0002	TS–4047
F554–71002–000–00–0002	TS–4049
F554–71002–000–00–0002	TS–4066
F554–71002–000–00–0003	TS–4083

TABLE 3—RUDDER P/N AND AFFECTED RUDDER S/N

Rudder P/N	Affected Rudder S/N
F554–71000–000–00–0000	TS–3060
F554–71000–000–00–0000	TS–3068
F554–70005–000–00–0000	TS–3128
F554–71002–000–00–0002	TS–4011

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

Surface defects were visually detected on the rudder of * * * [an] in-service aeroplane during scheduled maintenance.

Investigation has determined that the defects reported on both rudders corresponded to areas that had been reworked in production. The investigation confirmed that the surface defects were a result of de-bonding between the skin and honeycomb core.

* * * * *

An extended de-bonding, if not detected and corrected, may degrade the structural integrity of the rudder. The loss of the rudder leads to degradation of the handling qualities and reduces the controllability of the aeroplane.

* * * * *

Compliance

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

Inspections

(g) For rudders identified in table 1 and table 2 of this AD, within the compliance time in paragraph (g)(1) or (g)(2) of this AD as applicable, do a vacuum loss inspection on the rudder non-ventilated area (Area 1) for damage including de-bonding between the skin and honeycomb core of the rudder, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable.

(1) For rudders identified in table 1 of this AD: Within 1,800 flight hours after the effective date of this AD.

(2) For rudders identified in table 2 of this AD: Within 21 months after the effective date of this AD.

(h) For rudders identified in table 1 and table 2 of this AD, within 21 months after the effective date of this AD, do an elasticity laminate checker inspection on the trailing edge area (Area 2) for damage including de-bonding between the skin and honeycomb core of the rudder, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. Thereafter, repeat the inspection two more times at intervals not to exceed 4,500 flight cycles but not less than 4,000 flight cycles from the most recent inspection.

(i) For rudders identified in table 3 of this AD, within 4,500 flight cycles but not less than 4,000 flight cycles from the date of the sampling inspection identified in table 4 of this AD, or within 30 days after the effective date of this AD, whichever occurs later, do an elasticity laminate checker inspection on the trailing edge area for damage including de-bonding between the skin and honeycomb core of the rudder, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. Repeat the inspection once within 4,500 flight cycles after doing the inspection but not less than 4,000 flight cycles from the last inspection.

TABLE 4—RUDDER P/N AND AFFECTED RUDDER S/N AND SAMPLING INSPECTION DATE

Rudder P/N	Affected rudder S/N	Date of sampling inspection
F554–71000–000–00–0000	TS–3060	March 12, 2009.
F554–71000–000–00–0000	TS–3068	April 27, 2009.
F554–70005–000–00–0000	TS–3128	July 13, 2009.
F554–71002–000–00–0002	TS–4011	February 12, 2009.

Corrective Actions

(j) If damage is found during any inspection required by paragraph (g), (h), (i), or (k)(1) of this AD, before further flight, repair the damage using a method approved by either the Manager, International Branch, ANM 116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Restoration

(k) If no damage is found during any inspection required by paragraph (g) of this AD, before further flight, restore the vacuum loss holes by doing a temporary restoration with self-adhesive disks or tapes, a temporary restoration with resin, or a permanent restoration with resin, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. Do the applicable actions specified in paragraph (k)(1) or (k)(2) of this AD.

(1) For airplanes on which a temporary restoration with self-adhesive disks or tapes is done, within 900 flight hours after doing the restoration, do a detailed inspection for loose or missing self-adhesive disks or tapes and repeat the inspection thereafter at intervals not to exceed 900 flight hours until the permanent restoration is done, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. If any loose or missing self-adhesive disks or tapes are found during any inspection required by this AD, before further flight, close the holes, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable. Do the permanent restoration within 21 months after doing the temporary restoration, in accordance with the Accomplishment Instructions of Airbus

Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable.

(2) For airplanes on which a temporary restoration with resin is done: Within 21 months after doing the temporary restoration, do the permanent restoration, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3042 or A340–55–4038, both dated April 22, 2010, as applicable.

Reporting Requirements

(l) Submit a report of the findings (positive and negative) of the first inspection required by paragraphs (g), (h), and (i) of this AD to Airbus, at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

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

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

Parts Installation

(m) As of the effective date of this AD, no person may install any affected rudder listed in table 1, table, 2, or table 3 of this AD, on any airplane, unless the rudder is inspected as specified in paragraphs (g), (h), and (i) of this AD, as applicable, and all applicable corrective actions specified in paragraph (j) of this AD and applicable restoration specified in paragraph (k) of this AD are done.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

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

Related Information

(o) Refer to MCAI EASA Airworthiness Directive 2010–0127, dated June 23, 2010; Airbus Mandatory Service Bulletin A330–55–3042, dated April 22, 2010; and Airbus Mandatory Service Bulletin A340–55–4038, dated April 22, 2010; for related information.

Issued in Renton, Washington, on April 20, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–10624 Filed 5–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 460

Regulatory Approach for Commercial Orbital Human Spaceflight

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting to solicit comments and information from the public on the regulatory approach to commercial orbital human spaceflight by the FAA. This public meeting is intended to aid the FAA in its regulatory effort by receiving early input from the affected community.

DATES: The meeting is scheduled for Thursday, May 26, 2011, starting at 8:30 a.m. Eastern Daylight Time. Written comments submitted to the docket must be received no later than June 9, 2011.

ADDRESSES: DoubleTree by Hilton Hotel Cocoa Beach Oceanfront, 2080 North Atlantic Avenue, Cocoa Beach, FL 32931.

Persons who are unable to attend the meeting, or who otherwise wish to submit written comments, may send comments identified by Docket Number FAA–2011–0446 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, 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.

FOR FURTHER INFORMATION CONTACT: Randy Repcheck, Deputy Division Manager, Regulations and Analysis Division, AST–300, Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8760, or e-mail at *randy.repcheck@faa.gov;* or Laura Montgomery, Senior Attorney for Commercial Space Transportation, Regulations Division, AGC–200, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3150, or e-mail at *laura.montgomery@faa.gov.*

SUPPLEMENTARY INFORMATION: 51 U.S.C. Subtitle V, chapter 509 (Chapter 509) authorizes the Secretary of Transportation and, through delegations, the FAA's Associate Administrator for Commercial Space Transportation, to oversee, license, and regulate both launches and reentries, and the operation of launch and reentry sites when carried out by U.S. citizens or within the United States. 51 U.S.C. 50904, 50905. Chapter 509 directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States, and to encourage, facilitate, and promote commercial

space launch and reentry by the private sector. 51 U.S.C. 50905, 50903.

The Commercial Space Launch Amendments Act of 2004 (CSLAA) assigned the FAA responsibility for regulating commercial human space flight. In December 2006, the FAA issued human space flight regulations in accordance with its authority to protect public health and safety. The CSLAA prohibits the FAA from proposing regulations governing the design or operation of a launch vehicle to protect the health and safety of crew and space flight participants until December 23, 2012, or until a design feature or operating practice has resulted in a serious or fatal injury, or contributed to an event that posed a high risk of causing a death or serious injury, to crew or space flight participants during a licensed or permitted commercial human space flight. 51 U.S.C. 50905(c)(2) and (3). Until such time, the CSLAA only requires that a space flight participant be informed of the risks of taking a ride on a rocket. 51 U.S.C. 50905(b)(5). The FAA may also issue regulations setting reasonable requirements for space flight participants, including medical and training requirements. 51 U.S.C. 50905(b)(6).

Because of recent changes in U.S. policy and the effect they have had on the commercial space transportation industry, the FAA is planning to propose regulations to protect the health and safety of crew and space flight participants for orbital human spaceflight as soon as circumstances require after December 23, 2012. This initiative is driven by the fact that the National Aeronautics and Space Administration (NASA) is planning to contract with the private sector to transport NASA astronauts to the International Space Station within a few years, and is in the process of developing requirements for its procurement of such services. The FAA's role in these flights is still in work, but the transport of private individuals to Earth orbit, which would require an FAA license, is expected to use the same space transportation systems.

The FAA believes it is important to establish a regulatory foundation as early as possible to provide industry assurance that systems built to support NASA's missions will be compatible with future FAA regulations. The CSLAA mandates that any regulations governing the design or operation of a launch vehicle to protect the health and safety of crew and space flight participants must take into consideration the evolving standards of safety in the commercial space flight industry. 51 U.S.C. 50905(c)(3). We fully concur. When developed, the proposed regulations are planned to be a starting point for a regulatory regime that will evolve over time as the industry matures. Moreover, in order to facilitate the development of a successful commercial human space transportation industry, the FAA and NASA must develop complementary safety regimes for orbital human space flight. As noted above, NASA has already begun to develop requirements for its procurement of orbital transport services.

The public meeting will allow a large cross-section of the interested public to share views with each other and the FAA, and assist the FAA in redefining the regulatory framework for orbital human spaceflight. The FAA will share its current philosophy, but is most interested in the public's view on a number of regulatory issues such as—

- What the appropriate regulatory scope and breadth should be,
- What the appropriate mix of performance-based, process-based, and prescriptive requirements should be,
- What the appropriate level of safety the FAA should target with its regulations,
- What, if any, should be the medical requirements for space flight participants,
- How best to incorporate government and industry standards into the licensing process,
- How much flight testing should be required, and
- How much control over a spacecraft ground personnel and flight crew should have.

Any member of the public may present oral statements at the meeting. For planning purposes please inform a person listed in the **FOR FURTHER INFORMATION CONTACT** section by May 20, 2011, although we will accommodate uncoordinated statements.

Written comments are also welcome during or after the meeting, but must be submitted to the docket by June 9, 2011.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477–78), or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and 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.

Issued in Washington, DC on April 26, 2011.

George C. Nield,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 2011–10638 Filed 5–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0044]

RIN 1625–AA11

Regulated Navigation Area; Columbus Day Weekend, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent regulated navigation area (RNA) on Biscayne Bay in Miami, Florida. The RNA would be enforced annually on the Saturday and Sunday of the second week in October (Columbus Day weekend). It would include all waters within one nautical mile of the center of the Intracoastal Waterway between Featherbed Bank and the Rickenbacker Causeway Bridge. All vessels within the RNA would be: Required to transit the regulated navigation area at no more than 15 knots; subject to control by the Coast Guard; and required to follow the instructions of all law enforcement vessels in the area. This RNA is necessary to ensure the safe transit of vessels and to protect the marine environment.

DATES: Comments and related material must be received by the Coast Guard on or before July 14, 2011. Requests for public meetings must be received by the Coast Guard on or before June 14, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0044 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 Lieutenant Paul A. Steiner, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Paul.A.Steiner@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–2011–0044), 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–2011–0044" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0044" 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 a public meeting on or before June 14, 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 the Coast Guard's authority to establish regulated navigation areas (RNAs) and limited access areas: 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, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The purpose of the proposed rule is to ensure the safe transit of vessels in the area and to protect all persons, vessels, and the marine environment.

Discussion of Proposed Rule

The proposed rule would designate an RNA encompassing all waters within one nautical mile of the center of the Intracoastal Waterway from Featherbed Bank extending 14 nautical miles north to the Rickenbacker Causeway Bridge. The RNA would be enforced daily from 12:01 p.m. until 11:59 p.m. on the Saturday and Sunday of the second week in October (Columbus Day weekend) each year. All vessels within the regulated navigation area would be: (1) Required to transit the area at no more than 15 knots; (2) subject to control by the Coast Guard; and (3) required to follow the instructions of all law enforcement vessels in the area.

The RNA is necessary to ensure the safety of the public. The close proximity of numerous vessels transiting that portion of the Intracoastal Waterway encompassed within the proposed RNA during Columbus Day weekend poses a hazardous condition. The RNA would result in the transiting of vessels at a safer speed, thereby significantly reducing the threat of vessel collisions. Requiring vessels within the RNA to transit at no more than 15 knots would also enable law enforcement officials to identify, respond to, query, and stop operators who may pose a hazard to other vessels in the area. Nothing in this regulation would alleviate vessels or operators from complying with all other Federal, state, and local laws in the area, including manatee slow speed zones.

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 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 is not significant for the following reasons: (1) The proposed RNA would be in effect for only two days each year; (2) although during the enforcement period vessels would be required to transit the area at no more than 15 knots, be subject to control by the Coast Guard, and be required to follow the instructions of all law enforcement vessels in the area, the RNA does not prohibit vessels from transiting the area; (3) vessels could still operate in surrounding waters that are not encompassed within the RNA without the restrictions imposed by the RNA; and (4) advance notification of the RNA's enforcement would be made to the local maritime community via Local Notice to Mariners and Broadcast Notice to Mariners.

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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the RNA on the Saturday and Sunday of the second week in October (Columbus Day weekend). For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

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 Lieutenant Paul A. Steiner, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Paul.A.Steiner@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 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 that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing an RNA, as described in paragraph 34(g) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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 33 CFR 165.779 to read as follows:

§ 165.779 Regulated Navigation Area; Columbus Day Weekend, Biscayne Bay, Miami, FL.

(a) *Regulated Area.* The regulated navigation area encompasses all waters in Biscayne Bay between Featherbed Bank and the Rickenbacker Causeway Bridge contained within an imaginary line connecting the following points: beginning at Point 1 in position 25° 44′49″ N, 80° 12′02″ W; thence southwest to Point 2 in position 25° 31′21″ N, 80° 15′28″ W; thence southeast to Point 3 in position 25° 30′53″ N, 80° 13′20″ W; thence northeast to Point 4 in position 25° 43′57″ N, 80° 10′01″ W; thence back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) During each enforcement period, all vessels within the regulated area are required to transit at no more than 15 knots, are subject to control by the Coast Guard, and must follow the instructions of designated representatives.

(2) At least 48 hours prior to each enforcement period, the Coast Guard will provide notice of the regulated area through advanced notice via Local Notice to Mariners and Broadcast Notice to Mariners.

(d) *Enforcement Period.* This rule will be enforced daily from 12:01 p.m. until 11:59 p.m. on the Saturday and Sunday of the second week in October (Columbus Day weekend) each year.

Dated: April 7, 2011.

William D. Baumgartner,

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

[FR Doc. 2011–10665 Filed 5–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0195]

RIN 1625–AA00

Safety Zone; 2011 Rohto Ironman 70.3 Miami, Biscayne Bay, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on Biscayne Bay, east of Bayfront Park, in Miami, Florida during the 2011 Rohto Ironman 70.3 Miami, a triathlon. The Rohto Ironman 70.3 Miami is scheduled to take place on Sunday, October 30, 2011. The temporary safety zone is necessary for the safety of race participants, participant vessels, and the general public during the 1.2 mile swim portion of this competition. Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before July 19, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0195 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 Lieutenant Paul A. Steiner, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Paul.A.Steiner@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–2011–0195), 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–2011–0195" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0195" 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 a public meeting on or before June 10, 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

On October 30, 2011, Paramount Productions, LLC will be hosting the Rohto Ironman 70.3 Miami. This event includes a 1.2 mile swim, which will take place on the waters of Biscayne Bay located east of Bayfront Park in Miami, Florida. Approximately 2,500 individuals are scheduled to compete in the event. This safety zone is necessary to protect race participants, participant vessels, and the general public during the effective period.

Discussion of Proposed Rule

The proposed rule would designate a temporary safety zone around the swim area of the Rohto Ironman 70.3 Miami on Biscayne Bay, east of Bayfront Park, in Miami, Florida. The temporary safety zone will be in effect from 6:45 a.m. until 10 a.m. on October 30, 2011. Persons and vessels will be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless specifically authorized by the Captain of the Port Miami or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the safety zone by contacting the Captain of the Port Miami via telephone at 305–535–4472, or a designated representative via VHF radio on channel 16.

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 economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone will be in effect for just over three hours; (2) vessel traffic in the area during the effective period will be minimal; (3) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Miami or a designated representative, they will be able to operate in the surrounding area during the effective period; (4) persons and vessels may still enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Miami or a designated representative; and (5) advance notification will be made to the local maritime community via Local Notice to Mariners and Broadcast Notice to Mariners.

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 rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within the waters of Biscayne Bay that are encompassed within the safety zone from 6:45 a.m. until 10 a.m. on October 30, 2011. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule will not have a significant economic impact on a substantial number of small entities.

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 Lieutenant Paul A. Steiner, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Paul.A.Steiner@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 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 that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone, as described in paragraph 34(g) of the Instruction, on the waters of Biscayne Bay in Miami, Florida that will be in effect for just over three hours. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 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 a temporary § 165.T07–0195 to read as follows:

§ 165.T07–0195 Safety Zone; 2011 Rohto Ironman 70.3 Miami, Biscayne Bay, Miami, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of Biscayne Bay located east of Bayfront Park and encompassed within an imaginary line connecting the following points: starting at Point 1 in position 25°46′44″ N, 80°10′59″ W; thence southeast to Point 2 in position 25°46′24″ N, 80°10′46″ W; thence southwest to Point 3 in position 25°46′18″ N, 80°11′06″ W; thence north to Point 4 in position 25°46′31″ N, 80°11′06″ W; thence northeast back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term "designated representative" means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local

officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami via telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to seek authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated area via Local Notice to Mariners, Broadcast Notice to Mariners, and by on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 6:45 a.m. until 10 a.m. on October 30, 2011.

Dated: April 18, 2011.

C.P. Scraba,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2011–10663 Filed 5–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0148]

RIN 1625–AA00

Safety Zone; Rudey/Braga Wedding Fireworks Display, Cos Cob Harbor, Greenwich, CT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone around a fireworks display in Cos Cob Harbor, Greenwich, CT, located within the Captain of the Port (COTP) Sector Long Island Sound zone. This action is necessary to provide for the safety of life on navigable waters during the event. Entering into, transiting through, mooring or anchoring within this zone is prohibited unless authorized by the COTP Sector Long Island Sound.

DATES: Comments and related material must be received by the Coast Guard on or before June 2, 2011.

Requests for public meetings must be received by the Coast Guard on or before May 18, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0148 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 Chief Petty Officer Hugh Hamilton, Prevention Department, Coast Guard Sector Long Island Sound, 203–468–4459, e-mail *hugh.m.hamilton@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–2011–0148), 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–2011–0148" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2011–0148" 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 May 18, 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. 1226, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define safety zones.

This rule is necessary to ensure the safety of vessels and spectators from hazards associated with fireworks events. The COTP Long Island Sound has determined that fireworks events in close proximity to the navigational channel and Special Anchorage Area pose a significant risk to public safety and property. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm. Establishing a safety zone around the location of this fireworks event will help ensure the safety of persons and property and help minimize the associated risks.

Discussion of Rule

This safety zone is necessary to ensure the safety of participants, spectators, and vessels during the Rudey and Braga Fireworks event in the COTP Long Island Sound zone as this event may pose a hazard to the public.

The Rudey and Braga families will be hosting a fireworks display as part of a wedding celebration in Greenwich, CT, directly off a private estate in Cos Cob Harbor.

This rule proposes to create a 600 foot safety zone on the navigable waters around the launch site located at approximately 41°00′59″ N, 073°36′05″ W. The safety zone will be in place 30 minutes prior to the event until 30 minutes after the event concludes.

The particular size of the proposed safety zone established for this event was evaluated in accordance with Navigational and Vessel Inspection Circular (NVIC) 07–02; Marine Safety at Firework Displays; the National Fire Protection Association Standard 1123, Code for Fireworks Displays (30-yard distance per inch of diameter of the fireworks mortars), and other pertinent regulations and publications.

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 Coast Guard determined that this rule is not a significant regulatory action for the following reasons: The regulated area will be of limited duration, there is very little impingement onto the navigable waterway, and the event is designed to avoid, to the extent possible, deep draft, fishing, and recreational boating traffic routes. Persons and/or vessels may enter a safety zone if they obtain permission from the Coast Guard COTP, Long Island Sound.

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. Persons and/or vessels may enter this safety zone if they obtain permission from the Coast Guard COTP, Long Island Sound.

This proposed rule may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Cos Cob Harbor from 9 p.m. to 10:15 p.m. on June 25th, 2011.

This proposed safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This temporary safety zone would be activated and enforced for only 1 hour and 15 minutes in an area where vessel traffic is expected to be minimal. Vessel traffic could pass safely around the safety zone through the navigational channel. Persons and/or vessels may enter a safety zone if granted permission from the Coast Guard COTP, Long Island Sound.

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 (Public Law 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 Chief Petty Officer Hugh Hamilton, Prevention Department, Coast Guard Sector Long Island Sound, (203) 468–4459 or e-mail *hugh.m.hamilton@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 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. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This proposed rule involves the establishment of a safety zone. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREA 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. Chapters 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01–0148 to read as follows:

§ 165.T01–0148 Safety Zone; Rudey/Braga Wedding Fireworks Display, Cos Cob Harbor, Greenwich, CT.

(a) Location. The following is a Safety Zone: All waters of Long Island Sound in Cos Cob Harbor within a 600-foot radius of the fireworks barge located in approximate position 41°00′59″ N, 073°36′05″ W.

(b) Notification. Coast Guard Sector Long Island Sound will cause notice of the enforcement of this temporary safety zone to be made by all appropriate means to affect the widest publicity among the effected segments of the public, including publication in the Local Notice to Mariners and Broadcast Notice to Mariners.

(c) Enforcement Period. This section will be enforced on 25 June, 2011, from 9 p.m. until 10:15 p.m.

(d) Regulations. (1) The general regulations contained in 33 CFR 165.23 apply. During the enforcement period, entering into, transiting through, mooring or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port or the designated on-scene representatives.

(2) This temporary safety zones is closed to all vessel traffic, except as may be permitted by the Captain of the Port or the designated on-scene representative. The COTP or the designated on scene representative may be contacted via VHF Channel 16 or by telephone at (203) 468–4404.

(3) The "on-scene representative" of the COTP Long Island Sound is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his behalf. The on-scene representative of the COTP Long Island Sound may be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(4) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or the designated on-scene representative.

(5) The Captain of the Port or the designated on-scene representative may direct the delay, cancellation, or relocation of the specific area to be regulated within the generally described locations listed to ensure safety and compliance with environmental laws. Such changes in implementation of the safety zone may be required as a result of factors that could affect their associated marine events such as weather, vessel traffic density, spectator

activities, participant behavior or potential environmental impacts.

Dated: April 12, 2011.

J.M. Vojvodich,

Captain, U.S. Coast Guard, Captain of the Port Long Island Sound.

[FR Doc. 2011–10664 Filed 5–2–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0946; FRL–9294–8]

Approval and Promulgation of Air Quality Implementation Plans; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) for ozone. The State is revising its definition of volatile organic compound (VOC) to add two chemical compounds to the list of compounds that are exempt from being considered a VOC. This revision is based on EPA's 2009 determination that these two listed compounds do not significantly contribute to ozone formation.

DATES: Comments must be received on or before June 2, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2010–0946, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

2. *E-mail: aburano.douglas@epa.gov*.

3. *Fax:* (312) 408–2279.

4. *Mail:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Douglas Aburano, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6031, *hatten.charles@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: April 4, 2011.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2011–10028 Filed 5–2–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 09–189; Report 2929]

Petition for Reconsideration of Action of Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, a Petition for Reconsideration (Petition) has been filed in the Commission's Rulemaking proceeding listed below by Kona Coast Radio, LLC ("Kona Coast"), seeking reconsideration of actions taken in a *Report and Order* in *Kahuku and Kualapuu, Hawaii.* In the *Report and Order,* the Media Bureau (the Bureau) allotted FM Channel 296C2 at Kualapuu, Hawaii, and granted the proposal of Big D Consulting, Inc. ("Big D") to upgrade the facilities of FM Station KNAN, Nanakuli, Hawaii, from Channel 294C3 to Channel 294C2. The Bureau also dismissed Kona Coast's proposal for the allotment of FM Channel 296C3 at Kahuku, Hawaii. Kona Coast argues that the Bureau erred in giving priority to Big D's proposal, which was filed before Kona Coast's petition for rule making reached the Office of the Secretary. Kona Coast asserts that the public was given actual notice of the proposal as of the filing date of the Form 301 for Channel 296C3 at Kahuku, Hawaii. Kona Coast also argues that its alternative proposal would result in a preferential use of spectrum.

DATES: Oppositions to the Petition must be filed by May 18, 2011. Replies to an opposition must be filed May 31, 2011.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, 202–418–7072.

SUPPLEMENTARY INFORMATION: On February 18, 2011, the Commission, via the Media Bureau released *In the Matter of Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations* (*Kahuku and Kualapuu, Hawaii*), DA 11–323, *Report and Order,* adopted February 16, 2011; published at 76 FR 12292, March 7, 2011. This is a summary of Commission's document, Report No. 2929, released April 14, 2011. The full text of document Report No. 2929 is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). The Commission will not send a copy of document Report No. 2929 pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A), because it does not have an impact on any rules of particular applicability.

Subject: In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Kahuku and Kualapuu, Hawaii) (MB Docket No. 09–189).

Number of Petitions Filed: 1.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–10625 Filed 5–2–11; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 76, No. 85
Tuesday, May 3, 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

April 28, 2011.

The Department of Agriculture will submit the following information collection requirement(s) 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. 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), New Executive Office Building, Washington, DC; *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

DATES: Comments regarding these information collections are best assured of having their full effect if received by June 2, 2011. 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.

Agricultural Marketing Service

Title: Dairy Request for Applicant Number.

OMB Control Number: 0581—NEW.

Summary of Collection: The dairy grading program is a voluntary user fee program providing grading and inspection service to the dairy industry. The program is authorized under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627).

Need and Use of the Information: The Agricultural Marketing Service will collect the information on two new forms (1) DA–228—Request for Applicant Number, and (2) DA–229—Export Applicant Number Activation. The information requested will be used by the Administrative Officer to identify the applicant in the billing system, to set up an account in the billing system and contact the party responsible for payment of the fee and expense for the inspection, certification, and grading or equipment evaluation service.

Description of Respondents: Business or other for-profit.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10.

Agricultural Marketing Service

Title: USDA Web Based Supply Chain Management System (WBSCMs).

OMB Control Number: 0581—NEW.

Summary of Collection: Section 32 of the Act of August 24, 1935, as amended (Section 32 Public Law 74–320; 7 U.S.C. 612c); Sections 6(a) and (e), 13, and 17 of the National School Lunch Act, as amended, (42 U.S.C. sections 1751, 1761, and 1766) in addition to several other acts authorize the Agricultural Marketing Service (AMS) Procurement Branches to prepare and issue announcements for the purchase and sale of perishable agricultural commodities. AMS purchases agricultural commodities for the Section 32 and 6a & e National School Lunch Program/Child & Adult Care Food Program; Nutrition Service Incentive Program; Food Distribution Program on Indian Reservations; Commodity Supplemental Food Program; The Emergency Food Assistance Program and Disaster Feeding in addition to providing support for commodity markets with surplus inventory.

Need and Use of the Information: AMS issues solicitation for offers in order to solicit bids for commodities for delivery to domestic nutrition assistance programs. Vendors respond by making electronic offers using the secure Web Based Supply Chain Management System (WBSCM). Vendors must be registered, and have an ID and password, in order to submit bids electronically through WBSCM via the Internet. The information will change in response to the needs of the domestic feeding programs and each solicitation. Information collected has been consolidated into three processes—a New Vendor Application, Bid Solicitation and Contract Delivery, Invoice Submission and Inspection Results. The data collected from vendors assists AMS with making a determination whether a business is viable and capable of supplying product to the Federal government.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 320.

Frequency of Responses: Reporting: On occasion; Weekly; Monthly; Quarterly.

Total Burden Hours: 1,680.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–10714 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0011]

RIN 0579–AC03

Notice of Request for Approval of an Information Collection; Category of Plants for Planting Not Authorized for Importation Pending Pest Risk Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act, this notice announces the Animal and Plant Health Inspection Service's intention to initiate an information collection associated with a new category of plants for planting, also referred to as nursery stock, whose importation is not authorized for importation pending pest risk analysis.

DATES: We will consider all comments that we receive on or before July 5, 2011.

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

- *Federal eRulemaking Portal*: Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2006–0011* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send one copy of your comment to Docket No. APHIS–2006–0011, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0011.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room 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.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov*.

FOR FURTHER INFORMATION CONTACT: For information on a new category of plants for planting not authorized for importation pending pest risk analysis, contact Dr. Arnold Tschanz, Senior Plant Pathologist, Plants for Planting Policy, Risk Management and Plants for Planting Policy, RPM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–0627. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Category of Plants for Planting Not Authorized for Importation Pending Pest Risk Analysis.

OMB Number: 0579–xxxx.

Type of Request: Approval of a new information collection.

Abstract: Under the Plant Protection Act (PPA) (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to take such actions as may be necessary to prevent the introduction and spread of plant pests and noxious weeds within the United States. The Secretary has delegated this authority to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests that are not already established in the United States or plant pests that may be established but are under official control to eradicate or contain them within the United States. The regulations in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting or propagation. These regulations are intended to ensure that imported nursery stock does not serve as a host for plant pests, such as insects or pathogens, that can cause damage to U.S. agricultural and environmental resources.

On July 23, 2009, we published in the **Federal Register** (74 FR 36403–36414, Docket No. APHIS–2006–0011) a proposal to amend the nursery stock regulations. We proposed, among other things, to change the nursery stock regulations to refer instead to "plants for planting," a term that is consistent with the International Plant Protection Convention's Glossary of Phytosanitary Terms. In addition, the proposal would add a new category of plants for planting whose importation is not authorized pending the completion of a pest risk analysis (NAPPRA).

APHIS is in the final rulemaking stage to amend part 319 which, if adopted, will require that requests to remove a taxon from the NAPPRA category be made in accordance with § 319.5, which contains requirements for requests to change the regulations in part 319. The current regulations in § 319.5 will apply, if adopted in the final rule, to the new category of plants for planting. This requirement was not part of the 2009 proposed rule and was added based on commenters' requests to allow only national plant protection organizations (NPPOs) to request that taxa be removed from the NAPPRA list. The final rule will allow any person to request that a taxon be removed from the NAPPRA list, but the regulations in § 319.5 will require the NPPO to be involved in the request, to ensure that APHIS has all the information necessary to evaluate the taxon.

Section 319.5 contains information collection activities for the submission of requests to APHIS that are necessary for us to conduct a PRA, including information about the party making the request, information about the commodity proposed for importation into the United States, shipping information, and a description of pests associated with the commodity.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection for 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 5.6 hours per response.

Respondents: NPPOs and importers of nursery stock into the United States.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 5.

Estimated total annual burden on respondents: 28 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 27th day of April 2011.

Gregory L. Parham,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–10718 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2011–0002]

Notice of Request for a Revision of a Currently Approved Information Collection (Application for Inspection, Accreditation of Laboratories, and Exemptions)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a revision of a currently approved information collection. The information collection addresses the paperwork requirements specified in the regulations relating to the application for inspection, accreditation of laboratories, and exemptions. FSIS is revising the information collection to increase the estimate of the total burden hours, and because the OMB approval will expire on July 31, 2011.

DATES: Comments on this notice must be received on or before July 5, 2011.

ADDRESSES: FSIS invites interested persons to submit comments on this notice. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including floppy disks or CD-ROMs, and hand-or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 2–2127 George Washington Carver Center, 5601 Sunnyside Avenue, Mailstop 5272, Beltsville, MD 20705–5272.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2011–0002. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065, South Building, Washington, DC 20250, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Application for Inspection, Accreditation of Laboratories, and Exemptions.

OMB Number: 0583–0082.

Expiration Date of Approval: 07/31/2011.

Type of Request: Revision of a currently approved information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes provide that FSIS is to protect the public by verifying that meat and poultry products are safe, wholesome, not adulterated, and properly labeled and packaged.

FSIS is requesting a revision of an approved information collection addressing paperwork requirements specified in the regulations relating to the application for inspection, accreditation of laboratories, and exemptions.

FSIS requires meat and poultry establishments and import facilities to apply for a grant of inspection before receiving Federal inspection (9 CFR 304.1 & 381.17). FSIS also requires plants that wish to receive voluntary inspection to apply for service (9 CFR 350.5, 351.4, 352.3, & 362.3). Establishments that wish to export or import product must also submit certain documents to the Agency.

The FMIA (21 U.S.C. 642), the PPIA (21 U.S.C. 460(b)), and the EPIA (21 U.S.C. 1040) require certain parties to keep records that fully and correctly disclose all transactions involved in their businesses related to relevant animal carcasses and parts and egg products.

FSIS requires accredited non-Federal analytical laboratories to maintain certain paperwork and records (9 CFR 439.20 & 590.580). The Agency uses this collected information to ensure that meat and poultry establishments and egg products plants provide safe, wholesome, and not adulterated product, and that non-Federal laboratories act in accordance with FSIS regulations.

In addition, FSIS also requires establishments to keep records to ensure that meat and poultry products exempted from Agency inspection are not commingled with inspected meat and poultry products (9 CFR 303.1(b)(3) & 381.175), and that firms qualifying for a retail store exemption who have violated the provisions of that exemption are no longer in violation (9 CFR 303.1(d)(3) & 381.10(d)(3)).

The Agency is revising the information collection based on a revised estimate of the number of respondents due to an increase in the number of establishments. This increase in the number of establishments supports the finding of a total increase in burden hours (39.4) from that found in the previously approved information collection.

FSIS has made the following estimates based upon an information collection assessment:

Estimate of Burden: FSIS estimates that it will take respondents an average of .034 hours per response.

Respondents: Official meat and poultry establishments, official egg plants, and foreign establishments.

Estimated No. of Respondents: 27,743.

Estimated No. of Annual Responses per Respondent: 122.

Estimated Total Annual Burden on Respondents: 114,339.4 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 1400 Independence Avenue, SW., Room 6065, South Building, Washington, DC 20250, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of

information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Update* is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The *Update* also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on: April 26, 2011.

Alfred V. Almanza,

Administrator.

[FR Doc. 2011–10676 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Central Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343), the Salmon-Challis National Forest's Central Idaho Resource Advisory Committee will conduct a business meeting which is open to the public.

DATES: Friday, June 3, 2011, beginning at 10 a.m.

ADDRESSES: Public Lands Center, 1206 South Challis Street, Salmon, Idaho

SUPPLEMENTARY INFORMATION: Agenda topics will include, presentation of proposed projects, evaluation of some projects proposals, and approval and recommendation of some projects for Title II funding for 2011 and 2012. Some RAC members may attend the meeting by conference call, telephone, or electronically.

FOR FURTHER INFORMATION CONTACT: Lyle E. Powers, Acting Forest Supervisor, at 208–756–5557.

Dated: April 26, 2011.

Lyle E. Powers,

Acting Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. 2011–10661 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

El Dorado County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The El Dorado County Resource Advisory Committee will meet in Placerville, California. 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 RAC will prioritize a list of projects for funding in FY 2011 and FY 2012. The RAC may also be voting to recommend projects for funding.

DATES: The meeting will be held on May 23, 2011 beginning at 6 p.m..

ADDRESSES: The meeting will be held at the El Dorado Center of Folsom Lake College, Community Room, 6699 Campus Drive, Placerville, CA 95667.

Written comments should be sent to Frank Mosbacher; Forest Supervisor's Office; 100 Forni Road; Placerville, CA 95667. Comments may also be sent via e-mail to *fmosbacher@fs.fed.us,* or via facsimile to 530–621–5297.

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 100 Forni Road; Placerville, CA 95667. Visitors are encouraged to call ahead to 530–622–5061 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Frank Mosbacher, Public Affairs Officer, Eldorado National Forest Supervisors Office, (530) 621–5268. 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: The meeting is open to the public. The following business will be conducted: The RAC will prioritize a list of projects for funding in FY 2011 and FY 2012. The RAC may also be voting to recommend projects for funding. More information will be posted on the Eldorado National Forest Web site at *http://www.fs.fed.us/r5/eldorado.* A public comment opportunity will be made available following the business activity. Future meetings will have a formal public input period for those following the yet to be developed public input process.

Dated: *April 27, 2011.*

Frank Mosbacher,

Acting Forest Supervisor.

[FR Doc. 2011–10695 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Prince of Wales Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Prince of Wales Resource Advisory Committee will meet in Coffman Cove, Alaska, May 16, 2011 The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

DATES: The meeting will be held May 16, 2011 from 10 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Ferry Terminal 110 Stikine Way Coffman Cove, Alaska. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Craig Ranger District. Please call ahead to 907–826–3271 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Rebecca Sakraida, RAC Coordinator, 907–826–1601 or e-mail *rsakraida@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed FOR FURTHER INFORMATION.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Review of projects submitted for review. An agenda will be available at the Secure Rural Schools Web site, *https://wwwnotes.fs.fed.us/wo/secure_rural_schools.nsf.* Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 9, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Prince of Wales RAC c/o District Ranger P.O. Box 500 Craig, AK 99921, or by e-mail to *rsakraida@fs.fed.us*, or via facsimile to 907–826–2972.

April 21, 2011.

Francisco B. Sanchez,

District Ranger.

[FR Doc. 2011–10691 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Lincoln County Resource Advisory Committee will meet in Libby, MT. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to review 2011 project proposals.

DATES: May 18, 2011 @ 6 p.m.

ADDRESSES: Forest Supervisor's Office, 31374 Hwy 2, Libby, Montana. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Forest Supervisor's Office. Please call ahead to 406–283–7764 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Janette Turk, Committee Coordinator, Kootenai National Forest at (406) 283–7764, or e-mail *jturk@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: The following business will be conducted: A vote to fund 2011 projects. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake, based in Kalispell, Montana. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 16, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Forest Supervisor's Office, 31374 Hwy 2, Libby, Montana, or by e-mail to *jturk@fs.fed.us,* or via facsimile to 406–283–7709.

Dated: April 27, 2011.

Paul Bradford,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 2011–10697 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is for the committee to hear project status, presentation and review of new project proposals and to vote and make

recommendations. The meeting is open to the public. Opportunity for public comment will be provided.

DATES: The meeting will be held Monday June 20, 2011 at 4 p.m.

ADDRESSES: The meeting will be held at the Klamath National Forest Supervisor's Office, conference room, 1312 Fairlane Road, Yreka, CA 96097. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Klamath National Forest Supervisor's Office. Please call ahead to (530) 841–4484 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kerry Greene, Community Development and Outreach Specialist, Klamath National Forest, (530) 841–4484, *kggreene@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accommodation for access to the facility or proceedings may be made by contacting the person listed **FOR FURTHER INFORMATION**.

SUPPLEMENTARY INFORMATION: *The following business will be conducted:* project updates and financial status, and presentation and review of new project proposals to be considered by the RAC. The meeting is open to the public. Opportunity for public comment will be provided and individuals will have the opportunity to address the Committee at that time. Alternatively, anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 1, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 1312 Fairlane Road Yreka, CA 96097, or by e-mail to *kggreene@fs.fed.us,* or via facsimile to (530) 841–4571.

Dated: *April 26, 2011.*

Kenneth C. Stagg,

Acting Forest Supervisor.

[FR Doc. 2011–10699 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is for the committee to hear project status, presentation and review of new project proposals and to vote and make recommendations. The meeting is open to the public. Opportunity for public comment will be provided.

DATES: The meeting will be held Monday May 16, 2011 at 4 p.m.

ADDRESSES: The meeting will be held at the Klamath National Forest Supervisor's Office, conference room, 1312 Fairlane Road, Yreka, CA 96097. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION.**

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Klamath National Forest Supervisor's Office. Please call ahead to (530) 841–4484 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Kerry Greene, Community Development and Outreach Specialist, Klamath National Forest, (530) 841–4484, *kggreene@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION** .

SUPPLEMENTARY INFORMATION: *The following business will be conducted:* project updates and financial status, and presentation and review of new project proposals to be considered by the RAC. The meeting is open to the public. Opportunity for public comment will be provided and individuals will have the opportunity to address the Committee at that time. Alternatively, anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by May 1, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to 1312 Fairlane Road Yreka, CA 96097, or by e-mail to *kggreene@fs.fed.us,* or via facsimile to (530) 841–4571.

Dated: April 26, 2011.

Kenneth C. Stagg,

Acting Forest Supervisor.

[FR Doc. 2011–10700 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hiawatha West Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hiawatha West Resource Advisory Committee will meet in Rapid River, Michigan. 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 is to hold the first meeting of the newly formed committee.

DATES: The meeting will be held on June 16, 2011, and will begin at 6:30 p.m.

ADDRESSES: The meeting will be held at the Masonville Township Offices, 10574 North Main Street, Rapid River, MI 49878. Written comments should be sent to Janel Crooks, Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI 49829. Comments may also be sent via e-mail to *HiawathaNF@fs.fed.us,* or via facsimile to 906–789–3311.

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 Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, MI. Visitors are encouraged to call ahead to 906–786–4062 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Janel Crooks, RAC coordinator, USDA,

Hiawatha National Forest, 2727 North Lincoln Road, Escanaba, Michigan 49862; (906) 786–4062; E-mail *jmcrooks@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Review of submitted projects. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting.

Dated: April 22, 2011.

David J. Silvieus,

Designated Federal Officer.

[FR Doc. 2011–10698 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of a Meeting of the Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forest Resource Advisory Committee (RAC) will meet on May 19, 2011 in John Day, Oregon. The purpose of the meeting is to meet as a Committee to discuss selection of Title II projects under Public Law 110–343, H.R. 1424, the Reauthorization of the Secure Rural Schools and community Self-Determination Act of 2000 (16 U.S.C. 500 note; Pub. L. 106–393), also called "Payments to States" Act.

DATES: The meeting will be held on May 19, 2011, from 9 a.m to 4 p.m.

ADDRESSES: The meeting will be held in the Outpost Pizza and Grill, 201 West Main Street, John Day, Oregon.

FOR FURTHER INFORMATION CONTACT: Kurt Wiedenmann, Designated Federal Official, USDA, Wallowa-Whitman National Forest, La Grande Ranger District, 3502 Highway 30, La Grande, Oregon 97850; *Telephone:* (541)–962–8582.

SUPPLEMENTARY INFORMATION: This will be the third meeting of the Committee since reauthorization of Public Law 106–393. The meeting will focus on introducing new Committee members, becoming familiar with duties and responsibilities, selecting a chairperson, reviewing and recommending 2009 and 2010 project proposals that meet the intent of the Act. The meeting is open to the public. A public input opportunity will be provided at 1:00 p.m., and individuals will have the opportunity to address the committee at that time.

Dated: April 26, 2011.

Monica J. Schwalbach,

Forest Supervisor.

[FR Doc. 2011–10696 Filed 5–2–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Proposed Information Collection; Comment Request; Additional Protocol Report Forms

AGENCY: Bureau of Industry and Security, 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 July 5, 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 Larry Hall, BIS ICB Liaison, (202) 482–4895, *lhall@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Additional Protocol requires the United States to submit declaration forms to the International Atomic Energy Agency (IAEA) on a number of commercial nuclear and nuclear-related items, materials, and activities that may be used for peaceful nuclear purposes, but also would be necessary elements for a nuclear weapons program. These forms provides the IAEA with information about additional aspects of the U.S. commercial nuclear fuel cycle, including: Mining and milling of nuclear materials; buildings on sites of facilities selected by the IAEA from the U.S. Eligible Facilities List; nuclear-related equipment manufacturing, assembly, or construction; import and export of nuclear and nuclear-related items and materials; and research and development. The Protocol also expands IAEA access to locations where these activities occur in order to verify the data on the form.

II. Method of Collection

Submitted electronically or paper format.

III. Data

OMB Control Number: 0694–0135.

Form Number(s): AP–A, AP–B, AP–C, AP–D, AP–E, AP–F, AP–G, AP–H, AP–I, AP–J, AP–K, AP–L, AP–M, AP–N, AP–O, AP–P, and AP–Q.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 156.

Estimated Time per Response: 22 minutes to 6 hours.

Estimated Total Annual Burden Hours: 3,357.

Estimated Total Annual Cost to Public: $8,708.

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: April 27, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–10674 Filed 5–2–11; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–838]

Carbazole Violet Pigment 23 From India: Rescission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: On January 28, 2011, in response to a request from an interested party, the Department of Commerce (the Department) published a notice of initiation of the administrative review of the antidumping duty order on carbazole violet pigment 23 (CVP 23) from India for the period of December 1, 2009, through November 30, 2010. Because the party withdrew its request for an administrative review in a timely manner, the Department is rescinding this review.

DATES: *Effective Date:* May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Jerrold Freeman or Richard Rimlinger, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0180 and (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2004, the Department published in the **Federal Register** the antidumping duty order on CVP 23 from India. See *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbazole Violet Pigment 23 From India,* 69 FR 77988 (December 29, 2004). On January 28, 2011, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review of the antidumping duty order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 5137 (January 28, 2011). We initiated the review with respect to Meghmani Pigments (Meghmani) based on its request for a review of its sales during the period December 1, 2009, through November 30, 2010.

On April 4, 2011, Meghmani withdrew its request for review of its sales of merchandise subject to the antidumping duty order for the period December 1, 2009, through November 30, 2010.

Rescission of Review

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." We received a letter from Meghmani withdrawing its request for review within the 90-day time limit. We received no other requests for review of the antidumping duty order. In accordance with 19 CFR 351.213(d)(1), we are rescinding the review of the antidumping duty order on CVP 23 from India.

Assessment

The Department will instruct U.S. Customs and Border Protection to assess antidumping duties on all appropriate entries. 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 directly to CBP 15 days after the publication of this notice in the **Federal Register**.

Notification to Importer

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This notice serves as a reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the 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.

We are issuing and publishing this notice in accordance with section 777(i)(1) of the Act and 19 CFR 351.213(d)(4).

Dated: April 27, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–10761 Filed 5–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews; Correction

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") published a notice in the **Federal Register** on March 31, 2011, concerning the initiation of administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. The document contained incorrect information in the "Separate Rates" section.

DATES: *Effective Date:* May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

In the **Federal Register** notice *Initiation of Antidumping Duty Administrative Reviews, Requests, for Revocation in Part, and Deferral of Administrative Review,* 76 FR 17825, 17826 (March 31, 2011), under the section entitled "Separate Rates," we note that in the third paragraph of that section, concerning information on the filing of Separate Rate Certifications, we stated that the certifications are due to the Department no later than 30 calendar days after publication of this **Federal Register** notice. This was a typographical error. That sentence should read as follows: "Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this **Federal Register** notice."

Dated: April 27, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–10762 Filed 5–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803]

Heavy Forged Hand Tools (i.e., Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) From the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 3, 2011, the Department of Commerce ("Department") initiated a sunset review of the antidumping duty orders on heavy forged hand tools ("Hand Tools") (*i.e.,* Axes & Adzes, Bars & Wedges, Hammers & Sledges, and Picks & Mattocks) from the People's Republic of China ("PRC") pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). Based on the notices of intent to participate and adequate responses filed by the domestic interested parties, and the lack of response from any respondent interested party, the Department conducted an expedited sunset review of the orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of this sunset review, the Department finds that revocation of the orders would likely lead to continuation or recurrence of dumping, at the levels indicated in the "Final Results of Review" section of this notice.

DATES: Effective Date: May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–0219.

SUPPLEMENTARY INFORMATION:

Background

On January 3, 2011, the Department initiated the third sunset review of the orders on Hand Tools pursuant to section 751(c) of the Act. *See Initiation of Five-Year ("Sunset") Review,* 76 FR 89 (January 3, 2011) ("*Initiation*"); *see also Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles From the People's Republic of China,* 56 FR 6622 (February 19, 1991) ("*Orders*"). On January 12, 2011, the Department received notices of intent to participate from two domestic parties within the deadline specified in 19 CFR 351.218(d)(1)(i): (1) Ames True Temper ("Ames")[1] and (2) Council Tool Company, Inc. ("Council Tool"). These two parties claimed interested party status under section 771(9)(C) of the Act and 19 CFR 351.102(b), as domestic manufacturers and producers of the domestic like product. On February 2, 2011, Ames and Council Tool both filed timely and adequate substantive responses within 30 days after the date of publication of the *Initiation.* The Department did not receive a substantive response from any respondent interested party in the sunset review. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the *Orders.*

Scope of the Orders

The products covered by these orders are Hand Tools comprising the following classes or kinds of merchandise: (1) Hammers and sledges with heads over 1.5 kg (3.33 pounds); (2) bars over 18 inches in length, track tools and wedges; (3) picks and mattocks; and (4) axes, adzes and similar hewing tools. Hand Tools include heads for drilling hammers, sledges, axes, mauls, picks and mattocks, which may or may not be painted, which may or may not be finished, or which may or may not be imported with handles; assorted bar products and track tools including wrecking bars, digging bars, and tampers; and steel wood splitting wedges. Hand Tools are manufactured through a hot forge operation in which steel is sheared to required length, heated to forging temperature, and formed to final shape on forging equipment using dies specific to the desired product shape and size. Depending on the product, finishing operations may include shot blasting, grinding, polishing and painting, and the insertion of handles for handled products. Hand Tools are currently provided for under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 8205.20.60, 8205.59.30, 8201.30.00, and 8201.40.60. Specifically excluded from these orders are hammers and sledges with heads 1.5 kg. (3.33 pounds) in weight and under, hoes and rakes, and bars 18 inches in length and under. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the orders is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") dated concurrently with this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margin likely to prevail if the *Orders* were revoked. Parties can obtain a public copy of the Decision Memorandum on file in the Central Records Unit, room 7046, of the main Commerce building.

In addition, a complete public version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

The Department determines that revocation of the *Orders* on Hand Tools would likely lead to continuation or recurrence of dumping at the rates listed below.

PRC–wide (all manufacturers/ producers/exporters)	Margin (percent)
Axes/Adzes	15.02
Picks/Mattocks	50.81
Bars/Wedges	31.76
Hammers/Sledges	45.42

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: April 26, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–10768 Filed 5–2–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] Ames is the successor company to Woodings-Verona Tools Works, the petitioner in the original investigation.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Preliminary Intent To Rescind New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting three new shipper reviews (NSRs) under the antidumping duty order on fresh garlic from the People's Republic of China (PRC). The NSRs cover Shenzhen Bainong Co., Ltd. (Shenzhen Bainong) and Jining Yifa Garlic Produce Co., Ltd. (Jining Yifa) for the period of review (POR) November 1, 2009, through April 30, 2010, and Yantai Jinyan Trading Inc. (Yantai Jinyan) for the POR November 1, 2009, through May 31, 2010. As discussed below, we preliminarily determine that Shenzhen Bainong's and Jining Yifa's sales are not *bona fide.* As such, we are preliminarily rescinding the NSR for Shenzhen Bainong and Jining Yifa. In addition, with respect to Yantai Jinyan, we preliminarily determine that there was no sale or entry during the original, unextended POR, and therefore we are preliminarily rescinding the new shipper review for Yantai Jinyan. We invite interested parties to comment on these preliminary results. *see* "*comments*" section below.

DATES: *Effective Date:* May 3, 2011.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith (Yantai Jinyan), Milton Koch (Jining Yifa), and Justin Neuman (Shenzhen Bainong), AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–5255, (202) 482–2584, and (202) 482–0486, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 28, 2010, the Department received timely requests for an NSR from Jining Yifa, Shenzhen Bainong, and Yantai Jinyan in accordance with 19 CFR 351.214(c). On July 7, 2010, the Department determined that the requests submitted by Shenzhen Bainong, Jining Yifa, and Yantai Jinyan met the threshold requirements for initiation of an NSR and initiated the NSRs. *See Fresh Garlic From the People's Republic of China: Initiation of New Shipper Reviews,* 75 FR 38986 (July 7, 2010) (*Initiation Notice*). Since the initiation of these reviews, the Department has issued original and supplemental questionnaires to Shenzhen Bainong, Jining Yifa, and Yantai Jinyan, to which each has responded in a timely manner.

On July 20, 2010, the Department sent interested parties a letter requesting comments on the surrogate country selection and information pertaining to valuing factors of production. *See* Letter to All Interested Parties, from the Department, Re: New Shipper Review of Fresh Garlic from the People's Republic of China ("PRC") (July 20, 2010). On October 26, 2010, the respondents submitted comments on the surrogate country selection and information pertaining to valuing factors of production. *See* Letter to the Department, from Shenzhen Bainong, Yantai Jinyan, and Jining Yifa, Re: Fresh Garlic from the People's Republic of China—Surrogate Value Information (October 26, 2010). The Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch L.L.C., the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, Petitioners) also submitted comments regarding surrogate values for this NSR. *See* Letter to the Department, from Petitioners, Re: 17th New Shipper Review of the Antidumping Duty Order on Fresh Garlic from the People's Republic of China—Petitioners' Rebuttal Submission Concerning Surrogate Values for Factors of Production (November 4, 2010). No other party has submitted surrogate values or surrogate country comments on the record of this proceeding.

On November 23, 2010, the Department placed a copy of the U.S. Customs and Border Protection (CBP) data run on the record of this review, which contains all entries of subject merchandise exported from the PRC to the United States during the PORs. *See* Memorandum to the File, from The Team, AD/CVD Operations, Office 6, Re: New Shipper Review of Fresh Garlic from the People's Republic of China: Customs Entries from November 1, 2009 through May 31, 2010 (November 23, 2010). On November 30, 2010, the Department extended the deadline for the preliminary results of these NSRs to no later than April 26, 2011. *See Fresh Garlic From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Reviews,* 75 FR 74002 (November 30, 2010).

On February 11, 2011, the Department placed on the record of this review, copies of CBP documents pertaining to Shenzhen Bainong's and Jining Yifa's shipments of garlic during the POR. On February 14, 2011, the Department placed on the record of this review, copies of CBP documents pertaining to Yantai Jinyan's shipment of garlic during the POR. *See* Memorandum to the File, from Justin M. Neuman, Analyst, Re: Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (A–570–831): Customs Entry Packages (February 11, 2011) and Memorandum to the File, from Jacqueline Arrowsmith, International Trade Analyst, Re: Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (A–570–831): Customs Entry Documents (February 14, 2011).

Period of Review

Pursuant to 19 CFR 351.214(g), the POR of the NSRs of Shenzhen Bainong and Jining Yifa is the semi-annual period November 1, 2009, through April 30, 2010. In its request for a new shipper review, Yantai Jinyan requested that we extend the POR for its NSR to capture the entry of its shipment in early May, after the six-month semi-annual NSR POR. When the sale of the subject merchandise occurs within the POR specified by the Department's regulations, but the entry occurs after the POR, the POR may be extended unless it would be likely to prevent the completion of the review within the time limits set by the Department's regulations. *See* 19 CFR 351.214(f)(2)(ii). Additionally, the preamble to the Department's regulations states that both the entry and the sale should occur during the POR, but that under "appropriate" circumstances the Department has the flexibility to extend the POR. *See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27319–20 (May 19, 1997). Based on the information contained in Yantai Jinyan's request for an NSR, it appeared that the sale of subject merchandise was made during the POR specified by the Department's regulations and that the shipment entered in the subsequent month. Based on information provided by Yantai Jinyan, the Department found that extending the POR to capture this entry would not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the Department extended the POR for Yantai Jinyan's NSR by one month, *i.e.,* through May 31, 2010. *See Initiation Notice.*

Scope of the Order

The products covered by the order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen,

provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of the order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive. In order to be excluded from the order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to CBP to that effect.

Intent To Rescind the New Shipper Review of Yantai Jinyan

The NSR provisions of the Department's regulations require that the entity making a request for an NSR must document and certify, among other things: (i) The date on which the merchandise was first entered, or withdrawn from warehouse, for consumption, or, if it cannot establish the date of first entry, the date on which it first shipped the merchandise for export to the United States; (ii) the volume of that and subsequent shipments; and (iii) the date of the first sale to an unaffiliated customer in the United States. *See* 19 CFR 351.214(b)(2)(iv). If these provisions are met, the Department will conduct an NSR to establish an individual weighted-average dumping margin for such new shipper, if the Department has not previously established such a margin for the exporter or producer. *See* generally 19 CFR 351.214(b)(2).

In its request for an NSR, Yantai Jinyan made a representation and certified that it made a sale on April 19, 2010, to an unaffiliated customer, and that the sale entered the United States on May 25, 2010. *See* Letter from Yantai Jinyan to the Secretary of Commerce, dated May 28, 2010. At the time of Yantai Jinyan's request, the Department determined that the request met the requirements of 19 CFR 351.214 and the Department published its *Initiation Notice.* In the *Initiation Notice,* the Department extended the POR for Yantai Jinyan because the Department considered that extending the POR to capture this entry would not prevent the completion of the review within the time limits set by the Department's regulations. *See Initiation Notice.* The Department's determination to initiate the NSR and decision to extend the POR was based on the information provided by Yantai Jinyan in its request for an NSR.

In its Section A response, dated August 18, 2010, however, and its subsequent responses, Yantai Jinyan identified the customer to which its April 19, 2010 sale was made as an affiliated company. Further, the Section A response showed that the sale to the first unaffiliated customer occurred on May 25, 2010, a date outside the original semi-annual POR.

Based on information that Yantai Jinyan submitted after the initiation of the NSR, the Department has now determined that Yantai Jinyan did not meet the minimum requirements in its request for an NSR under 19 CFR 351.214(b)(2)(iv)(C). The sale that Yantai Jinyan certified in its request as its first sale to an unaffiliated customer in the United States was later identified by Yantai Jinyan as a sale to an affiliated customer. Consequently, the Department has now determined that the initiation and expansion of the POR to capture the entry was based on inaccurate information and that there was neither a sale nor an entry during the original POR. *See* 19 CFR 351.214(b)(2)(iv)(C). In order to qualify for an NSR under 19 CFR 351.214, a company must certify and document, among other things, the date of the first sale to an unaffiliated customer in the United States. *Id.* Because information provided by Yantai Jinyan after the initiation shows that Yantai Jinyan's request for review did not meet this key requirement, Yantai Jinyan is not entitled to an NSR. Further, the preamble to the Department's regulations also explains that "we do not believe it appropriate to base a new shipper review on anything short of a sale." Because there was neither a sale to an unaffiliated customer in the United States nor an entry during the original POR, there was no basis to initiate the NSR. Therefore, the Department preliminarily determines that it is appropriate to rescind the NSR for Yantai Jinyan.

The Department is currently conducting an antidumping duty administrative review for the POR November 1, 2009, through October 31, 2010, which includes Yantai Jinyan and its entries. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 75 FR 81565 (December 28, 2010). Therefore, the Department intends to move Yantai Jinyan's separate rate application from the record of this NSR to the record of the administrative review, and consider it in the context of the administrative review.

Bona Fides Analysis

Consistent with Department practice, we examined the *bona fides* of the sales of Jining Yifa and Shenzhen Bainong.[1] In evaluating whether a sale in an NSR is commercially reasonable, and therefore *bona fide,* the Department considers, *inter alia,* such factors as: (1) The timing of the sale; (2) the price and quantity; (3) the expenses arising from the transaction; (4) whether the goods were resold at a profit; and (5) whether the transaction was made on an arm's-length basis. *See Tianjin Tiancheng Pharmaceutical Co., Ltd.* v. *United States,* 366 F. Supp. 2d 1246, 1250 (Ct. Int'l Trade 2005) (*TTPC*). Accordingly, the Department considers a number of factors in its *bona fides* analysis, "all of which may speak to the commercial realities surrounding an alleged sale of subject merchandise." *See Hebei New Donghua Amino Acid Co., Ltd.* v. *United States,* 374 F. Supp. 2d 1333, 1342 (Ct. Int'l Trade 2005) (*New Donghua*) (citing *Fresh Garlic From the People's Republic of China: Final Results of Antidumping Administrative Review and Rescission of New Shipper Review,* 67 FR 11283 (March 13, 2002), and accompanying Issues and Decision Memorandum: New Shipper Review of Clipper Manufacturing Ltd.). In *TTPC,* the court also affirmed the Department's decision that "any factor which indicates that the sale under consideration is not likely to be typical of those which the producer will make in the future is relevant," (*TTPC,* 366 F. Supp. 2d at 1250), and found that "the weight given to each factor investigated will depend on the circumstances surrounding the sale." *TTPC,* 366 F. Supp. 2d at 1263. Finally,

[1] Because we intend to rescind the NSR of Yantai Jinyan based on the lack of a sale and entry during the POR, there is no basis to evaluate the *bona fides* of Yantai Jinyan's sale. Our analysis of the *bona fides* of the sale is limited to the sales of Shenzhen Bainong and Jining Yifa.

in *New Donghua,* the Court of International Trade affirmed the Department's practice of evaluating the circumstances surrounding an NSR sale, so that a respondent does not unfairly benefit from an atypical sale and obtain a lower dumping margin than the producer's usual commercial practice would dictate.

Shenzhen Bainong

Based on the totality of circumstances, we preliminarily find that the sale made by Shenzhen Bainong during the POR was not a *bona fide* commercial transaction. Shenzhen Bainong's POR sales price and quantity were both atypical and aberrational. In addition, we sought information from the importer in order to evaluate the commercial reasonableness of the sale and to consider whether this sale is predictive of future commercial activity. The importer has not substantiated its claims that it is trying to establish a garlic business; the importer has also said that it has no immediate plans to import garlic. Because much of the factual information used in our analysis of the *bona fides* of the transactions involves business proprietary information, a full discussion of the basis for our preliminary finding that the sale is not *bona fide* is set forth in the Memorandum to: Barbara E. Tillman, Director, AD/CVD Operations, Office 6, From: Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office 6, Import Administration: *Bona Fides* Analysis of Shenzhen Bainong Co., Ltd.'s New Shipper Sale in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC) (Shenzhen Bainong *Bona Fides* Memorandum). Because we have found Shenzhen Bainong's sale to not be *bona fide,* we cannot rely on it to calculate a dumping margin and we are, therefore, preliminarily rescinding Shenzhen Bainong's NSR. *See* Shenzhen Bainong *Bona Fides* Memorandum; *TTPC;* and *New Donghua.*

Jining Yifa

Based on the totality of circumstances, we preliminarily find that the sales made by Jining Yifa during the POR are not *bona fide* commercial transactions. Jining Yifa's POR sales price and quantity were both atypical and aberrational. In addition, the affiliated importer was not forthcoming with information that would have permitted a full analysis of the commercial reasonableness of the sales. Because much of the factual information used in our analysis of the *bona fides* of the transactions involves business proprietary information, a full discussion of the bases for our preliminary finding that the sales are not *bona fide* is set forth in the Memorandum to: Barbara E. Tillman, Director, AD/CVD Operations, Office 6, From: Dana S. Mermelstein, Program Manager, AD/CVD Operations, Office 6, Import Administration: *Bona Fides* Analysis of Jining Yifa Garlic Produce Co., Ltd.'s New Shipper Sales in the Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC) (Jining Yifa *Bona Fides* Memorandum). Because we have found Jining Yifa's sales to not be *bona fide,* we cannot rely on them to calculate a dumping margin and we are, therefore, preliminarily rescinding Jining Yifa's NSR. *See* Jining Yifa *Bona Fides* Memorandum; *TTPC;* and *New Donghua.*

Preliminary Rescission of Shenzhen Bainong and Jining Yifa

For the foregoing reasons, the Department finds that the sales of Shenzhen Bainong and Jining Yifa are not *bona fide* and that these sales do not provide a reasonable or reliable basis for calculating a dumping margin. Because these non-*bona fide* sales were the only sales of subject merchandise during the POR, the Department is preliminarily rescinding the NSRs of Shenzhen Bainong and Jining Yifa.

Assessment Rates

If we proceed to a final rescission of Jining Yifa's and Shenzhen Bainong's NSRs, Jining Yifa's and Shenzhen Bainong's entries will be subject to the PRC-wide rate. The Department is currently conducting an administrative review for the POR November 1, 2009, through October 31, 31, 2010, which includes the entries subject to these NSRs. Thus the PRC-wide rate is under review. Upon completion of the administrative review, we will instruct CBP to assess antidumping duties on entries for Jining Yifa and Shenzhen Bainong at the appropriate PRC-wide rate.

If we proceed to a final rescission of the NSR of Yantai Jinyan, we will determine, during the course of the ongoing administrative review, if Yantai Jinyan is entitled to a separate rate. We will instruct CBP to assess antidumping duties on entries by Yantai Jinyan in accordance with the final results of the administrative review.

Cash Deposit Requirements

Effective upon publication of the final rescission of these NSRs or the final results of these NSRs, we will instruct CBP to discontinue the option of posting a bond or security in lieu of a cash deposit for entries of subject merchandise by Jining Yifa, Shenzhen Bainong, and Yantai Jinyan. If we proceed to a final rescission of these NSRs, the cash deposit rate will continue to be for the per-unit PRC wide rate for Jining Yifa, Shenzhen Bainong, and Yantai Jinyan. If we issue a final results of NSR for any of these respondents, we will instruct CBP to collect cash deposits, effective upon the publication of the final results, at the rates established therein.

Disclosure

We will disclose our analysis to parties to this proceeding not later than five days after the date of public announcement, or if there is no public announcement within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Comments

Interested parties are invited to comment on these preliminary results and may submit case briefs and/or written comments within 30 days of the date of publication of this notice, unless otherwise notified by the Department. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs, limited to issues raised in the case briefs, will be due five days later, pursuant to 19 CFR 351.309(d). Parties who submit case or rebuttal briefs in these proceedings are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument. Parties are requested to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Additionally, parties are requested to provide their case and rebuttal briefs in electronic format (*e.g.,* preferably in Microsoft Word).

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c). Issues raised in the hearing will be limited to those raised in case and rebuttal briefs. The Department will issue the final results of this NSR, including the results of its analysis of issues raised in any such written briefs, not later than 90 days after these preliminary results are issued, unless the final results are extended. *See* 19 CFR 351.214(i).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these preliminary results in accordance with sections 751(a)(2)(B) and 777(i) of the Act, and 19 CFR 351.214(h) and 351.221(b)(4).

Dated: April 26, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary, for Import Administration.

[FR Doc. 2011–10766 Filed 5–2–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Request for Public Comments Concerning Regulatory Cooperation Between the United States and the European Union That Would Help Eliminate or Reduce Unnecessary Divergences in Regulation and in Standards Used in Regulation That Impede U.S. Exports

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The U.S. Government recognizes that economic recovery and job creation will depend significantly on its ability to work collaboratively with key trading partners to promote free and open trade and investment while also protecting public health and safety, the environment, intellectual property, and consumers' rights. In our trade and investment relationship with the European Union, the main impediments to greater trade and investment—and more open foreign markets for U.S. exporters and investors —are not tariffs or quotas, but rather differences in regulatory measures. These regulatory measures—which include standards developed by a government and used in regulation, standards developed by other bodies at the request or direction of a regulator for use in regulation, or proposals to provide a presumption of compliance to technical requirements developed by a government—may be unnecessary and may increase costs for producers and consumers.

With this Notice, the Department of Commerce's International Trade Administration (ITA), in support of the National Export Initiative (NEI) and the U.S.-EU High Level Regulatory Cooperation Forum (HLRCF), and pursuant to the Secretary of Commerce's role as the chair of Trade Promotion Coordinating Committee, is requesting stakeholders assist the Administration identify opportunities for cooperation between the United States and the European Union to reduce or eliminate divergences in regulatory measures that impede trade in goods in the transatlantic marketplace, in ways that may be unnecessary, as well as any existing or emerging sectors that may benefit from transatlantic regulatory cooperation.

For more information on U.S.-EU regulatory cooperation, *see* the Web site: *http://www.whitehouse.gov/omb/oira_irc_europe*.

DATES: The agency must receive comments on or before June 2, 2011.

ADDRESSES: Submissions should be made via the internet at *http://www.regulations.gov* under docket ITA–2011–0006. Please direct written submissions to Lori Cooper, Office of the European Union, Department of Commerce, Room 3513, 14th and Constitution Avenue, NW., Washington, DC 20230. The public is strongly encouraged to file submissions electronically rather than by mail.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice should be directed to *TransatlanticRegulatoryCooperation@trade.gov*.

SUPPLEMENTARY INFORMATION: With this notice, the Commerce Department, on behalf of the Administration, is seeking public input to help identify divergences in regulatory measures in the transatlantic marketplace, so that the U.S. Government can work cooperatively with the European Union to address them.

President Obama linked trade to job creation when he announced the National Export Initiative (NEI) in his 2010 State of the Union address and set the ambitious goal of doubling U.S. exports in the next five years to support millions of jobs here at home. To help achieve this goal, the U.S. Government is working to remove unnecessary divergences in regulations and in standards used in regulation between the United States and the European Union. The European Union, with its 27 member countries, is our largest trading partner, accounting for 19 percent of U.S. merchandise exports in 2010.

Since 2005, the U.S. Government has worked with officials from the European Commission, within the framework of the U.S.-EU High Level Regulatory Cooperation Forum (HLRCF), to strengthen regulatory cooperation, to promote better regulation, and to reduce or eliminate unnecessary regulatory differences that hinder trade and reduce competitiveness, when doing so does not compromise those protections Americans expect from their government. In addition, at the conclusion of its December 2010 meeting, the Transatlantic Economic Council, comprised of Cabinet-level officials from the United States and the European Union, endorsed several initiatives aimed at further promoting U.S.-EU regulatory cooperation, including directing the HLRCF to develop a process for identifying, with stakeholder input, sectors in which the United States and the European Union could pursue upstream regulatory cooperation.

In his January 2010 State of the Union address, President Obama announced the NEI to double U.S. exports over five years and support the creation of new jobs. As the President's Export Promotion Cabinet has undertaken to implement the NEI, regional and sectoral plans are being developed to tailor the U.S. Government's NEI efforts based on the realities of trade with key trading partners. For example, bilateral trade between the United States and the European Union was $559.4 billion in 2010. Despite this extensive trade between the United States and the European Union, U.S. exporters indicate that they continue to encounter unnecessary transatlantic divergences in regulatory measures that impede trade.

ITA has developed a Mature Markets Initiative (MMI) to evaluate how best to grow exports, create jobs, and support U.S. business growth in areas where trade is robust. Regulatory cooperation is a key component of the MMI. Accordingly, ITA has identified the European Union as a mature market and will seek ways to ease or eliminate unnecessary differences in regulation and in standards used in regulation that hinder competitiveness and negatively impact trade for U.S. firms, including new-to-market and new-to-export businesses, and particularly for small- and medium-sized enterprises (SMEs).

Trade may be impeded, for example, because countries apply different standards or technical requirements to address common environmental, health, safety, or other concerns with respect to certain products or product categories. In some instances, such divergences may be arbitrary and can lead to delays,

additional costs, and burdens on U.S. suppliers, particularly SMEs, and, in some cases, can make it difficult for U.S. suppliers to penetrate foreign markets. These divergences can also increase regulatory burdens for governments and costs for consumers. In other cases, divergences in regulation and in standards used in regulation, despite the burdens they impose, may be necessary to achieve legitimate objectives such as the protection of the environment and public health and safety.

Cooperation with respect to regulation and standards used in regulation can help reduce unjustified divergences and lower costs and burdens for businesses, especially SMEs, as well as for governments and consumers. For example, when regulators in different countries are allowed legally to share full data, studies, and other information on specific regulatory issues, they are more likely to reach similar conclusions, such as on the risks associated with a particular product, appropriate measures to mitigate those risks, and the costs and benefits associated with alternative regulatory approaches. This can lead regulators in these countries to adopt regulatory measures that are more aligned with each other, allow producers to develop economies of scale, reduce compliance costs associated with divergent regulatory measures, and pass on cost savings to consumers. It is important for regulatory cooperation to be transparent and non-discriminatory, reduce unnecessary costs and burdens on producers and consumers, and continue to fulfill each government's public health, safety, environmental, and other legitimate policy objectives.

Regulatory cooperation may include, e.g., equivalency agreements under which a regulator in one country agrees to recognize another country's standards as equivalent to its own, allowing products to be placed on its market that meet the other country's standards, or mutual recognition agreements under which regulators in each country agree to allow products from the other country to be placed on the market based on tests or certifications carried out in that country. The outcome of any such regulatory cooperation must ensure that each government can continue to meet its legitimate policy objectives and advance consumer interests.

In addition, when regulators cooperate with regard to regulatory measures, their cooperation may serve not only to facilitate trade, but may also help to realize common public policy objectives. For example, when regulators in different countries coordinate their efforts in carrying out product recalls, it can help ensure that defective or unsafe products are promptly removed from the market, thereby increasing consumers' confidence in the products they buy and in the global trading system.

Request for Information: ITA invites public comment on the following possible types of cooperative regulatory activities between the United States and the European Union: Information-sharing agreements; technical assistance; memoranda of understanding, mutual recognition agreements; collaboration between regulators before initiating rulemaking proceedings; agreements to align particular regulatory measures; equivalency arrangements; and accreditation of testing laboratories or other conformity assessment bodies. ITA acknowledges that these types of cooperative agreements and activities are not appropriate in all cases, and that many already exist between certain regulatory agencies of the U.S. government and their counterparts in the European Union, so interested parties are asked to provide a rationale for the proposed use of a particular cooperative approach or specific activity. ITA is also seeking recommendations for existing or emerging industry or product sectors that may benefit from regulatory cooperation between the United States and the European Union.

Submitters should be as specific as possible in describing the relevant product or product sector in which they believe there is an opportunity to facilitate trade without undermining U.S. public health, safety, environmental, and other legitimate policy objectives. In addition, each comment should include, where appropriate: (a) A description of the specific measure or measures that the recommendation would address (e.g., laws or regulations setting out safety or testing requirements for the relevant product or product sector); (b) an Internet link to or a copy of the measure in English and documentation that may assist ITA in understanding the measure; (c) identification of the key markets in the European Union for the product or product sector; (d) a description of how and to what degree the regulatory measures are affecting trade and their related costs, including for SMEs; (e) information that may affect the recommendation's feasibility (*e.g.,* U.S. legal, regulatory, confidentiality, or policy constraints, or any response from stakeholders or U.S. trading partners the recommendation may elicit); (f) estimates of the potential benefits, including for SMEs, that would result from more closely aligning the regulatory measure, as well as a description of the method by which the submitter has calculated the benefits; (g) contact information, if known, for the relevant government and non-government stakeholders in the United States or the European Union; and (h) any other information that may assist ITA in considering the recommendation.

ITA is interested in receiving recommendations concerning any product sector that, due to the volume of trade between the United States and the European Union, is a justifiable focus of enhanced regulatory cooperation. Submitters are encouraged to work with counterparts and other interested stakeholders in the United States and the European Union to submit comments jointly. ITA will give positive consideration to recommendations that demonstrate strong support from stakeholders in both the United States and the European Union.

Requirements for Submissions: In order to ensure the timely receipt and consideration of comments, ITA strongly encourages commenters to make online submissions, using the *http://www.regulations.gov* Web site. Comments should be submitted under ITA–2011–0006. To find this docket, enter the docket number in the "Enter Keyword or ID" window at the *http://www.regulations.gov* home page and click "Search." The site will provide a search-results page listing all documents associated with that docket number. Find a reference to this notice by selecting "Notice" under "Document Type" on the search-results page, and click on the link entitled "Submit a Comment." The *http://www.regulations.gov* Web site provides the option of making submissions by filling in a comments field, or by attaching a document. ITA prefers submissions to be provided in an attached document. (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on the "Help" tab.)

All comments and recommendations submitted in response to this notice will be made available to the public. For any comments submitted electronically containing business confidential information, the file name of the business confidential version should begin with the characters "BC". The top of any page containing business confidential information must be clearly marked "BUSINESS CONFIDENTIAL". Any person filing comments that

contain business confidential information must also file in a separate submission a public version of the comments. The file name of the public version of the comments should begin with the character "P". The "BC" and "P" should be followed by the name of the person or entity submitting the comments. If a comment contains no business confidential information, the file name should begin with the character "P", followed by the name of the person or entity submitting the comments.

Please do not attach separate cover letters to electronic submissions; rather, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the submission itself, not as separate files.

Dated: April 27, 2011.

Michael C. Camuñez,

Assistant Secretary of Commerce for Market Access and Compliance.

[FR Doc. 2011–10713 Filed 5–2–11; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Protocol for Access to Tissue Specimen Samples From the National Marine Mammal Tissue Bank

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 5, 2011.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 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 Patricia Lawson, 301–713–2289 or at *Patricia.Lawson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In 1989, the National Marine Mammal Tissue Bank (NMMTB) was established by the National Marine Fisheries Service (NMFS) Office of Protected Resources in collaboration with the National Institute of Standards and Technology (NIST), Minerals Management Service (MMS), and the US Geological Survey/Biological Resources Division (USGS/BRD). The NMMTB provides protocols, techniques, and physical facilities for the long-term storage of tissues from marine mammals. Scientists can request tissues from this repository for retrospective analyses to determine environmental trends of contaminants and other substances of interest. The NMMTB collects, processes, and stores tissues from specific indicator species (e.g., Atlantic bottlenose dolphins, Atlantic white sided dolphins, pilot whales, harbor porpoises), animals from mass strandings, animals that have been obtained incidental to commercial fisheries, animals taken for subsistence purposes, biopsies, and animals from unusual mortality events through two projects, the Marine Mammal Health and Stranding Response Program (MMHSRP) and the Alaska Marine Mammal Tissue Archival Project (AMMTAP).

The purposes of this collection of information are: (1) To enable NOAA to allow the scientific community the opportunity to request tissue specimen samples from the NMMTB and, (2) to enable the MMHSRP of NOAA to assemble information on all specimens submitted to the Marine Environmental Specimen Bank (Marine ESB), which includes the NMMTB.

II. Method of Collection

Respondents must complete a specimen banking information sheet for every sample submitted to the Bank. Methods of submitting reports include the Internet, mail and facsimile transmission of paper forms. Those requesting samples send the information, and their research findings, mainly via email.

III. Data

OMB Control Number: 0648–0468.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Not-for-profit institutions; individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time per Response: Request for tissue sample, 2 hours; specimen submission form, 45 minutes.

Estimated Total Annual Burden Hours: 155.

Estimated Total Annual Cost to Public: $152.

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: April 27, 2011.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–10658 Filed 5–2–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of a Federal Advisory Committee

AGENCY: Defense Acquisition University, DoD.

ACTION: 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 Defense Acquisition University Board of Visitors will take place:

DATES: Tuesday, May 17, 2011, from 9 a.m.–2 p.m.

ADDRESSES: Packard Conference Center, Defense Acquisition University, 9820 Belvoir Rd, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Christen Goulding, Protocol Director, DAU Phone: 703–805–5134, Fax: 703–805–5940, E-mail: *christen.goulding@dau.mil*.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to report back to the BoV on continuing items of interest.

Agenda:

9 a.m. Welcome and approval of minutes.
9:15 a.m. Defense Acquisition Workforce Talent Management Initiative.
10:45 a.m. Army Senior Service College Fellowship.
11:15 a.m. Retirement Ceremony.
12:45 p.m. Open Forum.

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. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Christen Goulding at 703–805–5134.

Committee's Designated Federal Officer or Point of Contact

Ms. Kelley Berta, 703–805–5412.

Dated: April 27, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–10679 Filed 5–2–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0048]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on June 2, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov*.

Follow the instructions for submitting comments.

- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard at (703) 588–6830, or Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 26, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 27, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DMDC 12 DoD

Joint Personnel Adjudication System (JPAS), (October 14, 2010, 75 FR 63161).

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed no later than one (1) year after notification of death or not later than five (5) years after separation or transfer of employee or no later than five (5) years after contract relationship expires, whichever is applicable."

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Manpower Data Center (DMDC) Boyers, ATTN: Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Written requests must contain the full name (and any alias and/or alternate names used), SSN, and date and place of birth."

RECORDS ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking information about themselves contained in this system should address written inquiries to the Office of the Defense Manpower Data Center (DMDC) Boyers, ATTN: Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Individuals should provide their full name (and any alias and/or alternate names used), SSN, and date and place of birth.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

Because JPAS is a "joint" DoD system, it may be necessary to refer specific data to the DoD Component where it originated for a release determination."

* * * * *

DMDC 12 DoD

SYSTEM NAME:

Joint Personnel Adjudication System (JPAS).

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of Defense active and reserve military personnel; civilian employees and applicants; DoD contractor employees and applicants; National Guard personnel; U.S. Coast Guard military and civilian personnel and applicants requiring access to National Security and/or Sensitive Compartmented Information; "affiliated" personnel (such as Non-Appropriated Fund employees, Red Cross volunteers and staff; USO personnel, and congressional staff members); and foreign nationals whose duties require access to National Security Information (NSI) and/or assignment to a sensitive position.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complete investigation packages and documenting records conducted by Federal investigative organizations (e.g., U.S. Office of Personnel Management (OPM), Central Intelligence Agency, NASA, etc.) and locator references to such investigations. Records documenting the personnel security adjudicative and management process, to include an individual's Social Security Number (SSN); name (both, current, former and alternate names); date of birth; place of birth; country of citizenship; type of DoD affiliation; employing activity; current employment status; position sensitivity; personnel security investigative basis; status of current adjudicative action; security clearance eligibility and access status; whether eligibility determination was based on a condition, deviation from prescribed investigative standards or waiver of adjudication guidelines; reports of security-related incidents, to include issue files; suspension of eligibility and/or access; denial or revocation of eligibility and/or access; eligibility recommendations or decisions made by an appellate authority; non-disclosure execution dates; indoctrination date(s); level(s) of access granted; debriefing date(s); and reasons for debriefing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 401, Congressional declaration of purpose; 50 U.S.C. 435, Purposes; DoD 5200.2R, Department of Defense Personnel Security Program Regulation; DoD 5105.21–M–1, Sensitive Compartment Information Administrative Security Manual; E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; E.O. 12829, National Industrial Security Program; and E.O. 12968, Access to Classified Information; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Joint Personnel Adjudication System (JPAS) is an enterprise automated system for personnel security management, providing a common, comprehensive medium to record and document personnel security actions within the Department, including granting interim clearances and submitting investigations. Decentralized access is authorized at the nine central adjudication facilities and DoD Component security offices. JPAS also compiles statistical data for use in analyses and studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as follows to:

To the White House to obtain approval of the President of the United States regarding certain military personnel office actions as provided for in DoD Instruction 1320.4, Military Officer Actions Requiring Approval of the Secretary of Defense or the President, or Confirmation by the Senate.

To the U.S. Citizenship and Immigration Services for use in alien admission and naturalization inquiries.

To the Office of the Director of National Intelligence, the Federal Bureau of Investigation; the National Aeronautics and Space Administration; the Central Intelligence Agency; the Office of Personnel Management; the Department of State, the Department of Treasury; the Internal Revenue Service; the U.S. Postal Service; the U.S. Secret Service; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the U.S. Customs and Border Protection; Department of Homeland Security; any other related Federal agencies for the purpose of determining access to National Security Information (NSI) pursuant to E.O. 12968, Access to Classified Information.

To authorized industry users for the purpose of verifying eligibility and determining access to National Security Information (NSI) of their employees.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Information is retrieved by full name, SSN, date of birth, state and/or country of birth.

SAFEGUARDS:

Electronically and optically stored records are maintained in "fail-safe" system software with password-protected access. Records are accessible only to authorized persons with a valid need-to-know, who are appropriately screened, investigated and determined eligible for access. During non-duty hours, alarms systems and/or security or military police guards secure all locations. Only authorized personnel with a valid need-to-know are allowed access to JPAS. Additionally, access to JPAS is based on a user's specific functions, security eligibility and access level.

RETENTION AND DISPOSAL:

Records are destroyed no later than one (1) year after notification of death or not later than five (5) years after separation or transfer of employee or no later than five (5) years after contract relationship expires, whichever is applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington VA 22209–2593.

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Manpower Data Center (DMDC) Boyers, ATTN: Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Written requests must contain the full name (and any alias and/or alternate names used), SSN, and date and place of birth.

RECORDS ACCESS PROCEDURES:

Individuals seeking information about themselves contained in this system should address written inquiries to the Office of the Defense Manpower Data Center (DMDC) Boyers, ATTN: Privacy Act Office, P.O. Box 168, Boyers, PA 16020–0168.

Individuals should provide their full name (and any alias and/or alternate

names used), SSN, and date and place of birth.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

Because JPAS is a "joint" DoD system, it may be necessary to refer specific data to the DoD Component where it originated for a release determination.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, and for contesting or appealing agency determinations are published in OSD Administrative Instruction 81, 32 CFR part 311; or may be obtained directly from the system manager.

RECORDS SOURCE CATEGORIES:

Information contained in this system is derived from the appropriate DoD personnel systems; Consolidated Adjudication Tracking System (CATS); records maintained by the DoD adjudicative agencies; and records maintained by security managers, special security officers, or other officials requesting and/or sponsoring the security eligibility determination for the individual. Additional information may be obtained from other sources (such as personnel security investigations, personal financial records, military service records, medical records and unsolicited sources).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

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

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2011–10677 Filed 5–2–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2011–0009]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: Department of the Army is altering a system of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 2, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and/ Regulatory Information Number (RIN) and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones at (703) 428–6185, or Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

SUPPLEMENTARY INFORMATION: Department of the Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the **FOR FURTHER INFORMATION CONTACT** address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 26, 2011 to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," February 20, 1996, 61 FR 6427.

Dated: April 27, 2011.

Morgan F. Park,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0600–8–1c AHRC DoD

SYSTEM NAME:

Defense Casualty Information Processing System (DCIPS)(April 25, 2005, 70 FR 21183).

* * * * *

CHANGES:

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Civilian Information: Individual's name, Social Security Number (SSN), date of birth, sex, race, religion, citizenship, DNA tracking information, employment information, financial information, mailing/home address, marital status, medical information, mother's maiden name, mother's middle name, other names used, personal cell telephone number, personal e-mail address, place of birth.

Contact Information: Home of record, and other pertinent information, emergency contact, home contact and address information, home telephone number.

Military Information: Branch of service, organization, duty, Army rank and military occupational specialty (MOS), Air Force Specialty Code (AFSC) and rank, (Navy rank and rate, Marine Corp rank and specialty code, personnel records, inquiries from other agencies and individuals, disability information, internal system ID number.

Casualty Information: DD Form 1300 (Report of Casualty); biometrics; casualty information (cause, circumstances, injuries observed post mortem, injury/illness description, location of death, status, and treatment facility); cemetery contact and address information, funeral, genealogy information.

Beneficiary Information: Correspondence with primary next of

kin/secondary next of kin, child information, Dependency and Indemnity Compensation beneficiary information, Servicemen's Group Life Insurance (SGLI) beneficiary information, spouse's truncated Social Security Number (SSN).

Law Enforcement Information: Incarcerated next-of-kin, legal status."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "10 U.S.C. 3013, Secretary of the Army, 10 U.S.C. 5013, Secretary of the Navy, 10 U.S.C. 5043, Commandant of the Marine Corps, 10 U.S.C. 8013, Secretary of the Air Force; 44 U.S.C. 3101, Records Management by Federal Agencies; DoDD 1300.15, Military Funeral Support; DoDD 1300.22, Mortuary Affairs Policy; DoDI 1300.18, Personnel Casualty Matters, Policies, and Procedures; Office of the Assistant Secretary of Defense Memorandum, Subject: Defense Casualty Information Processing System, dated Oct 22, 1999; and E.O. 9397 (SSN), as amended."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under Title 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from these records may be disclosed to the Department of Veterans Affairs, and other Federal agencies in connection with eligibility, notification and assistance in obtaining benefits due.

If deceased has no spouse, children, representative of minor children, or an executor or personal representative named in the deceased's will, then information from these records may be released to the primary next of kin (PNOK) family member(s) of the injured or deceased DoD personnel to aid in the settlement of the member's estate.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

RETRIEVABILITY:

Delete entry and replace with "By individual's name and/or Social Security Number (SSN) or last four of SSN if spouse."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Offices having Army-wide responsibility: Records are permanent. Keep in current file area until no longer needed for conducting business, then retire to Records Holding Area (RHA)/Army Electronic Archive (AEA). The RHA/AEA will transfer to the National Archives when 25 years old.

Offices other than having Army-wide responsibility: Keep in current file area until record is 2 years old, and then destroy."

SYSTEM MANAGERS AND ADDRESSES:

Delete entry and replace with "Office of the Under Secretary of Defense, Personnel and Readiness, Military Severely Injured Joint Support Operations Center, 2107 Wilson Blvd., Arlington, VA 22201–3058.

Commander, U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5001.

Commander, Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–3130.

Commandant of the Marine Corps Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134–5101."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

For verification purposes, individual should provide their full name, Social Security Number (SSN), last four only if spouse, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

RECORD ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the appropriate system manager.

For verification purposes, individual should provide their full name, Social Security Number (SSN), last four only if spouse, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'."

* * * * *

A0600–8–1c AHRC DoD

SYSTEM NAME:

Defense Casualty Information Processing System (DCIPS).

SYSTEM LOCATION:

Office of the Under Secretary of Defense, Personnel and Readiness, Military Severely Injured Joint Support Operations Center, 2107 Wilson Blvd., Arlington, VA 22201–3058.

Commander, U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5001.

Commander, Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–3130.

Commandant of the Marine Corps Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134–5101.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Defense military personnel (active component and reserve component) and their family members; DoD civilian personnel, retired service members, non-DoD civilians, and other individuals that are reported as casualties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Civilian Information: Individual's name, Social Security Number (SSN), date of birth, sex, race, religion, citizenship, DNA tracking information, employment information, financial information, mailing/home address, marital status, medical information, mother's maiden name, mother's middle name, other names used, personal cell telephone number, personal e-mail address, place of birth.

Contact Information: Home of record, and other pertinent information, emergency contact, home contact and address information, home telephone number.

Military Information: Branch of service, organization, duty, Army rank and military occupational specialty (MOS), Air Force

Specialty Code (AFSC) and rank, (Navy rank and rate, Marine Corp rank and specialty code, personnel records, inquiries from other agencies and individuals, disability information, internal system ID number.

Casualty Information: DD Form 1300 (Report of Casualty); biometrics; casualty information (cause, circumstances, injuries observed post mortem, injury/illness description, location of death, status, and treatment facility); cemetery contact and address information, funeral, genealogy information.

Beneficiary Information: Correspondence with primary next of kin/secondary next of kin, child information, Dependency and Indemnity Compensation beneficiary information, Servicemen's Group Life Insurance (SGLI) beneficiary information, spouse's truncated Social Security Number (SSN).

Law Enforcement Information: Incarcerated next-of-kin, legal status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army, 10 U.S.C. 5013, Secretary of the Navy, 10 U.S.C. 5043, Commandant of the Marine Corps, 10 U.S.C. 8013, Secretary of the Air Force; 44 U.S.C. 3101, Records Management by Federal Agencies; DoDD 1300.15, Military Funeral Support; DoDD 1300.22, Mortuary Affairs Policy; DoDI 1300.18, Personnel Casualty Matters, Policies, and Procedures; Office of the Assistant Secretary of Defense Memorandum, Subject: Defense Casualty Information Processing System, dated Oct 22, 1999; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

To provide DoD with a single joint military casualty information processing system; to provide support for the management of casualty and mortuary affairs by the Services Casualty and Mortuary Affairs Offices; to respond to inquiries; to provide statistical data comprising type, number, place and cause of incident to DoD Services' members; and to support the families of service members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under Title 5 US Code Section 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to Title 5 US Code Section 552a(b)(3) as follows:

Information from these records may be disclosed to the Department of Veterans Affairs, and other Federal agencies in connection with eligibility, notification and assistance in obtaining benefits due.

If deceased has no spouse, children, representative of minor children, or an executor or personal representative named in the deceased's will, then information from these records may be released to the primary next of kin (PNOK) family member(s) of the injured or deceased DoD personnel to aid in the settlement of the member's estate.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By individual's name and/or Social Security Number (SSN) or last four of SSN if spouse.

SAFEGUARDS:

Buildings and/or rooms employ alarms, security guards, and are security-controlled areas accessible only to authorized persons. Hard copy records are maintained in General Service Administration approved security containers, and records in the U.S. Army Investigative Records Repository are stored in security-controlled areas accessible only to authorized persons. Electronically and optically stored records are maintained in 'fail-safe' system software with password-protected access. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Offices having Army-wide responsibility: Records are permanent. Keep in current file area until no longer needed for conducting business, then retire to Records Holding Area (RHA)/ Army Electronic Archive (AEA). Transfer a snap shot of the DCIPS Master File to AEA annually at the end of the fiscal year. The AEA will transfer a snap shot of DCIPS to the National Archives and Records Administration (NARA) one year after the signature by the Archivist of the United States. Thereafter, the AEA will transfer a snap shot of DCIPS to NARA every two years. Legal custody of each snap shot will transfer to NARA when the record is 25 years old.

Offices other than having Army-wide responsibility: Keep in current file area until record is 2 years old, and then destroy.

SYSTEM MANAGERS AND ADDRESSES:

Office of the Under Secretary of Defense, Personnel and Readiness, Military Severely Injured Joint Support Operations Center, 2107 Wilson Blvd., Arlington, VA 22201–3058.

Commander, U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5001.

Commander, Headquarters Air Force Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–3130.

Commandant of the Marine Corps Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134–5101.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the appropriate system manager.

For verification purposes, individual should provide their full name, Social Security Number (SSN), last four only if spouse, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the appropriate system manager.

For verification purposes, individual should provide their full name, Social Security Number (SSN), last four only if spouse, any details which may assist in locating records, and their signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)'.

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)'.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From casualty reports and investigations received from commander, medical personnel, medical examiners, and other related official sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–10678 Filed 5–2–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period for the Draft Environmental Impact Statement for the Trident Support Facilities Explosives Handling Wharf (EHW–2), Naval Base Kitsap Bangor, Silverdale, Kitsap County, WA

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: A notice of availability was published in the **Federal Register** by the U.S. Environmental Protection Agency on March 18, 2011 (76 FR 14968) for the Department of the Navy's (Navy) Draft Environmental Impact Statement (EIS) for constructing and operating the TRIDENT Support Facilities Explosives Handling Wharf (EHW–2) at Naval Base Kitsap Bangor, Silverdale, WA. The public review period ends on May 2, 2011. This notice announces a fifteen-day extension of the public comment period until May 17, 2011.

FOR FURTHER INFORMATION CONTACT: Ms. Christine Stevenson, EHW–2 EIS Project Manager, 1101 Tautog Circle, Silverdale, Washington 98315–1101; or *http://ehw.nbkeis.com/.*

SUPPLEMENTARY INFORMATION: This notice announces a fifteen-day extension of the public comment period until May 17, 2011.

Comments may be submitted in writing to Naval Facilities Engineering Command Northwest, *Attention:* Ms. Christine Stevenson, EHW–2 EIS Project Manager, 1101 Tautog Circle, Silverdale, Washington 98315–1101. In addition, comments may be submitted online at *http://ehw.nbkeis.com/* during the comment period. All written comments must be postmarked by May 17, 2011, to ensure they become part of the official record. All comments will be addressed in the Final EIS.

Copies of the Draft EIS are available for public review at the following libraries: Jefferson County Rural Library, 620 Cedar Avenue, Port Hadlock, WA 98339; Port Townsend Public Library, 1220 Lawrence Street, Port Townsend, WA 98368; Poulsbo Library, 700 Northeast Lincoln Road, Poulsbo, WA 98370; Silverdale Library, 3450 NW Carlton Street, Silverdale, WA 98383; Sylvan Way Library, 1301 Sylvan Way, Bremerton, WA 98310; and Seattle Central Library, 1000 Fourth Avenue, Seattle, WA 98104. The Trident Support Facilities Explosives Handling Wharf (EHW–2) Draft EIS is also available for electronic public viewing at: *http://ehw.nbkeis.com/.*

Dated: April 28, 2011.

L.R. Almand,

Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 2011–10708 Filed 5–2–11; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before [insert the 30th day after publication of this notice].

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of

the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 28, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: Schools and Staffing Survey (SASS 2011/12) Full Scale Data Collection.

OMB Control Number: 1850–0598.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies.

Total Estimated Number of Annual Responses: 215,553.

Total Estimated Annual Burden Hours: 91,226.

Abstract: The Schools and Staffing Survey (SASS) is an in-depth, nationally-representative survey of first through twelfth grade public and private school teachers, principals, schools, library media centers, and school districts. Kindergarten teachers in schools with at least a first grade are also surveyed. For traditional public school districts, principals, schools, teachers and school libraries, the survey estimates are state-representative. For public charter schools, principals, teachers, and school libraries, the survey estimates are nationally-representative. For private school principals, schools, and teachers, the survey estimates are representative of private school types. There are two additional components within SASS's 4-year data collection cycle: the Teacher Follow-up Survey and the Principal Follow-up Survey, which are conducted a year after the SASS main collection, and the approval for which will be sought at a later date. SASS respondents include public and private school principals, teachers, and school and school district staff. Topics covered include, but are not limited to, demographic characteristics of teachers and principals, school staffing, school programs and services, school library staffing, school library usage, teacher professional development, district policies on teacher recruitment and retention, and teacher certification. This submission for SASS 2011/12 requests OMB approval for full-scale data collection activities to take place during school year 2011–12. These data collection activities include administering the teacher listing form for teacher sampling, and collection of all survey questionnaires for districts, schools, principals, teachers, and school libraries.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4528. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–10723 Filed 5–2–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Notice of Open Meeting and Partially Closed Sessions.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (e.g.: Interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than May 6, 2011. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: May 12–14, 2011

Times

May 12

Committee Meetings

Ad Hoc Committee: Open Session: 9:30 a.m.–11 a.m.

Assessment Development Committee: Closed Session: 11:30 a.m.–4:15 p.m.

Executive Committee: Open Session: 4:30 p.m.–5:15 p.m.; Closed Session: 5:15 p.m.–6 p.m.

May 13

Full Board

Open Session: 8:30 a.m.–9:45 a.m.; Closed Session: 12:45 p.m.–1:30 p.m.; Open Session: 1:45 p.m.–4:30 p.m.

Committee Meetings

Assessment Development Committee: Open Session: 10 a.m.–12:30 p.m.

Committee on Standards, Design and Methodology: Open Session: 10 a.m.–12:30 p.m.

Reporting and Dissemination Committee: Open Session: 10 a.m.–12:30 p.m.

May 14

Nominations Committee: Closed Session: 8 a.m.–8:45 a.m.

Full Board: Open Session: 9 a.m.–10 a.m.

Location: The Benson Hotel, 309 Southwest Broadway, Portland, OR 97205.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233, *Telephone:* (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include the following: Selecting subject areas to be assessed, developing assessment frameworks and specifications, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing

guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On May 12, from 9:30 a.m. to 11 a.m., the Ad Hoc Committee on Parent Engagement will meet in open session. Thereafter, from 11:30 a.m. to 4:15 p.m., the Assessment Development Committee will meet in closed session to review secure test items at the eighth grade for the Technological and Engineering Literacy (TEL) pilot assessment in 2013. The Board will be provided with specific test materials/questions for review that cannot be discussed/disclosed in an open meeting. Premature disclosure of these secure test materials would significantly impede implementation of the NAEP assessments, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 12, from 4:30 p.m. to 5:15 p.m., the Executive Committee will meet in open session and thereafter in closed session from 5:15 p.m. to 6 p.m. During the closed session on May 12, the Executive Committee will receive a briefing from the National Center for Education Statistics (NCES) on options for NAEP contracts covering assessment years beyond 2011 and discuss budget implications for the NAEP assessment schedule and for international linking studies. The discussion of contract options and costs will address the congressionally mandated goals and Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public discussion of this information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process. Public disclosure of information discussed would significantly impede implementation of the NAEP contracts, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On May 13, the full Board will meet in open session from 8:30 a.m. to 9:45 a.m. The Board will review and approve the meeting agenda and meeting minutes from the March 2011 Board meeting, followed by an oath of office for a newly appointed Board member, and the Chairman's remarks. Thereafter, Portland Board member W. James Popham and Oregon education leaders are scheduled to make welcome remarks and address the Board. The Executive Director of the Governing Board will then provide a report to the Board, followed by updates from the Commissioner of the National Center for Education Statistics and the Director of the Institute of Education Sciences. The Board will recess for Committee meetings on May 13 from 10 a.m. to 12:30 p. m.

The Governing Board's standing committees, the Assessment Development Committee, the Reporting and Dissemination Committee and the Committee on Standards, Design and Methodology will meet in open session on May 13 from 10 a.m. to 12 p.m.

On May 13, from 12:45 p.m. to 1:30 p.m. the full Board will meet in closed session to receive a briefing on the 2010 NAEP U.S. History Report Card. The Board will be provided with results of the assessments that cannot be discussed in an open meeting prior to their official release. Premature disclosure of test results would significantly impede implementation of the NAEP assessment, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

From 1:45 p.m. to 2:30 p.m. the Board will meet in open session to receive a briefing and discuss the NAEP Five Largest States Report for 2009 (Mega States). Following this session, from 2:30 p.m. to 3:15 p.m., the Board will discuss ways of improving student achievement and closing achievement gaps. From 3:30 p.m. to 4:30 p.m., the Board will receive a briefing on Oregon's Assessment System from Tony Alpert, the Director of Assessment and Accountability from the Oregon Department of Education.

The May 13, 2010 session of the Board meeting is scheduled to conclude at 4:30 p.m.

On May 14, the Nominations Committee will meet in closed session from 8 a.m. to 8:45 a.m. to review specific names for Board vacancies, and the status of nominees for Board membership for terms beginning October 1, 2011. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

On May 14, the full Board will meet in open session to receive Committee reports and take action on Committee recommendations. The May 14, 2010 session of the Board meeting is scheduled to adjourn at 10 a.m.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Time, Monday through Friday.

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.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: April 28, 2011.

Cornelia S. Orr,

Executive Director, National Assessment Governing Board, U.S. Department of Education.

[FR Doc. 2011–10682 Filed 5–2–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education (NACIE) Meeting

AGENCY: U.S. Department of Education.

ACTION: Notice of a Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming closed meeting of the National Advisory Council on Indian Education (the Council) and is intended to notify the general public of the meeting. This notice also describes the functions of the Council. Notice of the Council's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act.

Date and Time: May 18, 2011; May 18, 2011—2 p.m.–5 p.m. Eastern Daylight Savings Time

Location: The closed meeting will be conducted via conference call with NACIE members.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Indian Education is authorized by Section 7141 of the Elementary and Secondary Education Act. The Council is established within the Department of

Education to advise the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction and includes Indian children or adults as participants or programs that may benefit Indian children or adults, including any program established under Title VII, Part A of the Elementary and Secondary Education Act. The Council submits to the Congress, not later than June 30 of each year, a report on the activities of the Council that includes recommendations the Council considers appropriate for the improvement of Federal education programs that include Indian children or adults as participants or that may benefit Indian children or adults, and recommendations concerning the funding of any such program.

One of the Council's responsibilities is to develop and provide recommendations to the Secretary of Education on the funding and administration (including the development of regulations, and administrative policies and practices) of any program over which the Secretary has jurisdiction that can benefit Indian children or adults participating in any program which could benefit Indian children. The purpose of this closed meeting is to convene the Council to review, advise, and provide recommendations to the Secretary on the procurement of services to accomplish this responsibility. Council members will discuss contract options and costs during the closed meeting. The meeting must be conducted in closed session because public discussion of procurement information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

FOR FURTHER INFORMATION CONTACT: Jenelle Leonard, Acting Director/Designated Federal Official, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. *Telephone:* 202–205–2161. *Fax:* 202–205–5870.

A report of the activities of the closed session and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 21 days of the meeting. Records are kept of all Council proceedings and are available for public inspection at the at the Office of Indian Education, United States Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202. Monday–Friday, 8:30 a.m.–5 p.m. Eastern Daylight Time.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–866–512–1830; or in the Washington, DC, area at (202) 512–0000.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Thelma Meléndez de Santa Ana,

Assistant Secretary, Office of Elementary and Secondary Education.

[FR Doc. 2011–10720 Filed 5–2–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites

AGENCY: Department of Energy.

ACTION: Notice of change in the acceptance of Title X claims during fiscal year (FY) 2011.

SUMMARY: This Notice announces changes in the Department of Energy (DOE) acceptance of claims in FY 2011 from eligible active uranium and thorium processing site licensees for reimbursement under Title X of the Energy Policy Act of 1992.

DATES: In our **Federal Register** Notice of November 24, 2010, (75 FR 71677) the Department announced the closing date for the submission of claims in FY 2011 as April 29, 2011. It has become necessary to defer that closing date for acceptance of claims. At a later date, the Department will announce a new closing date for the submission of FY 2011 claims and a new address for submitting the claims.

FOR FURTHER INFORMATION CONTACT: Contact David Mathes at (301) 903–7222 of the U.S. Department of Energy, Office of Environmental Management, Office of Disposal Operations.

SUPPLEMENTARY INFORMATION: DOE published a final rule under 10 CFR Part 765 in the **Federal Register** on May 23, 1994, (59 FR 26714) to carry out the requirements of Title X of the Energy Policy Act of 1992 (sections 1001–1004 of Pub. L. 102–486, 42 U.S.C. 2296a *et seq.*) and to establish the procedures for eligible licensees to submit claims for reimbursement. DOE amended the final rule on June 3, 2003, (68 FR 32955) to adopt several technical and administrative amendments (*e.g.,* statutory increases in the reimbursement ceilings). Title X requires DOE to reimburse eligible uranium and thorium licensees for certain costs of decontamination, decommissioning, reclamation, and other remedial action incurred by licensees at active uranium and thorium processing sites to remediate byproduct material generated as an incident of sales to the United States Government. To be reimbursable, costs of remedial action must be for work which is necessary to comply with applicable requirements of the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. 7901 *et seq.*) or, where appropriate, with requirements established by a State pursuant to a discontinuance agreement under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021). Claims for reimbursement must be supported by reasonable documentation as determined by DOE in accordance with 10 CFR part 765. Funds for reimbursement will be provided from the Uranium Enrichment Decontamination and Decommissioning Fund established at the Department of Treasury pursuant to section 1801 of the Atomic Energy Act of 1954 (42 U.S.C. 2297g). Payment or obligation of funds shall be subject to the requirements of the Anti-Deficiency Act (31 U.S.C. 1341).

Authority: Section 1001–1004 of Public Law 102–486, 106 Stat. 2776 (42 U.S.C. 2296a *et seq.*).

Issued in Washington, DC, on this 25th of April 2011.

David E. Mathes,

Office of Disposal Operations, Office of Technical and Regulatory Support.

[FR Doc. 2011–10724 Filed 5–2–11; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–9301–6]

California State Nonroad Engine and Vehicle Pollution Control Standards; Authorization of Tier II Marine Inboard/Sterndrive Spark Ignition Engine Emission Standards; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Decision.

SUMMARY: EPA today, pursuant to section 209(e) of the Clean Air Act (Act), 42 U.S.C. 7543(e), is granting California its request for authorization to enforce its emission standards and other requirements for its second tier ("Tier II") of emission standards for new marine inboard/sterndrive spark ignition engines.

DATES: Petitions for review must be filed by July 5, 2011.

ADDRESSES: The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by California, are available for public inspection in EPA's Air and Radiation Docket and Information Center (Air Docket). Materials relevant to this decision are contained in Docket OAR–2004–0403 at the following location: EPA Air Docket, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8 a.m. to 4:30 p.m. Monday through Friday, except on government holidays. The Air Docket telephone number is (202) 566–1742, and the facsimile number is (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

Additionally, an electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, select "Environmental Protection Agency" from the pull-down Agency list, then scroll to "Keyword or ID" and enter EPA–HQ–OAR–2004–0403 to view documents in the record of this Marine Engine Authorization Request docket. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

EPA makes available an electronic copy of this Notice via the Internet on the Office of Transportation and Air Quality (OTAQ) homepage (*http://www.epa.gov/OTAQ*). Users can find this document by accessing the OTAQ homepage and looking at the path entitled "Federal Register Notices." This service is free of charge, except any cost you already incur for Internet connectivity. Users can also get the official **Federal Register** version of the Notice on the day of publication on the primary Web site: (*http://www.epa.gov/docs/fedrgstr/EPA–AIR/*). Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

EPA's Office of Transportation and Air Quality also maintains a Web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to several of the prior waiver **Federal Register** notices which are cited throughout today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Robert M. Doyle, Attorney-Advisor, Office of Transportation and Air Quality, (6405J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (U.S. mail), 1310 L Street, NW., Washington, DC 20005 (courier mail). *Telephone:* (202) 343–9258; *Fax:* (202) 343–2804; *E-Mail: doyle.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Nonroad Authorizations

Section 209(e)(1) of the Act addresses the permanent preemption of any State, or political subdivision thereof, from adopting or attempting to enforce any standard or other requirement relating to the control of emissions for certain new nonroad engines or vehicles.[1] Section 209(e)(2) of the Act requires the Administrator, after notice and opportunity for public hearing, to grant California authorization to enforce state standards for new nonroad engines or vehicles which are not listed under section 209(e)(1), subject to certain restrictions. EPA regulations set forth, among other things, the criteria, as found in section 209(e)(2), by which EPA must consider any California authorization requests for new nonroad engines or vehicle emission standards (section 209(e) rules).[2] These regulations, codified at 40 CFR part 1074, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as the otherwise applicable Federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination of California is arbitrary and capricious;

(2) California does not need such standards to meet compelling and extraordinary conditions; or

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

As stated in the preamble to the section 209(e) rule, EPA has interpreted the requirement regarding whether "California standards and accompanying enforcement procedures are not consistent with section 209" to require that California standards and accompanying enforcement procedures must in particular be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C), as EPA has interpreted that subsection in the context of motor vehicle waivers.[3] In order to be consistent with section 209(a), California's nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. Secondly, California's nonroad standards and enforcement procedures must be consistent with section 209(e)(1), which identifies the categories permanently preempted from state regulation.[4]

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[1] Section 209(e)(1) of the Act provides:

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this Act—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives. Subsection (b) shall not apply for purposes of this paragraph.

[2] *See* 59 FR 36969 (July 20, 1994), and regulations set forth therein, 40 CFR part 85, subpart Q, §§ 85.1601–85.1606. EPA has moved these regulations, without changing their substance to 40 CFR part 1074. *See* 73 FR 59033, 59279 (October 8, 2008).

[3] *See* 59 FR 36969, 36983 (July 20, 1994).

[4] Section 209(e)(1) of the Act has been implemented at 40 CFR Par 1074, 1074.10, 1074.12. § 1074.10 provides in applicable part:

(a) States are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new engines smaller than 175 horsepower that are primarily used in farm or construction equipment or vehicles, as defined in this part. For equipment that is used in applications in addition to farming or construction activities, if the equipment is primarily used as farm and/or construction equipment or vehicles (as defined in this part), it is considered farm or construction equipment or vehicles.

California's nonroad standards and enforcement procedures would be considered inconsistent with section 209 if they applied to the categories of engines or vehicles identified and preempted from State regulation in section 209(e)(1).

Finally, because California's nonroad standards and enforcement procedures must be consistent with section 209(b)(1)(C), EPA will review nonroad authorization requests under the same "consistency" criteria that are applied to motor vehicle waiver requests. Under section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if she finds that California's "standards and accompanying enforcement procedures are not consistent with section 202(a)" of the Act. Previous decisions granting waivers of Federal preemption for motor vehicles have stated that State standards are inconsistent with section 202(a) if there is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time period or if the Federal and State test procedures impose inconsistent certification requirements.[5]

With regard to enforcement procedures accompanying standards, EPA must grant the requested authorization unless it finds that these procedures may cause the California standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards promulgated pursuant to section 213(a), or unless the Federal and California certification test procedures are inconsistent.[6]

Once California has received an authorization for its standards and enforcement procedures for a certain group or class of nonroad equipment engines or vehicles, it may adopt other conditions precedent to the initial retail sale, titling or registration of these engines or vehicles without the necessity of receiving an additional authorization.[7]

B. CARB's Authorization Request and EPA's Authorization Proceeding

The California Air Resources Board (CARB) requested EPA's authorization of the IB/SD marine engine emission standards by letter dated March 2, 2004.[8] The CARB standards were implemented in two tiers; the first tier set HC and NO_X standards beginning with the 2003 model year engines, and the second tier set more stringent HC and NO_X standards beginning with the 2007 model year engines. As required by the Act, EPA offered the opportunity for a public hearing and requested public comments on these new standards on January 12, 2005;[9] this hearing also covered earlier CARB authorization requests for emission standards for marine outboard and personal watercraft spark ignition engines. EPA received a request for a hearing from the National Marine Manufacturers Association (NMMA),[10] and a hearing was held on February 28, 2005,[11] at which the NMMA, several boat manufacturers, and the Manufacturers of Emission Controls Association (MECA) testified. In addition, EPA received written comments from several boat manufacturers (some of whom also testified at the hearing), the U.S. Coast Guard, MECA, NMMA, Senator Herb Kohl (D–WI), and Senator James Inhofe (R–OK), as well as a supplemental submission from CARB responding to matters raised at the public hearing.[12]

After our review of the information submitted by CARB in its requests, and the information presented to the Agency at the public hearing and in the comments received after the hearing, EPA granted authorization for the CARB emission regulations for marine spark-ignition outboard and personal watercraft (PWC) engines in their entirety. EPA also granted authorization for the first Tier of the CARB regulations covering (IB/SD) engines. For the Tier I standards (as well as for the outboard and personal watercraft engines), EPA determined that CARB had successfully shown that these standards were technologically feasible, and thus met the authorization criterion of consistency with section 202(a). Regarding the Tier II IB/SD emission standards, all parties who testified at the hearing and submitted comments after the hearing, with the exception of CARB and MECA, had expressed concern that CARB had not shown that the Tier II IB/SD standards were technologically feasible, because they believed CARB had not shown that catalysts needed for the marine IB/SD engines to comply with the CARB standards were safe and durable in saltwater operation. Accordingly, EPA deferred authorization of these standards until the conclusion of then ongoing joint testing (by CARB, EPA, the U.S. Coast Guard, and the industry), to evaluate the technological feasibility of both the CARB Tier II IB/SD standards and Federal IB/SD standards which, at that time, were expected to be proposed in 2007. These Federal standards were proposed in May 2007 and finalized in October 2008.[13]

Shortly after the EPA IB/SD proposed standards were published, the NMMA wrote to EPA stating that "at this stage of catalyst development, there is little or no additional data to be obtained by completing the (joint test program). * * * NMMA agrees that EPA and CARB can cancel the saltwater test program." Additionally, NMMA dropped its objection to the "waiver" of the CARB standards because "one manufacturer is already in production with catalysts, and the others will be

§ 1074.12 provides in applicable part:

States and localities are preempted from adopting or enforcing standards or other requirements relating to the control of emissions from new locomotives and new engines used in locomotives.

§ 1074.5 provides definitions of terms used in § 1074.0 and sates in applicable part:

Construction equipment or vehicle means any internal combustion engine-powered machine primarily used in construction and located on commercial construction sites.

Farm Equipment or Vehicle means any internal combustion engine-powered machine primarily used in the commercial production and/or commercial harvesting of food, fiber, wood, or commercial organic products or for the processing of such products for further use on the farm.

Primarily used means 51 percent or more.

[5] To be consistent, the California certification procedures need not be identical to the Federal certification procedures. California procedures would be inconsistent, however, if manufacturers would be unable to meet both the state and the Federal requirement with the same test vehicle in the course of the same test. *See, e.g.,* 43 FR 32182 (July 25, 1978).

[6] *See, e.g., Motor and Equipment Manufacturers Association, Inc.* v. *EPA,* 627 F.2d 1095, 1111–14 (DC Cir. 1979), cert. denied, 446 U.S. 952 (1980) (MEMA I); 43 FR 25729 (June 14, 1978). While inconsistency with section 202(a) includes technological feasibility, lead time, and cost, these aspects are typically relevant only with regard to standards. The aspect of consistency with 202(a) which is of primary applicability to enforcement procedures (especially test procedures) is test procedure consistency.

[7] *See* 43 FR 36679, 36680 (August 18, 1978).

[8] Letter from Catherine Witherspoon, Executive Officer, CARB to Administrator, EPA regarding its "Request for Authorization to Enforce California's Emission Standards and Test Procedures for New 2003 and later Spark-Ignition Inboard and Sterndrive Marine Engines," dated March 2, 2004 ("CARB IB/SD Request letter"), Docket Entry EPA–HQ–OAR–2004–0403–0018.

[9] 70 FR 2151 (January 12, 2005).

[10] *See* Letter from John McKnight, National Marine Manufacturers Association (NMMA), to Robert M. Doyle, USEPA, dated January 27, 2005, Docket Entry EPA–HQ–2004–0403–0030.

[11] Written statements presented at this hearing and the hearing transcript appear in the Docket as Docket Entries EPA–HQ–OAR–2004–0403–0031 through EPA–HQ–OAR–2004–0403–0036.

[12] These comments can be found in the Docket as Docket entries EPA–HQ–OAR–2004–0037 through EPA–HQ–OAR–2004–0047.

[13] The NPRM is found at 72 FR 14546 (March 28, 2007), and the final regulations at 73 FR 59034 (October 8, 2008).

ready to meet the CARB standard in 2008." [14]

II. Decision

EPA, based on the record of this proceeding, cannot find that CARB's Marine Tier II IB/SD protectiveness determination was arbitrary and capricious, that CARB does not need its own standards to meet compelling and extraordinary conditions, or that the CARB standards are inconsistent with section 209 of the Act. Therefore, EPA grants authorization for CARB to enforce the second tier of its regulations for IB/SD engines which set a level of 5.0 g/kW-hr HC plus NO_X and phases in beginning with 45% of manufacturers' sales in 2007, 75% in 2008, and 100% in 2009 and beyond. EPA has made this authorization decision based on the information submitted by CARB in its requests, and the information presented to the Agency at the public hearing and in the comments received after the hearing. A full explanation of EPA's decision, including our review of comments received, is contained in our Decision Document which may be obtained as explained above in the **ADDRESSES** section of this Notice.

My decision will affect not only persons in California but also persons outside the State who would need to comply with California's Marine Tier II IB/SD regulations to produce engines for introduction into commerce in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by July 5, 2011. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver and authorization decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

[14] Letter from John McKnight, NMMA to Robert Doyle, EPA, dated May 11, 2007, Docket Entry EPA–HQ–OAR–2004–0403–0042.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

Finally, the Administrator has delegated the authority to make determinations regarding authorizations under section 209(e) of the Act to the Assistant Administrator for Air and Radiation.

Dated: April 26, 2011.

Gina McCarthy,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 2011–10752 Filed 5–2–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0782; ER–FRL–8996–7]

Initiation of Scoping for an Environmental Assessment (EA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Initiation of Scoping.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4307h), the Council on Environmental Quality's NEPA regulations (40 CFR parts 1500–1508), and EPA's regulations for implementing NEPA (40 CFR part 6), EPA will prepare an Environmental Assessment (EA) to analyze the potential environmental impacts related to the reissuance of the National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges from Construction Activities. The EA will evaluate the potential environmental impacts from the discharge of pollutants associated with stormwater runoff from construction activities greater than one acre, where EPA is the permitting authority. EPA will use the information in the EA to determine whether to prepare an Environmental Impact Statement (EIS).

This notice initiates the scoping process by inviting comments from Federal, State, and local agencies, Indian tribes, and the public to help identify the environmental issues and reasonable alternatives to be examined in the EA. The scoping process will inform the preparation of the EA, which will be made available for public comment.

DATES: Comments must be received by May 27, 2011.

ADDRESSES: You may submit scoping comments to the Docket ID No. EPA–HQ–OW–2010–0782 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments by clicking on "Help" or "FAQs."
- *Mail: Attn:* CGP Scoping Comments, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Mail Code: 2252A, Washington, DC 20460.
- *Courier: Attn:* CGP Scoping Comments, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Rm. #7241C, Washington, DC 20004, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- *Fax:* 202–564–0072, ATTN: CGP Scoping Comments.

Comments should be received within 30 days of the date of the publication of the Proposed Construction General Permit in the **Federal Register**. 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.* 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 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: Jessica Trice, NEPA Compliance Division, Office of Federal Activities, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code: 2252A, Washington, DC 20460. *Telephone:* (202) 564–6646.

SUPPLEMENTARY INFORMATION: EPA is seeking public comment to determine the scope of environmental issues and

reasonable alternatives to be addressed in the EA on the reissuance of the National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities that are greater than one acre. EPA invites the public to submit comments through Regulations.gov or by mail or fax to the address cited in the **ADDRESSES** section during the 30-day comment period following the publication of the Proposed Construction General Permit in the **Federal Register**.

Since 1992, EPA has issued a series of NPDES Construction General Permits (CGP) that cover areas where EPA is the permitting authority. At present, EPA is the permitting authority in four states (Idaho, Massachusetts, New Hampshire, and New Mexico), the District of Columbia, Puerto Rico, all U.S. territories with the exception of the Virgin Islands, federal facilities in four states (Colorado, Delaware, Vermont, and Washington), most Indian lands and a few other specifically designated activities in specific states (e.g., oil and gas activities in Texas and Oklahoma). EPA's current CGP became effective on June 30, 2008 (*see* 74 FR 40338) and will expire on June 30, 2011. (**Note:** On April 25, 2011, EPA proposed extending the expiration of the 2008 CGP until January 31, 2012. *See* 76 FR 22891.) On April 25, 2011, EPA proposed for public comment the draft National Pollutant Discharge Elimination System general permit for stormwater discharges from large and small construction activities. 76 FR 22882. The proposed permit would replace the 2008 CGP, as well as the 2003 CGP for construction sites still covered under that administratively continued permit. EPA proposes to issue the construction general permit for five (5) years, and to provide permit coverage to eligible existing and new construction projects in all areas of the country where EPA is the NPDES permitting authority.

EPA is currently planning to analyze two alternatives in the EA: No Action, that is not issuing the CGP; and the proposed action, which is issuing the draft CGP implementing the technology-based Effluent Limitation Guidelines and New Source Performance Standards (C&D Rule). The C&D Rule was issued by EPA for the construction and development industry on December 1, 2009. These requirements include (1) non-numeric effluent limitations that apply to all permitted discharges from construction sites in order to minimize the discharge of pollutants, and (2) a numeric effluent limit that applies to sites over 10 acres. The EA will analyze the potential environmental impacts of both alternatives on threatened and endangered species, water quality, and historic properties.

Dated: April 28, 2011.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–10736 Filed 5–2–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

April 27, 2011.

SUMMARY: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*. Include in the e-mail the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below, or if there is no OMB control number, include the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail, contact the person listed below to make alternate arrangements.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 2, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov;* and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the email the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below, or if there is no OMB control number, include the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by email, contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1113.

Title: Commercial Mobile Alert System (CMAS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,253 respondents; 1,253 responses.

Estimated Time per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirements

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154(i), 154(j), 154(o), 218, 219, 230, 256, 302(a), 303(f), 303(g), 303(r), 403, 621(b)(3), and 621(d).

Total Annual Burden: 627 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB during this comment period. The Commission is seeking OMB approval for revision of this information collection.

The Commission is requesting OMB approval for a revision because on August 7, 2008, the FCC released a *Third Report and Order* in PS Docket No. 07–287, FCC 08–184 (*CMAS Third R&O*).

The *CMAS Third R&O* implements provisions of the Warning, Alert and Response Network ("WARN") Act, including inter alia, a requirement that within 30 days of release of the *CMAS Third R&O,* each Commercial Mobile Service (CMS) provider must file an election with the Commission indicating whether or not it intends to transmit emergency alerts as part of the Commercial Mobile Alert System (CMAS). The *CMAS Third R&O* noted that this filing requirement was subject to OMB review and approval. The Commission received "pre-approval" from the OMB on February 4, 2008. The Commission began accepting CMAS election filings on or before September 8, 2008.

All CMS providers are required to submit a CMAS election, including those that were not licensed at the time of the initial filing deadline with the FCC. In addition, any CMS provider choosing to withdraw its election must

notify the Commission at least sixty (60) days prior to the withdrawal of its election. The information collected will be the CMS provider's contact information and its election, i.e., a "yes" or "no", on whether it intends to provide commercial mobile service alerts.

The Commission will use the information collected to meet its statutory requirement under the WARN Act to accept licensees' election filings and to establish an effective CMAS that will provide the public with effective mobile alerts in a manner that imposes minimal regulatory burdens on affected entities.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–10636 Filed 5–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

April 21, 2011.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB 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 OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 2, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov;* and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov.*). Include in the e-mail the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below, or if there is no OMB control number, include the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail, contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1046.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128, Order on Reconsideration, FCC 04–251.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 924 respondents; 8,080 responses.

Estimated Time per Response: .50 hours—200 hours.

Frequency of Response: On occasion, annual and quarterly reporting requirements, third party disclosure requirements, and recordkeeping requirement.

Obligation To Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 154 and 276.

Total Annual Burden: 160,184 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting respondents to submit confidential information. Respondents may request confidential treatment of their information that they believe to be confidential pursuant to 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB during this comment period. The Commission is seeking OMB approval for an extension of this information collection. There is no change in the reporting, recordkeeping and/or third party disclosure requirements. The Commission is reducing its previous burden estimates by 18,208 hours.

In an Order on Reconsideration (FCC 04–251), the Commission considered four petitions for reconsideration of the Commission's *Report and Order.* The *Report and Order* established detailed rules (Payphone Compensation Rules) ensuring that payphone service providers or PSPs are "fairly compensated" for each and every completed payphone-originated call pursuant to section 276 of the Communications Act as follows:

(1) The Payphone Compensation Rules place liability to compensate PSPs for payphone-originated calls on the facilities-based long distance carriers from whose switches such calls are completed.

(2) The Payphone Compensation Rules define these responsible carriers as "completing carriers" and require them to develop their own system of tracking calls to completion, the accuracy of which must be confirmed and attested to by a third-party auditor.

(3) Completing carriers must file with PSPs a quarterly report and must also submit an attestation by the chief financial officer (CFO) that the payment amount for that quarter is accurate and is based on 100% of all completed calls.

(4) The rules also require reporting obligations for other facilities-based long distance carriers in the call path, if any, and define these carriers as "intermediate carriers".

(5) Additionally, the rules give parties flexibility to agree to alternative compensation arrangements (ACA) so that small completing carriers may avoid the expense of instituting a tracking system and undergoing an audit.

(6) The Payphone Compensation Rules satisfy section 276 by identifying the party liable for compensation and establishing a mechanism for PSPs to be paid.

The information collected under the Completing Carrier filing of quarterly reports and Intermediate Carrier filing of quarterly reports must be provided to third parties. The information collected under the completing carrier establishment of call tracking system must be provided to third parties and submitted to the Commission. The information is collected annually under completing carrier establishment of call tracking system. Completing carrier

filing of quarterly reports and intermediate carrier filing of quarterly reports would be used to ensure that completing carriers comply with their obligations under the Telecommunications Act of 1996.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–10633 Filed 5–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

April 19, 2011.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB 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 OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 2, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov;* and to the Federal Communications Commission's PRA mailbox (*e-mail address: PRA@fcc.gov.*). Include in the email the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below, or if there is no OMB control number, include the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by email, contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0470.

Title: Section 64.901, Allocation of Cost; Section 64.903, Cost Allocation Manuals; and RAO Letters 19 and 26.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1 respondent; 2 responses.

Estimated Time per Response: 200 hours.

Frequency of Response: On occasion and annual reporting requirements.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154, 201–205, 215, and 218–220.

Total Annual Burden: 400 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The information is not of a confidential nature. Respondents who believe that certain information to be of a proprietary nature may solicit confidential treatment in accordance with 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection (IC) to the OMB during this comment period to obtain the three year clearance from them. The Commission is seeking OMB approval for a revision of this information collection.

In a Memorandum Opinion and Order in WC Docket No. 07–21 (FCC 08–120) the Commission forbore from many of its cost allocation rules as they apply to the former Bell Operating Companies (BOCs). Therefore, there are fewer respondents affected by the requirements of these rule sections.

Section 64.901 requires carriers to separate their regulated costs from nonregulated costs using the attributable cost method of cost allocation. Carriers must follow the principles described in section 64.901. Carriers subject to section 64.901 are also subject to the provisions of 47 CFR sections 32.23 and 32.27 of the Commission's rules.

Section 64.903(a) requires each local exchange carrier with annual operating revenues that equal or exceed the indexed revenue threshold, as defined in 47 CFR 32.9000, to file with the Commission a manual containing information regarding its allocation of costs between regulated and non-regulated activities.

Section 64.903(b) requires that carriers update their cost allocation manuals (CAMs) at least annually; except that changes to the cost apportionment table and the description of time reporting procedures must be filed at the time of implementation. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in the cost apportionment table must be quantified in $100,000 increments at the cost pool level.

Moreover, filing of CAMs and occasional updates are subject to the uniform format and standard procedures specified in Responsible Accounting Officer (RAO) Letter 19. RAO Letter 26 provides guidance to carriers in revising their CAMs to reflect changes to the affiliate transactions rules pursuant to the *Accounting Safeguards Order* (FCC 96–490).

The CAM is reviewed by the Commission to ensure that all costs are properly classified between regulated and nonregulated activity. Uniformity in the CAMs helps improve the joint cost allocation process. In addition, this uniformity gives the Commission greater reliability in financial data submitted by the carriers through the Automated Reporting Management Information System (ARMIS).

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–10632 Filed 5–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 26, 2011.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB 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 OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 5, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1087.

Title: Section 90.477(a), (b)(2), (d)(2), and (d)(3), Interconnected Systems.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 10,294 respondents; 10, 294 responses.

Estimated Time per Response: .25 hours for 9,768 responses and 2 hours for 526 responses.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 332(a).

Total Annual Burden: 3,494 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period to obtain the regular three year clearance. There is no change in the Commission's reporting, recordkeeping and/or third party disclosure requirements. There is no change in the Commission's burden estimates (since this information collection was approved by OMB in 2008).

This rule section governs interconnection of private land mobile radio service stations with the public switched telephone network as follows:

(1) Pursuant to 47 CFR section 90.477(a), licensees of interconnected land stations must maintain as part of their station records a detailed description of how interconnection is accomplished.

(2) Pursuant to 47 CFR section 90.477(b)(2) and (d)(2), at least one licensee participating in any cost sharing arrangement for telephone service must maintain cost sharing records, the costs must be distributed at least once a year, and a report of the distribution must be placed in the licensee's station records and made available to participants in the sharing arrangement and the Commission upon request.

(3) Pursuant to 47 CFR 90.477(d)(3), licensees in the Industrial/Business Pool and those licensees who establish eligibility pursuant to 90.20(a)(2), other than persons or organizations charged with specific fire protection activities, persons or organizations charged with specific forestry-conservation activities, or medical emergency systems in the 450–470 MHz band, and who seek to connect within 120 km (75 miles) of 25 cities specified in 90.477(d)(3), must obtain the consent of all co-channel licensees located both within 120 km of the center of the city, and with 120 km of the interconnected base station transmitter. Consensual agreements must specifically state the terms agreed upon and a statement must be submitted to the Commission indicating that all co-channel licensees have consented to the use of interconnection.

In a December 1998 *Report and Order* in WT Docket Nos. 98–20 and 96–188, the Commission consolidated, revised and streamlined the Commission's rules governing the licensing application procedures for radio services licensed by the Commission's Wireless Telecommunications Bureau in order to fully implement the Universal Licensing System (ULS). As a result of the ULS rule conversions in connection with this information collection, 47 CFR 90.477(a), interconnected systems now file all information (100 percent) electronically via ULS. Pursuant to 47 CFR 90.477(d)(3), interconnected systems were changed to reflect NAD83 coordinates

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–10634 Filed 5–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

April 26, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's

burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 2, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via e-mail to *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams on (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0419.

Title: Sections 76.94, Notification; 76.95, Exceptions; 76.105, Notification; 76.106, Exceptions; 76.107, Exclusivity contracts; and 76.1609, Non duplication and Syndicated Exclusivity.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,555 respondents; 199,304 responses.

Estimated Time per Response: 0.5–2.0 hours.

Frequency of Response: On occasion reporting requirement; One time reporting requirement; Third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 4(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 183,856.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 76.94(a) and 76.105(a) require television stations and program distributors to notify cable television system operators of non-duplication protection and exclusivity rights being sought. The notification shall include (1) The name and address of the party requesting non-duplication protection/exclusivity rights and the television broadcast station holding the non-duplication right; (2) the name of the program or series for which protection is sought; and (3) the dates on which protection is to begin and end.

47 CFR 76.94(b) requires broadcasters entering into contracts providing for network non-duplication protection to notify cable systems within 60 days of the signing of such a contract. If they are unable to provide notices as provided for in Section 74.94(a), they must provide modified notices that contain the name of the network which has extended non-duplication protection, the time periods by time of day and by network for each day of the week that the broadcaster will be broadcasting programs from that network, and the duration and extent of the protection.

47 CFR 76.94(d) requires broadcasters to provide the following information to cable television systems under the following circumstances: (1) In the event the protection specified in the notices described in 47 CFR 76.94(a) or (b) has been limited or ended prior to the time specified in the notice, or in the event a time period, as identified to the cable system in a notice pursuant to Section 76.94(b) for which a broadcaster has obtained protection is shifted to another time of day or another day (but not expanded), the broadcaster shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means. (2) In the event the protection specified in the modified notices described in Section 76.94(b) has been expanded, the broadcaster shall, at least 60 calendar days prior to broadcast of a protected program entitled to such expanded protection, notify each cable system operator that has previously received notice of all changes from the original notice.

47 CFR 76.94(e)(2) and 76.105(c)(2) state that if a cable television system asks a television station for information about its program schedule, the television station shall answer the request.

47 CFR 76.94(f) and 76.107 require a distributor or broadcaster exercising exclusivity to provide to the cable system, upon request, an exact copy of those portions of the contracts, such portions to be signed by both the network and the broadcaster, setting forth in full the provisions pertinent to the duration, nature, and extent of the non-duplication terms concerning broadcast signal exhibition to which the parties have agreed. Providing copies of relevant portions of the contracts is assumed to be accomplished in the notification process set forth in Sections 76.94 and 76.105.

47 CFR 76.95 states that the provisions of Sections 76.92 through 76.94 (including the notification provisions of Section 76.94 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication protection against it.

47 CFR 76.105(d) requires that in the event the exclusivity specified in Section 76.94(a) has been limited or has ended prior to the time specified in the notice, the distributor or broadcaster who has supplied the original notice shall, as soon as possible, inform each cable television system operator that has previously received the notice of all changes from the original notice. In the event the original notice specified contingent dates on which exclusivity is to begin and/or end, the distributor or broadcaster shall, as soon as possible, notify the cable television system

*10030 operator of the occurrence of the relevant contingency. Notice to be furnished "as soon as possible" under this subsection shall be furnished by telephone, telegraph, facsimile, overnight mail or other similar expedient means.

47 CFR 76.106(b) states that the provisions of Sections 76.101 through 76.105 (including the notification provisions of Section 76.105 shall not apply to a cable system serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each such system shall file a notice to effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise syndicated exclusivity protection against it.

47 CFR 76.1609 states that network non-duplication provisions of Sections 76.92 through 76.94 shall not apply to cable systems serving fewer than 1,000 subscribers. Within 60 days following the provision of service to 1,000 subscribers, the operator of each system shall file a notice to that effect with the Commission, and serve a copy of that notice on every television station that would be entitled to exercise network non-duplication or syndicated exclusivity protection against it.

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 848 respondents; 250,000 responses.

Estimated Time per Response: 0.50 hours.

Frequency of Response: Recordkeeping requirement; On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is the Satellite Home Viewer Act, 17 U.S.C. 119.

Total Annual Burden: 125,000 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: On November 23, 2010, the Commission's Office of Engineering and Technology, released a Report and Order, Measurement Standards for Digital Television Signals Pursuant to the Satellite Home Viewer Extension and Reauthorization Act of 2004, ET Docket No. 06–94; FCC 10–195. The Report and Order adopted rules establishing measurement procedures for determining the strength of a digital broadcast television (DTV) signal at any specific location. These procedures will be used for determining whether households are eligible to receive distant DTV network signals retransmitted by satellite carriers, pursuant to the provisions of the Satellite Television Extension and Localism Act of 2010 (STELA). This Report and Order implements DTV signal measurement procedures proposed in the Commission's Notice of Proposed Rulemaking (SHVERA NPRM) and Further Notice of Proposed Rulemaking (STELA FNRPM) in this proceeding with minor modifications.

Therefore, the information collection requirements that require approval by the Office of Management and Budget (OMB) are as follows:

47 CFR 73.686(e) describes the procedures for measuring the field strength of digital television signals. These procedures will be used to determine whether a household is eligible to receive a distant digital network signal from a satellite television provider, largely rely on existing, proven methods the Commission has already established for measuring analog television signal strength at any individual location, as set forth in Section 73.686(d) of the existing rules, but include modifications as necessary to accommodate the inherent differences between analog and digital TV signals. The new digital signal measurement procedures include provisions for the location of the measurement antenna, antenna height, signal measurement method, antenna orientation and polarization, and data recording.

Therefore, satellite and broadcast industries making field strength measurements shall maintain written records and include the following information: (a) A list of calibrated equipment used in the field strength survey, which for each instrument specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture; (b) a detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable; (c) for each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features; (d) a description of where the cluster measurements were made; (e) time and date of the measurements and signature of the person making the measurements; (f) for each channel being measured, a list of the measured value of field strength (in units of dB) after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–10635 Filed 5–2–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, 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 renewal of an existing information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on renewal of the information collection titled: Flood Insurance (OMB Number: 3064–0120).

DATES: Comments must be submitted on or before July 5, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Room F–1086, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number (3064–0120). A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently-Approved Collection of Information:

Title: Flood Insurance.

OMB Number: 3064–0120.

Frequency of Response: On occasion.

Affected Public: Any depository institution that makes one or more loans to be secured by a building located on property in a special flood hazard area.

Estimated Number of Respondents/Recordkeepers: 5,272.

Estimated Number of Transactions: 180,000.

Estimated Reporting Hours: .05 hours × 180,000 = 9,000.

Estimated Recordkeeping Hours: 1 hour × 5,272 hours = 5,272.

Estimated Total Annual Reporting and Recordkeeping Burden Hours: 5,272 + 9,000 = 14,272 hours.

General Description of Collection: Each supervised lending institution is currently required to provide a notice of special flood hazards to each borrower with a loan secured by a building or mobile home located or to be located in an area identified by the Director of the Federal Emergency Management Agency as being subject to special flood hazards. The Riegle Community Development Act requires that each institution must also provide a copy of the notice to the servicer of the loan (if different from the originating lender).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 27th day of April 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–10607 Filed 5–2–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities; 60-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, the Federal Maritime Commission (Commission) invites comments on the continuing information collections (extensions with no changes) listed below in this notice.

DATES: Written comments must be submitted on or before July 5, 2011.

ADDRESSES: Address all comments to: Ronald D. Murphy, Managing Director, Office of the Managing Director, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, *Phone:* (202) 523–5800, *E-mail: omd@fmc.gov.*

Please send separate comments for each specific information collection listed below. You must reference the information collection's title and OMB number in your comments.

FOR FURTHER INFORMATION CONTACT: Copies of the information collections and instructions, or copies of any comments received, may be obtained by contacting Jane Gregory on (202) 523–5800 or e-mail at *jgregory@fmc.gov*.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing information collections listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collections Open for Comment

Title: 46 CFR Part 540—Application for Certificate of Financial Responsibility/Form FMC–131.

OMB Approval Number: 3072–0012 (Expires August 31, 2011).

Abstract: Sections 2 and 3 of Public Law 89–777 (46 U.S.C. 44101–44106) require owners or charterers of passenger vessels with 50 or more passenger berths or stateroom accommodations and embarking passengers at United States ports and territories to establish their financial responsibility to meet liability incurred for death or injury to passengers and other persons, and to indemnify passengers in the event of nonperformance of transportation. The Commission's Rules at 46 CFR part 540 implement Public Law 89–777 and specify financial responsibility coverage requirements for such owners and charterers.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The information will be used by the Commission's staff to ensure that passenger vessel owners and charterers have evidenced financial responsibility to indemnify passengers and others in the event of nonperformance or casualty.

Frequency: This information is collected when applicants apply for a certificate or when existing certificants change any information in their application forms.

Type of Respondents: The types of respondents are owners, charterers and operators of passenger vessels with 50 or more passenger berths that embark passengers from U.S. ports or territories.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 45.

Estimated Time per Response: The time per response ranges from 0.5 to 8 person-hours for reporting and recordkeeping requirements contained

in the rules, and 8 person-hours for completing Application Form FMC–131.

Total Annual Burden: The Commission estimates the total person-hour burden at 1,286 person-hours.

Title: 46 CFR Part 565—Controlled Carriers.

OMB Approval Number: 3072–0060 (Expires August 31, 2011).

Abstract: Section 9 of the Shipping Act of 1984, 46 U.S.C. 40701–40706, requires that the Commission monitor the practices of controlled carriers to ensure that they do not maintain rates or charges in their tariffs and service contracts that are below a level that is just and reasonable; nor establish, maintain or enforce unjust or unreasonable classifications, rules or regulations in those tariffs or service contracts which result or are likely to result in the carriage or handling of cargo at rates or charges that are below a just and reasonable level. 46 CFR part 565 establishes the method by which the Commission determines whether a particular ocean common carrier is a controlled carrier subject to section 9 of the Shipping Act of 1984. When a government acquires a controlling interest in an ocean common carrier, or when a controlled carrier newly enters a United States trade, the Commission's rules require that such a carrier notify the Commission of these events.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses these notifications in order to effectively discharge its statutory duty to determine whether a particular ocean common carrier is a controlled carrier and therefore subject to the requirements of section 9 of the Shipping Act of 1984.

Frequency: The submission of notifications from controlled carriers is not assigned to a specific time frame by the Commission; they are submitted as circumstances warrant. The Commission only requires notification when a majority portion of an ocean common carrier becomes owned or controlled by a government, or when a controlled carrier newly begins operation in any United States trade.

Type of Respondents: Controlled carriers are ocean common carriers which are owned or controlled by a government.

Number of Annual Respondents: It is estimated that 9 of the currently classified controlled carriers may respond in any given year. Classifications are reviewed periodically to determine current status of respondents and to increase or decrease the number of controlled carriers based on new circumstances. The Commission cannot anticipate when a new carrier may enter the United States trade; therefore, the number of annual respondents may fluctuate from year to year and could increase to 10 or more at any time.

Estimated Time per Response: The estimated time for compliance is 7 person-hours per year.

Total Annual Burden: The Commission estimates the person-hour burden required to make such notifications at 63 person-hours per year.

Title: 46 CFR Part 525—Marine Terminal Operator Schedules and Related Form FMC–1.

OMB Approval Number: 3072–0061 (Expires August 31, 2011).

Abstract: Section 8(f) of the Shipping Act of 1984, 46 U.S.C. 40501(f), provides that a marine terminal operator (MTO) may make available to the public a schedule of its rates, regulations, and practices, including limitations of liability for cargo loss or damage, pertaining to receiving, delivering, handling, or storing property at its marine terminal. The Commission's rules governing MTO schedules are set forth at 46 CFR part 525.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to determine the organization name, organization number, home office address, name and telephone number of the firm's representatives and the location of MTO schedules of rates, regulations and practices, and publisher, should the MTOs determine to make their schedules available to the public, as set forth in section 8(f) of the Shipping Act.

Frequency: This information is collected prior to an MTO's commencement of its marine terminal operations.

Type of Respondents: Persons operating as MTOs.

Number of Annual Respondents: The Commission estimates the respondent universe at 20, of which 12 opt to make their schedules available to the public.

Estimated Time per Response: The time per response for completing Form FMC–1 averages 0.5 person hours, and approximately 5 person-hours for related MTO schedules.

Total Annual Burden: The Commission estimates the total person-hour burden at 70 person-hours.

Title: 46 CFR Part 520—Carrier Automated Tariffs and Related Form FMC–1.

OMB Approval Number: 3072–0064 (Expires August 31, 2011).

Abstract: Except with respect to certain specified commodities, section 8(a) of the Shipping Act of 1984, 46 U.S.C. 40501(a)–(c), requires that each common carrier and conference shall keep open to public inspection, in an automated tariff system, tariffs showing its rates, charges, classifications, rules, and practices between all ports and points on its own route and on any through transportation route that has been established. In addition, individual carriers or agreements among carriers are required to make available in tariff format certain enumerated essential terms of their service contracts. 46 U.S.C. 40502. The Commission is responsible for reviewing the accessibility and accuracy of automated tariff systems, in accordance with its regulations set forth at 46 CFR Part 520.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses information obtained from Form FMC–1 to ascertain the location of common carrier and conference tariff publications, and to access their provisions regarding rules, rates, charges and practices.

Frequency: This information is collected when common carriers or conferences publish tariffs.

Type of Respondents: Persons desiring to operate as common carriers or conferences.

Number of Annual Respondents: The Commission estimates there are 4,200 Carrier Automated Tariffs. It is estimated that the number of annual respondents will be 1,300.

Estimated Time per Response: The time per response ranges from 0.1 to 2 person-hours for reporting and recordkeeping requirements contained in the rules, and 0.5 person-hours for completing Form FMC–1.

Total Annual Burden: The Commission estimates the total person-hour burden at 4,275 person-hours.

Title: 46 CFR Part 530—Service Contracts and Related Form FMC–83.

OMB Approval Number: 3072–0065 (Expires August 31, 2011).

Abstract: Section 8(c) of the Shipping Act of 1984, 46 U.S.C. 40502, requires service contracts, except those dealing

with bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper or paper waste, and their related amendments and notices to be filed confidentially with the Commission.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission monitors service contract filings for acts prohibited by the Shipping Act of 1984.

Frequency: The Commission has no control over how frequently service contracts are entered into; this is solely a matter between the negotiating parties. When parties enter into a service contract, it must be filed with the Commission.

Type of Respondents: Parties that enter into service contracts are ocean common carriers and agreements among ocean common carriers on the one hand, and shippers or shipper's associations on the other.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 141.

Estimated Time per Response: The time per response ranges from 0.1 to 1 person-hours for reporting and recordkeeping requirements contained in the rules, and 0.1 person-hours for completing Form FMC–83.

Total Annual Burden: The Commission estimates the total person-hour burden at 79,370 person-hours.

Title: 46 CFR Part 531—NVOCC Service Arrangements and Related Form FMC–78.

OMB Approval Number: 3072–0070 (Expires August 31, 2011).

Abstract: Section 16 of the Shipping Act of 1984, 46 U.S.C. 40103, authorizes the Commission to exempt by rule "any class of agreements between persons subject to this part or any specified activity of those persons from any requirement of this part if the Commission finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to an exemption and may, by order, revoke an exemption." 46 CFR part 531 allows non-vessel-operating common carriers (NVOCCs) and shippers' associations with NVOCC members to act as shipper parties in NVOCC Service Arrangements (NSAs), and to be exempt from certain tariff publication requirements of the Shipping Act provided the carriage in question is done pursuant to an NSA filed with the Commission and the essential terms are published in the NVOCC's tariff.

Current Actions: There are no changes to this information collection, and it is being submitted for extension purposes only.

Type of Review: Extension.

Needs and Uses: The Commission uses filed NSAs and associated data for monitoring and investigatory purposes and, in its proceedings, to adjudicate related issues raised by private parties.

Frequency: The filing of NSAs is not assigned a specific time by the Commission; NSAs are filed as they may be entered into by private parties. When parties enter into an NSA, it must be filed with the Commission.

Type of Respondents: Parties that enter into NSAs are NVOCCs and shippers' associations with NVOCC members.

Number of Annual Respondents: The Commission estimates an annual respondent universe of 145.

Estimated Time per Response: The time per response ranges from 0.1 to 1 person-hours for reporting and recordkeeping requirements contained in the rules, and 1 person-hour for completing Form FMC–78.

Total Annual Burden: The Commission estimates the total person-hour burden at 1,186 person-hours.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2011–10738 Filed 5–2–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 11–07]

DNB Exports LLC, and AFI Elektromekanikanik Ve Elektronik San. Tic. Ltd. Sti. v. Barsan Global Lojistiks Ve Gumruk Musavirligi A.S., Barsan International, Inc., and Impexia Inc.; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission ("Commission") by DNB Exports LLC ("DNB"), and AFI Elektromekanikanik Ve Elektronik San. Tic. Ltd. Sti. ("AFI"), hereinafter "Complainants," against Barsan Global Lojistiks Ve Gumruk Musavirligi A.S. ("BGL"), Barsan International, Inc. ("Barsan Int'l"), and Impexia Inc. ("Impexia"), hereinafter "Respondents". Complainant AFI asserts that it is a corporation organized and existing pursuant to the laws of Turkey. Complainant DNB asserts that it is a corporation organized and existing pursuant to the laws of the State of Delaware. Complainant alleges that: Respondent BGL is a corporation organized and existing pursuant to the laws of Turkey; Respondent Barsan Int'l is BGL's subsidiary and is a corporation organized and existing pursuant to the laws of the State of New York; and Respondent Impexia is a corporation existing pursuant to the laws of the State of New Jersey.

Complainants allege that Respondents have violated Section 10(b)(13) of the Shipping Act, 46 U.S.C. 41103(a), by "knowingly disclosing, offering, soliciting and receiving information concerning the nature, kind, quantity, destination, shipper, consignee, and routing of property tendered or delivered to Barsan Int'l by DNB and/or AFI, by, without the consent of DNB and/or AFI, using that information to the detriment and disadvantage of DNB and/or AFI, by unlawfully disclosing that information to Impeixa (sic) as a competitor * * *." Complainant alleges "[a]s a direct consequence of the unlawful conduct engaged in by Respondents, Complainants have suffered loss of clients, current and future revenues from those clients, not only loss amounts represented by shipments with Respondents, but also with other forwarders, and loss of reputation, all of which has caused and continues to cause Complainants monetary damages of at least $ 1.2 million, and other significant amounts * * *."

Complainant asks the Commission to: compel respondents to answer the complaint; find the activities of Respondents in violation of the Shipping Act; order reparations be made to Complainants "in the amount as may be proven during the course of this proceeding, with interest as may be lawfully permitted by law, costs and attorneys' fees"; order that Respondents "cease and desist their activities in violation of the Shipping Act"; and revoke Respondent Barsan Int'l's NVOCC and freight forwarder license and prohibit "Respondents BGL, Barsan Int'l and its officers from doing NVOCC and freight forwarding business in the U.S."

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits,

depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be issued by April 26, 2012 and the final decision of the Commission shall be issued by August 24, 2012.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–10673 Filed 5–2–11; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 27, 2011.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *The BANKshares, Inc.,* Winter Park, Florida; to merge with The Commercial Bancorp, Inc., and thereby indirectly acquire control of all the voting shares of East Coast Community Bank, both in Ormond Beach, Florida.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Saint Joseph Bancshares Acquisitions, Inc.,* Saint Joseph, Minnesota; to acquire 100 percent of the voting shares of Financial Bancshares Company, and thereby indirectly acquire control of all the voting shares of Sherburne State Bank, both in Becker, Minnesota.

C. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Platinum Bancshares of Texas, Inc.,* Lubbock, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Platinum Bank, Lubbock, Texas.

Board of Governors of the Federal Reserve System, April 28, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–10683 Filed 5–2–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day-11–11EO]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send written comments to Carol Walker, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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. Written comments should be received within 60 days of this notice.

Proposed Project

The National Health and Nutrition Examination Survey (NHANES)—New—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability; environmental, social and other health hazards; and determinants of health of the population of the United States. This three-year clearance request includes the data collection in 2011 and 2012 and data planning and testing activities for 2013–2014 data collection.

The National Health and Nutrition Examination Survey (NHANES) has, to date, been authorized as a generic clearance under OMB Number 0920–0237. A change in accounting practice for the burden hours, however, requires a shift to a newly-assigned clearance number; thus the submission of a new clearance request. Legislative authority and major activities remain the same as the approval that was received on 11/2/2010. In addition, a new NHANES youth fitness study, beginning in 2012, is now added to the request.

NHANES was conducted periodically between 1970 and 1994, and continuously since 1999 by the National Center for Health Statistics, CDC. Almost 19,000 persons are screened, with about 5,000 participants interviewed and examined annually. Participation in NHANES is completely voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutrition status of the general population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States. NHANES monitors the prevalence of chronic conditions and risk factors related to health such as arthritis, asthma, osteoporosis, infectious diseases, diabetes, high blood

pressure, high cholesterol, obesity, smoking, drug and alcohol use, physical activity, environmental exposures, and diet. NHANES data are used to produce national reference data on height, weight, and nutrient levels in the blood. Results from more recent NHANES can be compared to findings reported from previous surveys to monitor changes in the health of the U.S. population over time. NHANES continues to collect genetic material on a national probability sample for future genetic research aimed at understanding disease susceptibility in the U.S. population. NCHS collects personal identification information from survey respondents to facilitate linkage of survey data with health related administrative records. For the 2011–2012 survey, NHANES will add an Asian oversample to the survey design. Beginning in 2012 NHANES will also conduct the NHANES Youth Fitness Study. NHANES will measure children's height and weight and ask them to perform activities such as walking on a treadmill, exercises, and wearing an activity monitor that records body movement during everyday activities. Participation is voluntary. This study will be conducted among children 3–15 years old, who are not participants in the regular NHANES.

NHANES data users include the U.S. Congress; the World Health Organization; numerous Federal agencies such as the National Institutes of Health, the Environmental Protection Agency, and the United States Department of Agriculture; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and/or evaluate recommended dietary allowances, food fortification policies, environmental exposures, immunization guidelines and health education and disease prevention programs. This submission requests approval for three years.

There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
NHANES Respondents All ages	18,813	1	2	37,626
NHANES Youth Fitness Study Participants 3–15 years	2,500	1	1.5	3,750
Other Special study/pretest participants	2,750	1	3	8,250
Total				49,626

Dated: April 27, 2011.

Carol Walker,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–10703 Filed 5–2–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–0263]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (OMB Control No. 0920–0263 exp. 6/30/2011)—Extension—National Center for Emerging and Zoonotic Infectious Diseases, (NCEZID), Centers for Disease Control and Prevention (CDC).

Proposed Project

Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States (OMB Control No. 0920–0263 exp. 6/30/2011)—Extension—National Center for Emerging and Zoonotic Infectious Diseases, (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is requesting OMB approval to continue its data collection, "Requirements for a Special Permit to Import Cynomolgus, African Green, or Rhesus Monkeys into the United States", for another three years. This data collection is currently approved under OMB Control No. 0920–0263. There are no revisions proposed to the currently approved information collection request.

A registered importer must request a special permit to import Cynomolgus, African Green, or Rhesus monkeys. To receive a special permit to import nonhuman primates, the importer must submit a written plan to the Director of CDC which specifies steps that will be taken to prevent exposure of persons and animals during the entire importation and quarantine process for the arriving nonhuman primates.

Under the special permit arrangement, registered importers must submit a plan to CDC for importation and quarantine if they wish to import the specific monkeys covered. The plan must address disease prevention procedures to be carried out in every step of the chain of custody of such monkeys, from embarkation in the country of origin to release from quarantine. Information such as species, origin and intended use for monkeys, transit information, isolation and quarantine procedures, and procedures for testing of quarantined animals is necessary for CDC to make public health decisions. This information enables CDC to evaluate compliance with the standards and to determine whether the measures being taken are adequate to prevent exposure of persons and animals during importation. CDC will monitor at least 2 shipments to be assured that the provisions of a special permit plan are being followed by a new permit holder. CDC will assure that adequate disease control practices are being used by new permit holders before the special permit is extended to cover the receipt of additional shipments under the same plan for a period of 180 days, and may be renewed

upon request. This extension eliminates the burden on importers to repeatedly report identical information, requiring submission only of specific shipment itineraries and information on changes to the plan which require approval. Respondents are businesses or not-for-profit organizations that import nonhuman primates. The burden represents full disclosure of information and itinerary/change information, respectively. There are no costs to respondents except for their time to complete the requisition process. The total annualized burden for this information collection request is 21 hours.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Businesses (limited permit)	2	5	30/60
Businesses (extended permit)	3	5	10/60
Organizations (extended permit)	15	5	10/60

Dated: April 27, 2011.

Carol Walker,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–10701 Filed 5–2–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 76, FR 15984–15985, dated March 22, 2011) is amended to reflect the reorganization of the Center for Global Health, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

After the title and functional statement for the Division of Public Health Systems and Workforce Development (CWF), delete in their entirety the remaining titles and functional statements for the Division of Public Health Systems and Workforce Development (CWF) and insert the following:

Office of the Director (CWF1). (1) Provides leadership, overall direction, and evaluation for the division; (2) formulates and implements CDC's strategy for developing global public health capacity in applied epidemiology, public health systems, laboratory operations and management, and leadership; (3) provides leadership and guidance on policy, program planning, program management, and operations; (4) plans, allocates, and monitors resources; (5) provides leadership in assisting national ministries of health, international agencies, and non-governmental organizations in the delivery of epidemiologic services and the development of international epidemiologic networks; (6) liaises with other CDC organizations, other Federal agencies, national ministries of health, and international organizations; and (7) provides consultations with partners and stakeholders, including nongovernmental organizations and the private sector, on program development and overall public health systems and sub-systems.

Field and Applied Epidemiology Training Programs Branch (CWFD). (1) Plans, directs, supports, implements, and coordinates field epidemiology and laboratory training programs (FE(L)TP), Data for Decision Making Projects, operational and implementation research projects, and other partnerships with ministries of health; (2) assists partners in assessing their needs for workforce strengthening and development; (3) with partners, designs and conducts evidence-based instruction in public health disciplines needed to strengthen their public health systems, including instructional design, epidemiology, surveillance, laboratory operations and management, communications, and economic evaluation; (4) provides leadership and expertise in assisting national ministries of health to utilize trained public health workers for developing health policy, and implementing and evaluating health programs; (5) assigns and manages expert consultants as long-term, in-country advisors to ministry of health programs; (6) collaborates within CDC and with other Federal agencies, and with national and international organizations in support of partner programs; (7) provides consultation to ministries of health in the development of surveillance systems (e.g., communicable and non-communicable disease surveillance, injury, chronic diseases, etc.); (8) develops and evaluates competency-based training materials for the FETP and similar programs for use of the division and its partners; (9) collaborates within CDC and with national or international organizations in the development of competency-based training materials, evaluation of training, and design of surveillance systems needed to accomplish the mission; (10) creates and maintains division-wide computer-based and distance-based learning methods, and develops the capacity of partners to create, evaluate, and share their own; (11) works closely and coordinates with the Public Health Systems Strengthening Branch in areas of assessment, workforce development to meet system needs; laboratory systems, etc.; and (12) maintains a divisional training material library and Web site.

Public Health Systems Strengthening Branch (CWFE). (1) Plans, directs, supports, implements, and coordinates public health systems development, operational and implementation research projects, and other partnerships with ministries of health related to systems strengthening; (2) assists partners in assessing their needs for health systems strengthening, focusing on public health systems development issues; (3) supports partner ministries of health's system strengthening efforts through provision of technical assistance, including facilitating provision of assistance from relevant subject matter expert programs across the agency, to ensure that ministries have access to the technical resources they need to fully evaluate critical systems and programs; (4)

improves the management and functionality of public health laboratories in partner countries by supporting laboratory systems quality improvement, biosafety, and implementation of international laboratory standards and guidelines; (5) develops models for continuous tracking and improvement of critical outputs and outcomes from the programs around the world that the division supports (monitoring and evaluating function); (6) implements and coordinates CDC's support to WHO'S Integrated Disease Surveillance and Response strategy and directly supports the implementation of the International Health Regulations at the country level; (7) enhances the skills, knowledge, and capacity of the human resources for surveillance by merging those efforts with IT solutions that allow the surveillance workforce to function at a high level of timeliness and reliability; (8) works with partner countries to establish human resource information systems to better track the public health workforce within ministries of health; (9) mobilizes expertise from across the agency and from partners throughout the USG and internationally to provide technical assistance for countries interested in building their own dedicated public health institutions ("national CDCs"); (10) plans, directs, supports, implements, and coordinates public health leadership and management development and organizational excellence efforts; (11) provides leadership and technical assistance for reconstruction and stabilization efforts aimed at rebuilding or strengthening severely disrupted public health systems in countries in crisis or emerging from crisis ("fragile states"); and (12) coordinates and works closely with the Field and Applied Epidemiology Training Programs Branch in areas of assessments and workforce development to meet system needs and overall strategies.

Delete in its entirety the function statement for the Office of the Director (CWJ1), Division of Global Disease Detection and Emergency Response (CWJ), and insert the following:

Office of the Director (CWJ1). (1) Provides leadership, oversight, evaluation and overall direction and management for the activities of the division; (2) develops the division overall strategy and the division policies on planning, evaluation, management, and operations; (3) plans, allocates, and monitors resources; (4) provides liaison with other CDC organizations, other Federal agencies, national ministries of health, international organizations, non-governmental organizations, private sector, and others that CDC cooperates with in global health programs and activities; (5) promotes high standards in science and ethics among CDC's international activities; (6) maintains staff in the CDC Emergency Operations Center to manage, direct, coordinate and evaluate biosurveillance data from domestic and international networks and serve as a central focus for global outbreak and incident response activities; and (7) maintains and supports the Health Systems Reconstruction Office in its efforts to coordinate the implementation of training/capacity building initiatives within Haiti and other impacted countries.

Delete in its entirety item (8) of the functional statement for the Global Disease Detection Branch (CWJB). Delete item (2) and insert the following: (2) provides program support, resources and technical assistance to the Global Disease Detection (GDD) Centers around the world;

Delete items (3), (4), (6), and (7) of the functional statement for the Global Health Security Branch (CWJC) and insert the following accordingly: (3) provides support and coordination at HHS/OGHA regarding the development of policies and priorities on international influenza; (4) serves as liaison with HHS and technical agency (CDC, NIH, FDA) representatives for international pandemic preparedness related to budget formulation, program development, strategic planning, and global health security policy development; (6) provides technical assistance through training, and capacity building in supporting efforts to reduce the public health threat from chemical, biological, and nuclear disasters that are either natural or man-made; (7) provides liaison with the DoS Biosecurity Engagement Program and DoD Defense Threat Reduction Agency to coordinate on global biological threat reduction;

Dated: April 19, 2011.

James D. Seligman,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–10639 Filed 5–2–11; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Project LAUNCH Cross-Site Evaluation.

OMB No.: 0970–0373.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is planning to collect data as part of a cross-site evaluation of a new initiative called Project LAUNCH (Linking Actions for Unmet Needs in Children's Health). Project LAUNCH is intended to promote the healthy development and wellness of children ages birth to eight years. A total of 24 Project LAUNCH grantees are funded to improve coordination among child-serving systems, build infrastructure, and improve methods for providing services. Grantees will also implement a range of public health strategies to support young child wellness in a designated locality.

Data for the cross-site evaluation of Project LAUNCH will be collected through: (1) interviews conducted either via telephone or during site-visits to Project LAUNCH grantees, and (2) semi-annual reports that will be submitted electronically on a web-based data-entry system. Information will be collected from all Project LAUNCH grantees.

During either telephone interviews or the site visits, researchers will conduct interviews with Project LAUNCH service providers and collaborators in States/Tribes and local communities of focus. Interviewers will ask program administrators questions about all Project LAUNCH activities, including: infrastructure development; collaboration and coordination among partner agencies, organizations, and service providers; and development, implementation, and refinement of service strategies.

As part of the proposed data collection, Project LAUNCH staff will be asked to submit semi-annual electronic reports on State/Tribal and local systems development and on services that children and families receive. The electronic data reports also will collect data about other Project LAUNCH-funded service enhancements, such as trainings, Project LAUNCH systems change activities, and changes in provider settings. Information provided in these reports will be aggregated on a quarterly basis, and reported semi-annually.

Respondents: State/Tribal Child Wellness Coordinator, State/Tribal Wellness Council Members, State ECCS Project Director, Local Child Wellness Coordinator, Local Wellness Council Members, Local Evaluator, and Local Service Providers.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Telephone or Site Visit Interview Guide	240	1	1.25	300
Electronic Data Reporting: Systems Measures	24	2	4	192
Electronic Data Reporting: Services Measures	24	2	8	384

Estimated Total Annual Burden Hours: 876.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: OPREinfocollection@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the Federal Register. Therefore, submit comments on or before June 2, 2011. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–6974, *Attn:* Desk Officer for the Administration, for Children and Families.

Dated: April 25, 2011.

Seth F. Chamberlain,

OPRE Reports Clearance, Officer.

[FR Doc. 2011–10410 Filed 5–2–11; 8:45 am]

BILLING CODE 4184–22–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0044]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry and Food and Drug Administration Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products

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 under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by June 2, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that the 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 0910–0673. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

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: *Information Request Regarding Guidance for Industry and FDA Staff; Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products—(OMB Control Number 0910–0673)—Extension.*

On June 22, 2009, the President signed the Family Smoking Prevention and Tobacco Control Act (the Tobacco Control Act) (Pub. L. 111–31) into law. The Tobacco Control Act amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act) by adding a new chapter granting FDA important new authority to regulate the manufacture, marketing, and distribution of tobacco products to protect the public health generally and to reduce tobacco use by minors.

Section 905(j)(1) of the FD&C Act authorizes FDA to establish the form and manner for the submission of information related to substantial equivalence (21 U.S.C. 387e(j)(1)). In a level 1 guidance document issued under the Good Guidances Practices regulation (21 CFR 10.115), FDA provides recommendations intended to assist persons submitting reports under section 905(j) of the FD&C Act, and explains, among other things, FDA's interpretation of the statutory sections related to substantial equivalence (*see* "Guidance for Industry and FDA Staff—Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products" (January 6, 2011, 76 FR 789).)

In the **Federal Register** of January 24, 2011 (76 FR 4116), FDA published a 60-day notice requesting public comment on the proposed information collection.

FDA received one comment in response to the 60-day notice. The commenter indicated that the substantial equivalence requirements were "burdensome to industry in the extreme," that FDA's estimation of the number of reports to be received was too low, and that the current burden hours to complete each report was unrealistic. Although the commenter asserted that the burden hours were too low and unrealistic, no alternative estimates were provided.

The recommendations in the "Guidance for Industry and FDA Staff—Section 905(j) Reports: Demonstrating Substantial Equivalence for Tobacco Products" are the information that FDA suggests a manufacturer include in a report submitted under section 905(j)(1)(A)(i) of the FD&C Act. The recommendations reflect the information FDA believes is necessary for it to make the required findings under section 910(a) of the FD&C Act (21 U.S.C. 387j(a)). FDA has also articulated current enforcement policies in its guidances that are intended to address some of the burden associated with premarket requirements for new tobacco products (manufacturers and interested parties may refer to FDA's

Web site for guidance documents with current enforcement policies related to premarket requirements for tobacco products (*http://www.fda.gov/TobaccoProducts/default.htm*)).

With regard to the comment that the number of section 905(j)(1)(A)(i) substantial equivalence reports which FDA estimated to be submitted (150 per year) was too low, FDA has revised its estimate based on information it now has from initial submissions, interactions with industry, and other information, such as the comment received on the 60-day notice on the information collection. As shown below, FDA is increasing the annual estimate of the number of reports received from 150 to 1,000.

With regard to the comment that the number of hours to prepare and submit each report is unrealistic, FDA continues to believe that the currently estimated hours (360 hours annually) is appropriate, particularly given that the premarket requirements for new tobacco products (Section 910 of the FD&C Act) are new and manufacturers' experience with preparing a submission is just beginning to develop. As the requirements and program become more familiar to respondents, FDA may be able to refine these estimates. In addition, as discussed previously, the commenter did not suggest an alternative number of hours. FDA's estimate of 360 hours reflects an amount of time that should provide each submitter enough time to prepare and submit a section 905(j)(1)(A)(i) substantial equivalence report to the Agency.

Estimation of Burden

FDA estimates the burden for this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FD&C Act sections	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
905(j)(a)(A)(i) and 910(a)	1,000	1	1,000	360	360,000
Total					360,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA has based these estimates on information it now has available from interactions with the industry, comments regarding the submission of 905(j)(1)(A)(i) substantial equivalence reports, and comments on the 60-day information collection notice request for comments published in the **Federal Register** on January 24, 2011 (76 FR 4116). Table 1 of this document describes the annual reporting burden as a result of the implementation of the substantial equivalence requirements of sections 905(j)(1)(A)(i) and 910(a) of the FD&C Act. FDA estimates that it will receive 1,000 section 905(j) substantial equivalence reports each year and that it will take a manufacturer approximately 360 hours to prepare a report of substantial equivalence for a new tobacco product. Therefore, FDA estimates the burden for submission of substantial equivalence information will be 360,000 hours.

Dated: April 27, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–10618 Filed 5–2–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Cancer Biomedical Informatics Grid® (caBIG®) Support Service Provider (SSP) Program (NCI)

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 11, 2011 (76 FR 7867) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: cancer Biomedical Informatics Grid ® (caBIG ®) Support Service Provider (SSP) Program (NCI). *Type of Information Collection Request:* Existing Collection in Use Without an OMB Number. *Need and Use of Information Collection:* The NCI Center for Biomedical Informatics and Information Technology (CBIIT) launched the enterprise phase of the caBIG ® initiative in early 2007 with an emphasis on widespread institutional adoption of the program and tools. This emphasis on adoption has generated an expanding community with diverse needs for support, which are met through the resources available through the caBIG ® Enterprise Support Network (ESN), including the caBIG ® Support Service Provider (SSP) Program. The caBIG ® SSPs provide caBIG ® end-users with the freedom to match what caBIG ® has to offer to their unique organizational goals and needs, so having this customized support option available is critically important to advancing the goals of the caBIG ® program. caBIG ® SSP applicants are evaluated against well-defined criteria published in the SSP Program Announcement and must successfully demonstrate that they have the technical capabilities, staffing and scalability, geographic coverage (when applicable), and the domain expertise in biomedicine to effectively serve caBIG ® users. The information submitted by SSP applicants enables NCI to determine whether such applicants are qualified to enter into trademark license negotiations with NCI to use the caBIG ® trademarks in connection with their services and become designated as caBIG ® SSPs. Thus, the collection of information from SSP applicants is critical to both ensuring that the goals and objectives of the caBIG ® program will be maintained and furthered by the

organizations designated as SSPs and facilitating NCI's ability to exercise appropriate stewardship of the caBIG® trademarks. Sections 410 and 411 of the Public Health Service Act (42 U.S.C. 285 and 285a) authorize the collection of the information. *Frequency of Response:* *once for the applicants.* caBIG® SSP applications are accepted on a rolling basis and reviewed several times a year. *Affected Public: Private sector including Business or other for-profits and* not-for-profit organizations and institutions. *Type of Respondents:* Technical representatives of commercial, academic or not-for-profit organizations. The annual reporting burden is estimated at 360 hours.

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

A.12–1—ESTIMATES OF ANNUAL BURDEN HOURS

Type of respondents	Number of respondents	Frequency of response	Average time per response (minutes/hour)	Annual burden hours
Commercial Organizations	14	1	1440/60 (24 hours)	336
Nonprofit Organizations	1	1	1440/60 (24 hours)	24
Totals	15			360

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Attention: NIH Desk Officer, Office of Management and Budget, at *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact John Speakman, NCI CBIIT Chief Program Officer, Center for Biomedical Informatics and Information Technology, National Cancer Institute, NIH, DHHS, 2115 E. Jefferson Street, Suite 6000, Rockville, MD 20892 or call non-toll-free number 301–451–8786 or e-mail your request, including your address to: *john.speakman@nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: April 26, 2011.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2011–10666 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: June 1–2, 2011.

Time: 3 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: June 2–3, 2011.

Time: 3 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: William Cruce, PhD, Scientific Review Administrator, National Institute on Aging, Scientific Review Office, Gateway Building 2c-212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10739 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications. the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, NIH—NCRR COBRE I Meeting 1.

Date: June 14–15, 2011.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Courtyard Gaithersburg Washingtonian Ctr, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Steven Birken, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Room 1078, MSC 4874, Bethesda, MD 20892–4874, 301–435–0815, *birkens@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: April 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10671 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Hematology.

Date: May 23–24, 2011.

Time: 11:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bukhtiar H. Shah, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 301 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group. Molecular Neurogenetics Study Section.

Date: June 2–3, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Tysons Corner, 7801 Leesburg Pike, Falls Church, VA 22043.

Contact Person: Eugene Carstea, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 408–9756, *carsteae@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group, Cancer Genetics Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Steven F. Nothwehr, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5183, MSC 7840, Bethesda, MD 20892, 301.408.9435, *nothwehrs@mail.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Molecular and Integrative Signal Transduction Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco Alexandria, 480 King Street, Alexandria, VA 22314.

Contact Person: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 402–8228, *rayam@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Alexandria, 400 Courthouse Square, Alexandria, VA 22314.

Contact Person: Priscilla B. Chen, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Community-Level Health Promotion Study Section.

Date: June 9–10, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Jacinta Bronte-Tinkew, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 806–0009, *brontetinkewjm@csr.nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group, Behavioral Genetics and Epidemiology Study Section.

Date: June 9, 2011.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Magnificent Mile, 165 E. Ontario Street, Chicago, IL 60611.

Contact Person: Suzanne Ryan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, (301) 435–1712, *ryansj@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Pathogenic Eukaryotes Study Section.

Date: June 9–10, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tera Bounds, DVM, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, 301 435–2306, *boundst@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurotransporters, Receptors, and Calcium Signaling Study Section.

Date: June 9–10, 2011.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Peter B. Guthrie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Vaccines Against Microbial Diseases Study Section.

Date: June 9–10, 2011.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Jian Wang, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7812, Bethesda, MD 20892, (301) 435–2778, *wangjia@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group,

Skeletal Muscle and Exercise Physiology Study Section.

Date: June 9–10, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Loews Annapolis Hotel, 126 West Street, Annapolis, MD 21401.

Contact Person: Richard Ingraham, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Cellular and Molecular Immunology—A Study Section.

Date: June 9–10, 2011.

Time: 9 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: David B. Winter, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, 301–435–1152, *dwinter@mail.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Biobehavioral Regulation, Learning and Ethology Study Section.

Date: June 9, 2011.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Carlyle Suites Hotel, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 408–9107, *geraldmel@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BTSS and SAT Member Conflict.

Date: June 9, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Guo Feng Xu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, 301–237–9870, *xuguofen@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prokaryotic Biology.

Date: June 9, 2011.

Time: 6 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Diane L. Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, MSC 7890, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10675 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed 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 Arthritis and Musculoskeletal and Skin Diseases, Special Emphasis Panel, Clinical Trial Pilot Grant Review.

Date: May 12, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Charles N. Rafferty, PhD, Chief, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20817, 301–594–5019, *charles.rafferty@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 22, 2011.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10672 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health (NIH), Orientation Work Group. The meeting will be closed to the public.

The NIH Director's Pioneer Award and New Innovator Award programs are part of the NIH Common Fund and support exceptionally creative scientists who take highly innovative, potentially high-impact approaches to major challenges in biomedical or behavioral research. The members of the Advisory Committee to the Director, NIH will be participating in an orientation work group meeting for the purpose of receiving instructions on their role and responsibility in the review of these applications requesting NIH research support. Members will be participating in the final review of both the NIH Director's Pioneer Award and New Innovator Award grant reviews during the June 9–10, 2011 meeting of the Advisory Committee to the Director, NIH.

The Orientation Work Group discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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 Work Group: Advisory Committee to the Director, NIH, Orientation Work Group.

Date: May 26, 2011.

Closed: 3 p.m. to 4 p.m.

Agenda: To receive instruction and guidance for the review of the NIH Director's Pioneer Award and New Innovator Award programs.

Place: National Institutes of Health, Building 1, Room 103, One Center Drive, Bethesda, MD 20892, (Teleconference).

Contact Person: Gretchen S. Wood, Special Assistant to the Associate Director for OD Coordination, Immediate Office of the Director, National Institutes of Health, One Center Drive, Building 1, Room 103, Bethesda, MD 20892, *woodgs@od.nih.gov*.

Dated: April 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10667 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 17, 2011, 1 p.m. to May 17, 2011, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on April 22, 2011, 76 FR 22716.

The meeting will be held May 24, 2011. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10742 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; 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 National Advisory Council on Drug Abuse.

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 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 Advisory Council on Drug Abuse.

Date: May 11, 2011.

Closed: 8:30 a.m. to 9:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Open: 10 a.m. to 2:30 p.m.

Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Rooms C & D, Rockville, MD 20852.

Contact Person: Teresa Levitin, PhD, Director, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 4243, MSC 9550, 6001 Executive Boulevard, Bethesda, MD 20892–89550, (301) 443–2755, *tlevitin.nida.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their 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.

Information is also available on the Institute's/Center's home page: *http://www.drugabuse.gov/NACDA/NACDAHome.html,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos.: 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: April 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10741 Filed 5–2–11; 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 Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meetings will be open to the public, 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.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Translation, Dissemination, and Policy Implications Subcommittee.

Date: June 13, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Increasing public participation in decisions relating to breast cancer research by increasing the involvement of patient advocacy and community organizations representing a broad geographical area and creating models for dissemination of information regarding the progress of breast cancer research. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Translation, Dissemination, and Policy Implications Subcommittee.

Date: August 17, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Increasing public participation in decisions relating to breast cancer research by increasing the involvement of patient advocacy and community organizations representing a broad geographical area and creating models for dissemination of information regarding the progress of breast cancer research. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call.

To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Translation, Dissemination, and Policy Implications Subcommittee.

Date: September 15, 2011.

Time: 12 p.m. to 2:30 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Translation, Dissemination, and Policy Implications Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Increasing public participation in decisions relating to breast cancer research by increasing the involvement of patient advocacy and community organizations representing a broad geographical area and creating models for dissemination of information regarding the progress of breast cancer research. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/*.

Place: Conference Call: This meeting will be conducted remotely, via conference call.

To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov*.

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (i.e. WORD, Rich Text, PDF) may be submitted via e-mail to *ibcercc@niehs.nih.gov* or mailed to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

(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: April 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10740 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Cancer Therapeutics.

Date: May 5, 2011.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed M. Quadri, PhD, Chief, OTC IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10733 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Chemo/Dietary Prevention Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Sally A. Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6198, MSC 7804, Bethesda, MD 20892, (301) 408–9724, *mulherns@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Genetics.

Date: June 9–10, 2011.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–443–4512, *cooperc@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.

Date: June 10, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Central Visual Processing Study Section.

Date: June 10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Kirk Thompson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, 301–435–1242, *kgt@mail.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Urologic and Kidney Development and Genitourinary Diseases Study Section.

Date: June 10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.

Date: June 10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Yuanna Cheng, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 435–1195, *Chengy5@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Urology.

Date: June 10, 2011.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Amalfi Hotel, 20 West Kinzie Street, Chicago, IL 60654.

Contact Person: Ryan G. Morris, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4205, MSC 7814, Bethesda, MD 20892, 301–435–1501, *morrisr@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Developmental Therapeutics Study Section.

Date: June 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 408–9512, *gubanics@csr.nih.gov*.

Name of Committee: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: June 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: John Burch, PhD, Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–408–9519, *burchjb@csr.nih.gov*.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: June 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Fungai Chanetsa, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–408–9436, *fungai.chanetsa@nih.hhs.gov*.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group; Molecular Oncogenesis Study Section.

Date: June 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov*.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative Nutrition and Metabolic Processes Study Section.

Date: June 13, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Sooja K. Kim, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892, (301) 435–1780, *kims@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Aging Systems and Geriatrics Study Section.

Date: June 13, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.

Contact Person: James P. Harwood, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7840, Bethesda, MD 20892, 301–435–1256, *harwoodj@csr.nih.gov*.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.

Date: June 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 237–9838, *bhagavas@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: June 13, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Edwin C. Clayton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, 301–408–9041, *claytone@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Neurotoxicology and Alcohol Study Section.

Date: June 13, 2011.

Time: 8 a.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Brian Hoshaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5181, MSC 7844, Bethesda, MD 20892, 301–435–1033, *hoshawb@csr.nih.gov*.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Clinical Oncology Study Section.

Date: June 13–14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Malaya Chatterjee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6192, MSC 7804, Bethesda, MD 20892, 301–451–0131, *chatterm@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: June 13–14, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Harbor Court Baltimore, 550 Light Street, Baltimore, MD 21202.

Contact Person: Aftab A Ansari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7814, Bethesda, MD 20892, 301–237–9931, *ansaria@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RM 10–019: NIH Director's Early Independence Awards.

Date: June 13–14, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Weijia Ni, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 237–9918, *niw@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Clinical Research and Field Studies of Infectious Diseases Study Section.

Date: June 13–14, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Clinical and Translational Imaging Applications.

Date: June 13, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Antonio Sastre, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5215, MSC 7412, Bethesda, MD 20892, 301–435–2592, *sastrea@csr.nih.govZ*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Alcohol Psychopathology.

Date: June 13, 2011.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Christine L Melchior, PhD, MS, Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1713, *melchioc@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10731 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of 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 National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

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 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 Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 14, 2011.

Open: 8:30 a.m. to 12 p.m.

Agenda: To discuss administrative details relating to the Council's business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Laura K. Moen, PhD, Director, Division of Extramural Research Activities, NIAMS/NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–6515, *moenl@mail.nih.gov*.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10730 Filed 5–2–11; 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 Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meetings will be open to the public, 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.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Process Subcommittee.

Date: June 14, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Process Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Setting research priorities, decreasing redundancies across federal and non-governmental organizations,

developing a process for soliciting research, fostering collaborations, highlighting peer review issues, and identifying the most appropriate models for agencies to work together. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please rsvp via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Process Subcommittee.

Date: August 16, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Process Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Setting research priorities, decreasing redundancies across federal and non-governmental organizations, developing a process for soliciting research, fostering collaborations, highlighting peer review issues, and identifying the most appropriate models for agencies to work together. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please rsvp via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) Research Process Subcommittee.

Date: September 15, 2011.

Time: 2:30 p.m. to 5 p.m.

Agenda: The purpose of the meeting is to continue the work of the Research Process Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: Setting research priorities, decreasing redundancies across federal and non-governmental organizations, developing a process for soliciting research, fostering collaborations, highlighting peer review issues, and identifying the most appropriate models for agencies to work together. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please rsvp via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (i.e. Word, Rich Text, PDF) may be submitted via e-mail to *ibcercc@niehs.nih.gov* or mailed to the contact person listed on this notice. You do not need to attend the meeting in order to submit comments.

(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: April 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10728 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes And Digestive and Kidney Diseases; Notice of 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 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 sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: June 21–23, 2011.

Open: June 21, 2011, 4 p.m. to 4:30 p.m.

Agenda: To review procedures and discuss policy.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 21, 2011, 4:30 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 22, 2011, 8:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 23, 2011, 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Barbara A. Woynarowska, Phd, Scientific Review Administrator, Review Branch, Dea, Niddk, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, Md 20892–5452, (301) 402–7172. *woynarowskab@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10727 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function A Study Section.

Date: June 2, 2011.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: George Washington University Inn, 824 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: David R. Jollie, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301)–435–1722, *jollieda@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function B Study Section.

Date: June 2–3, 2011.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Arnold Revzin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biological Chemistry and Macromolecular Biophysics.

Date: June 2–3, 2011.

Time: 11 a.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Donald L. Schneider, PhD, Scientific Review Officer, Center for Scientific Rreview, National Institutes of Health, 6701 Rockledge Drive, Room 5160, MSC 7842, Bethesda, MD 20892, (301) 435–1727, *schneidd@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Nanotechnology Study Section.

Date: June 9–10, 2011.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bellevue, 900 Bellevue Way NE., Bellevue, WA 98004.

Contact Person: James J Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–806–8065, *lijames@csr.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Therapeutic Approaches to Genetic Diseases.

Date: June 9, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Michael K Schmidt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2214, MSC 7890, Bethesda, MD 20892, (301) 435–1147, *mschmidt@mail.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Health Services Organization and Delivery Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Seattle Hotel, 1900 Fifth Avenue, Seattle, WA 98101.

Contact Person: Kathy Salaita, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301–451–8504, *salaitak@csr.nih.gov*.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biodata Management and Analysis Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Mark Caprara, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–435–1042, *capraramg@mail.nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.

Date: June 9, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Diane L Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group, Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina del Rey Marriott, 4100 Admiralty Way, Marina del Rey, CA 90292.

Contact Person: Olga A Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov*.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Genetic Variation and Evolution Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, NW., Washington, DC 20037.

Contact Person: Cheryl M Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Biochemistry and Biophysics of Membranes Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: Nuria E. Assa-Munt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function C Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: InterContinental Chicago Hotel, 505 North Michigan Avenue, Chicago, IL 60611.

Contact Person: William A. Greenberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.

Date: June 9–10, 2011.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Daniel F McDonald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, ≤(301) 435–1215, *mcdonald@csr.nih.gov*.

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Societal and Ethical Issues in Research Study Section.

Date: June 9, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications. Westin Seattle Hotel, 1900 Fifth Avenue, Seattle, WA 98101.
Contact Person: Karin F Helmers, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, 301–254–9975, *helmersk@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroimmunology and Brain Tumors Study Section.
Date: June 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 408–9135, *joshij@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.
Date: June 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications. Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Social Psychology, Personality and Interpersonal Processes Study Section.
Date: June 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Michael Micklin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3136, MSC 7759, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Biostatistical Methods and Research Design Study Section.
Date: June 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications. Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Tomas Drgon, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892, 301–435–1017, *tdrgon@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Cancer Biomarkers Study Section.
Date: June 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Lawrence Ka-Yun Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6152, MSC 7804, Bethesda, MD 20892, 301–357–9318, *ngkl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurotechnology Overflow.
Date: June 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Hotel Washington, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Yvonne Bennett, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, 301–379–3793, *bennetty@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group, Health Disparities and Equity Promotion Study Section.
Date: June 9–10, 2011.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Westin Seattle Hotel, 1900 Fifth Avenue, Seattle, WA 98101.
Contact Person: Delia Olufokunbi Sam, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, 301–435–0684, *olufokunbisamd@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Drug Discovery and Mechanisms of Antimicrobial Resistance Study Section.
Date: June 9–10, 2011.
Time: 8 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.
Contact Person: Guangyong Ji, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7808, Bethesda, MD 20892, 301–435–1146, *jig@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10670 Filed 5–2–11; 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 Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Interagency Breast Cancer and Environmental Research Coordinating Committee.

The meetings will be open to the public, 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.

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) State of the Science Subcommittee.
Date: May 25, 2011.
Time: 1 p.m. to 4 p.m.
Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*
Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please RSVP via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.
Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) State of the Science Subcommittee.
Date: June 7, 2011.
Time: 12 p.m. to 3 p.m.
Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The

meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please rsvp via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709,(919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) State of the Science Subcommittee.

Date: June 22, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please rsvp via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) State of the Science Subcommittee.

Date: August 2, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please rsvp via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Name of Committee: Interagency Breast Cancer and Environmental Research Coordinating Committee (IBCERC) State of the Science Subcommittee.

Date: September 12, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: The purpose of the meeting is to continue the work of the State of the Science Subcommittee as it addresses a broad set of objectives related to the overall mandate of the IBCERC including: summarizing the state of the literature (both animal and human research) and identifying research gaps. The meeting agenda will be available on the Web at *http://www.niehs.nih.gov/about/orgstructure/boards/ibcercc/.*

Place: Conference Call: This meeting will be conducted remotely, via conference call. To attend the meeting, please rsvp via e-mail to *ibcercc@niehs.nih.gov* at least 10 days in advance and instructions for joining the meeting will be provided.

Contact Person: Gwen W. Collman, PhD, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 615 Davis Dr., KEY615/3112, Research Triangle Park, NC 27709, (919) 541–4980, *collman@niehs.nih.gov.*

Any member of the public interested in presenting oral comments to the committee should submit their remarks in writing at least 10 days in advance of the meeting. Comments in document format (i.e. Word, Rich Text, PDF) may be submitted via e-mail to *ibcercc@niehs.nih.gov* or mailed to the Contact Person listed on this notice. You do not need to attend the meeting in order to submit comments.

(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: April 26, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10669 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Brain Function and Neurological Disorders.

Date: May 26–27, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kevin Walton, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *kevin.walton@nih.hhs.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biological Basis of Mental Disorders.

Date: May 26–27, 2011.

Time: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Risk Prevention and Health Behavior.

Date: June 6, 2011.

Time: 11:45 a.m. to 12:45 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Claire E Gutkin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3106, MSC 7808, Bethesda, MD 20892, 301–594–3139, *gutkincl@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 27, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10749 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: June 1–2, 2011.

Time: 4 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2c–212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov.*

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: June 2–3, 2011.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Alicja L. Markowska, PhD, DSC, National Institute on Aging, National Institutes of Health, Gateway Building 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 25, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–10668 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Input To Inform a Possible Surgeon General Action on Prescription Drug Abuse in Youth

AGENCY: National Institute on Drug Abuse, National Institutes of Health, Department of Health and Human Services (HHS).

ACTION: Request for information.

SUMMARY: The National Institute on Drug Abuse, a Research Institute of the National Institutes of Health, is seeking on behalf of the Department of Health and Human Services information for an anticipated Surgeon General response to the public health problem of prescription drug abuse among youth.

SUPPLEMENTARY INFORMATION:

Scope of Problem: Prescription drug abuse [1] remains a looming public health threat in this country. Unlike illicit drug use, which has shown a continuing downward trend, prescription drug abuse, particularly of opioid pain medications, has seen a continual rise through the 1990s and has remained stubbornly steady among persons 12 or older during recent years. Most abusers are between the ages of 18 and 25, but younger age groups are also a major concern.

Approach: ONDCP highlighted prescription drug abuse in its 2010 National Drug Control Strategy. At that time, ONDCP outlined a plan of action to address the prescription drug abuse problem, which included engaging the Office of the Surgeon General to help bring it needed attention. A multi-agency federal work group was formed to follow through on facilitating a Surgeon General response. To date, the work group has received expert input on the state of the science for addressing prescription drug abuse among youth, including from scientific researchers, public health officials, clinicians, and military and law enforcement personnel. Expectations are that a review of the information collected will lead to the issuance of a Surgeon General publication.

Potential Areas of Focus: Extent of the problem and its consequences; differences in prescription drug abuse motivations and how they might inform prevention approaches; availability and adaptability of evidence-based prevention programs; the design of media messages for a wide range of stakeholders; and possible roles for health care professionals, parents, community stakeholders, law enforcement, policymakers, and others addressing this problem.

Purpose of Notice: The purpose of this notice is to provide individuals and organizations the opportunity to identify issues and areas of need for consideration as we gather information for an anticipated Surgeon General response to the public health problem of prescription drug abuse among youth. Comments must be in writing and should not exceed 500 words. All comments will receive careful consideration. However, persons and organizations submitting comments will not receive individual responses.

DATES: Individuals and organizations interested in providing information must submit their comments on/or before June 2, 2011. Comments received after this date will not be considered.

ADDRESSES: Comments may be submitted by any one of the following methods:

- *Mail:* Anna Staton, M.P.A., Office of Science Policy and Communications, National Institute on Drug Abuse, 6001 Executive Boulevard, Suite 5230, MSC 9591, Bethesda, MD 20892–9591; or
- *E-mail:* Send to *comments4sg@nih.gov.*

FOR FURTHER INFORMATION CONTACT: Mary Beth Bigley, Dr.P.H., M.S.N., A.N.P., Acting Director, Office of Science and Communications, Office of the Surgeon General, by telephone at 202–205–5642, or e-mail at *Marybeth.Bigley@hhs.gov.*

Dated: April 27, 2011.

Mary Affeldt,

Executive Officer, NIDA, National Institutes of Health.

[FR Doc. 2011–10735 Filed 5–2–11; 8:45 am]

BILLING CODE 4140–01–P

[1] Prescription drug abuse is defined here as the *intentional* use of a medication without a prescription; in a way other than as prescribed; or for the experience or feeling elicited. It is used interchangeably with "nonmedical" use, a term employed by many of the National Surveys. This definition does not include use for self-harm (suicide attempts).

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0019]

Privacy Act of 1974; Department of Homeland Security United States Coast Guard—DHS/USCG–002 Employee Assistance Program Records System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and reissue an existing Department of Homeland Security system of records titled, "Department of Homeland Security/United States Coast Guard–002 Employee Assistance Program Records System of Records." This system will allow the Department of Homeland Security/United States Coast Guard to administer the United States Coast Guard Employee Assistance Program for military personnel. As a result of the required biennial review of this system, records have been updated within "Retention and Disposal" category. This updated system will be included in the Department of Homeland Security's inventory of record system.

DATES: Submit comments on or before on or before June 2, 2011. This new system will be effective June 2, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0019 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 1–703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket to read background documents or comments received go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Eileen Yenikaliotis (202–475–3530), Acting Privacy Officer, United States Coast Guard, 2100 2nd Street, SW., Washington, DC 20593. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and reissue an existing DHS system of records titled, "DHS/USCG–002 Employee Assistance Records System of Records." This system will allow USCG to administer the USCG Employee Assistance Program for military personnel.

As a result of the biennial review of this system, the "Retention and disposal" category has been amended to reflect:

Records are maintained and disposed in accordance with National Archives and Records Administration approved agency Records Schedule, SSIC 1754, item 1 (AUTH: N1–026–07–1, Item1) Employee Assistance Program Coordinator Case Records; if not disclosed under the Privacy Act, records are retained for three years after the client has ceased contact and then destroyed.

Employee Assistance Program client records may contain Department of Transportation-required Substance Abuse evaluations and USCG Sexual Abuse Prevention and Response Program client records; if not disclosed under the Privacy Act, these are destroyed with the Employee Assistance Program Coordinator case records three years after the last contact with the client.

Employee Assistance Program Coordinator Case Records that are disclosed are retained until five years after the client has ceased contact or, if later, for five years after last disclosure of information from the record, as authorized by General Records Schedule 14, item 23.

All records will be retained beyond their normal maintenance period until any pending litigation is completed. This will be true whether or not the client has terminated employment with DHS/USCG. Individual states may require longer retention. The rules in this system notice should not be construed to authorize any violation of such state laws that have greater restrictions.

Files will be destroyed only after the required period of maintenance, with a witness present, by either (1) an DHS or USCG Employee Assistance Program Administrator or an Employee Assistance Program Administrator from another organization that contracts with DHS or USCG for Employee Assistance Program services, or (2) by designated staff of a private or governmental organization under contract with DHS or USCG to provide document destruction services. The witness must be trained in the proper handling of records covered by the Privacy Act and 42 CFR Part 2.

Written records will be destroyed by shredding or burning. Records stored on hard drives will be destroyed using software tools which ensure the protection of the confidential information by making reconstruction or compromise by reuse impracticable. Records contained on back-up tapes/diskettes will be disposed by either physically destroying the tapes/diskettes or by deleting them using software tools which ensure the protection of the confidential information by making reconstruction or compromise by reuse impracticable.

Records located away from the destruction site shall be transferred to the destruction site in the confidential manner. No other information about Employee Assistance Program clients may be maintained once these files have been destroyed.

Consistent with DHS' information sharing mission, information stored in the DHS/USCG–002 Employee Assistance Program Records may be shared with other DHS components, as well as appropriate federal, state, local, tribal territorial, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of record notice. This updated system will be included in DHS' inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States Government collects, maintains, uses and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency from which information is stored and retrieved by the name of the individual or by some identifying number symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends Privacy Act protections to all individuals where system of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Below is the description of the DHS/USCG–002 Employee Assistance Program Records System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of

Management and Budget and to Congress.

System of Records

DHS/USCG–002.

SYSTEM NAME:

DHS/USCG–002 Employee Assistance Program Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Employee Assistance Program case records are maintained by the USCG's vendor for the Employee Assistance Program. USCG Headquarters (CG–1112) is the point of contact for access to these records. Reports of USCG active duty suicidal behavior, work place violence incidents, critical incidents, and sexual assault reports are maintained at USCG Headquarters by the Office of Work-Life (CG–1112). All other USCG records under this system are located at Work-Life Offices in Washington, DC and field locations. USCG Headquarters (CG–1112) is the point of contact for access to these records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All USCG active duty, reserve, and retired active duty and reserve military personnel and their eligible dependants/individuals who have been referred for assistance or counseling, are being assisted or counseled, or have been assisted or counseled by the USCG Employee Assistance Program. Eligibility will vary based on status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Military personnel's name;
- Eligible dependent/individual's name, if applicable;
- Social Security number;
- Employee identification number;
- Date of birth;
- Addresses;
- E-mail address;
- Telephone numbers;
- Job-related information including: job title, rank, duty station, supervisor's name and telephone number, documents received from supervisors or personnel regarding work place problems or performance, leave and attendance records, and workplace-related recommendations made to supervisors as a result of a team meeting;
- Counseling and intervention-related information including: notes and documentation of Employee Assistance Program counselors; records of treatment, including non-clinical educational interventions; counseling referrals; team reports; records of employee attendance at treatment and counseling programs; prognosis of individuals in treatment or counseling programs; insurance data; addresses and contact information of treatment facilities; name and address of individuals providing treatment or counseling or intervention; and Privacy Act notification forms and written consent forms;
- USCG Workplace Violence and related Critical Incident Team records of the Workplace Violence Prevention Program, maintained by USCG Work-Life personnel. These records may include written reports and recommendations to leadership personnel regarding alleged work place violence incidents;
- USCG Critical Incident Stress Management-related records which may include descriptions of incidents, consultations, interventions, and may contain personally-identifying information (for the purpose of follow-on contacts with those thought to be impacted by the critical incident).
- USCG Sexual Assault Prevention and Response Program case records maintained by USCG Work-Life personnel. These records are used to facilitate services for victims and their family members as appropriate. In addition to information cited above these records may contain Victim Reporting Preference Statement, case notes and safety plan. Record may also contain descriptions of alleged assaults;
- USCG Victim Support Person or Victim Advocate maintained by USCG Work-Life personnel. These are maintained in conjunction with efforts to provide assistance to victims of crime. Record will contain signed Victim Support Person or Victim Advocate Statement of Understanding and Victim Support Person or Victim Advocate Supervisor Statement of Understanding, assignment information, and notes regarding results of screening interview, relevant training received, and any other information relevant to the Victim Support Person's or Victim Advocate's provision of support services to victims;
- USCG Critical Incident Stress Management Peer Volunteers maintained by USCG Work-Life personnel. These records contain statement of understanding, notes regarding screening interview, record of related training received and any other information relevant to the peer's provision of services when deployed after a critical incident;
- Case records maintained by USCG Work-Life personnel on USCG Active Duty members who have demonstrated suicidal behavior. The purpose of these records is to facilitate continuity of care for personnel who have exhibited suicidal behavior. These records will contain reports regarding each incident and follow-up case notes;
- Reports of USCG active duty suicidal behavior incidents, work place violence incidents, critical incidents, and sexual assaults are maintained by USCG Headquarters (CG–1112). These reports are received from Work-Life Offices who are responsible for providing services for the related programs described above. Their purpose is to ensure continuity of care and to identify any systemic issues found in aggregate data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, Pub. L. 107–296, 6 U.S.C. 121; Federal Records Act, 44 U.S.C. 3101; 6 CFR part 5; 5 U.S.C. app. 3; 5 U.S.C. 301 and Ch. 41; Executive Order 11348, as amended by Executive Order 12107; and Executive Order 9397. 5 U.S.C. 7361, 7362, 7901, 7904.

PURPOSE(S):

The Employee Assistance Program will maintain information gathered by and in the possession of USCG Employee Assistance Program, an internal agency program designed to assist employees of USCG and, in certain instances, their eligible dependants/individuals, in regard to a variety of personal and/or work related problems. The program involves counseling, educational, and consultative services provided through the internal and external Employee Assistance Program for alcohol, drug, emotional, or behavioral problems, and addresses mandatory and voluntary counseling following exposure to a traumatic incident, responses to critical incidents that impact employees, and workplace incidents involving actual violence or the threat of violence and necessary follow up.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure of substance abuse records is limited to the parameters set forth in 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e). Accordingly, a Federal employee's substance abuse records may not be disclosed without the prior written consent of the employee, unless the disclosure would be one of the following:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency

conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) or harm to the individual who relies upon the compromised information;

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

C. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

D. To appropriate State and local authorities to report, under State law, incidents of suspected child abuse or neglect to the extent described under 42 CFR 2.12.

E. To any person or entity to the extent necessary to prevent an imminent and potential crime which directly threatens loss of life or serious bodily injury.

F. To report to appropriate authorities when an individual is potentially at risk to harm himself or herself or others.

G. To medical personnel to the extent necessary to meet a bona fide medical emergency;

H. To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation provided that employees are individually identified;

I. To the employee's medical review official;

J. To the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating;

K. To any supervisory or management official within the employee's agency having authority to take adverse personnel action against such employee; or

L. Pursuant to the order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action. *See* 42 U.S.C. 290dd, 290ee, and Public Law 100–71, Section 503(e).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Data may be retrieved by a Military personnel's, eligible dependant's/individual's name. USCG Critical Incident Stress Management-related records are filed by unit name and are not be retrievable by individual name, rather, by unit name.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated system security access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Records are maintained and disposed in accordance with National Archives and Records Administration approved agency Records Schedule, SSIC 1754, item 1 (AUTH: N1–026–07–1, Item1) Employee Assistance Program (EAP) Coordinator Case Records; if not disclosed under the Privacy Act, records are retained for three years after the client has ceased contact and then destroyed.

Employee Assistance Program client records may contain Department of Transportation-required Substance Abuse evaluations and USCG Sexual Abuse Prevention and Response Program client records; if not disclosed under the Privacy Act, these are destroyed with the EAP Coordinator case records three years after the last contact with the client.

Employee Assistance Program Coordinator Case Records that are disclosed are retained until five years after the client has ceased contact or, if later, for five years after last disclosure of information from the record, as authorized by General Records Schedule 14, item 23.

All records will be retained beyond their normal maintenance period until any pending litigation is completed. This will be true whether or not the client has terminated employment with DHS/USCG. Individual states may require longer retention. The rules in this system notice should not be construed to authorize any violation of such state laws that have greater restrictions.

Files will be destroyed only after the required period of maintenance, with a witness present, by either (1) an DHS or USCG Employee Assistance Program Administrator or an Employee Assistance Program Administrator from another organization that contracts with DHS or USCG for Employee Assistance Program services, or (2) by designated staff of a private or governmental organization under contract with DHS or USCG to provide document destruction services. The witness must be trained in the proper handling of records covered by the Privacy Act and 42 CFR part 2.

Written records will be destroyed by shredding or burning. Records stored on hard drives will be destroyed using software tools which ensure the protection of the confidential information by making reconstruction or compromise by reuse impracticable. Records contained on back-up tapes/diskettes will be disposed by either physically destroying the tapes/diskettes or by deleting them using software tools which ensure the

protection of the confidential information by making reconstruction or compromise by reuse impracticable.

Records located away from the destruction site shall be transferred to the destruction site in the confidential manner. No other information about Employee Assistance Program clients may be maintained once these files have been destroyed.

SYSTEM MANAGER AND ADDRESS:

Commandant, CG–1112, Office of Work-Life, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to Commandant, CG–1112, Office of Work-Life, United States Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001.

When seeking records about yourself from this system of records or any other USCG system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Specify when you believe the records would have been created;
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG will not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification Procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification Procedure" above.

RECORD SOURCE CATEGORIES:

Records are retained from the following sources:

- USCG Employee Assistance Program: the client, the licensed mental health provider, and collateral sources and resources intended to help the client.
- USCG Workplace Violence and related Critical Incident Team: investigation records, personnel records, critical incident team assembled to make recommendations to command, subject's supervisors, and the subject.
- USCG Critical Incident Stress Management-related records: Work-Life staff, Peers, Incident commander, command(s) affected, individuals impacted by incident, other support persons who may be mobilized to assist those impacted by the event.
- USCG Sexual Assault Prevention and Response Program: victim, victim support person, medical personnel assisting victim, criminal investigations and investigators, and other support personnel intended to assist victim.
- USCG Victim Support Persons (VSP): the victim support person, Work-Life staff, VSP's or Victim Advocate's work supervisor, other support persons who may assist in training.
- USCG Critical Incident Stress Management Peer Volunteers: Peer, Peer's supervisor, Work-Life staff, and other support persons who may assist in training.
- Case records maintained by USCG Work-Life personnel on USCG Duty members who have demonstrated suicidal behavior: the patient, medical personnel, patient's command, and Work-Life staff and other support persons who may assist in helping the patient.
- Reports of USCG active duty suicidal behavior incidents, work place violence incidents, critical incidents, and sexual assaults maintained by USCG Headquarters (CG–1112): Work-Life staff and others as described above under their related programs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 23, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–10719 Filed 5–2–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0020]

Privacy Act of 1974; Department of Homeland Security United States Coast Guard—DHS/USCG–007 Special Needs Program System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to update and rename an existing Department of Homeland Security system of records titled, "Department of Homeland Security/United States Coast Guard–007 Exceptional Family Member Program System of Records." This system will allow the Department of Homeland Security United States Coast Guard meet it obligation to assist military personnel, civilian personnel and their eligible dependents with special needs. As a result of the required biennial review of this system, records have been updated to reflect the name change to Department of Homeland Security/ United States Coast Guard Special Needs Program Record. This updated system will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before June 2, 2011. This updated system will be effective June 2, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0020 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.
- *Docket:* For access to the docket, to read background documents, or comments received go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Eileen Yenikaliotis (202–475–3515), Acting Privacy Officer, United States Coast

Guard 2100 2nd Street SW., Washington, DC 20593. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, U.S. Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS) United States Coast Guard (USCG) proposes to update and rename an existing DHS system of records titled, "DHS/USCG–007 Exceptional Family Member Program.

This system will allow the Department of Homeland Security/ United States Coast Guard to collect and maintain records on civilians, active duty, reserve, retired active duty and retired reserve military personnel, and their eligible dependents with special needs.

As a result of the biennial review of this system, the term "Exceptional Family Member Program" has been replaced by term "Special Needs" in the preamble, Supplementary Information, System Name, and Purpose categories of the SORN.

Consistent with DHS' information sharing mission, information stored in DHS/USCG–007 Special Needs Program Records may be shared with other DHS components, as well as appropriate federal, state, local, tribal, territorial foreign, or international government agencies. This sharing will only occur after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice. This updated system will be included in DHS' inventory of record systems.

II. Health Insurance Portability and Accountability Act

This system of records contains individually identifiable health information. The Department of Defense Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. Department of Defense 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

III. Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the U.S. Government collects, maintains, uses and disseminates individuals' records. The Privacy Act applies to information that is maintained in a "system of records." A "system of records" is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy DHS extends administrative Privacy Act protections to all individuals where system of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Below is the description of the DHS/USCG—007 Special Needs Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this new system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

DHS/USCG–007.

SYSTEM NAME:

DHS/USCG–007 Special Needs Program.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained at USCG Headquarters in Washington, DC and field locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Coast Guard active duty, reserve, retired active duty, retired reserve, and civilian personnel and their eligible dependents who have a long-term physical or mental chronic condition that substantially limits one or more of the major life activities of an individual including professionally diagnosed medical, physical, psychological, and/or educational disabilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this system include:

- Military or civilian personnel's name;
- Eligible dependent's name and birth date;
- Service member's, civilian's or eligible dependents home address, phone numbers, and email information;
- Identification number (EMPLID); social security numbers of the service member or civilian personnel are currently in the case records (we will no longer be asking for those in the new policy, but the numbers will still be in all of the old files);
- Eligible dependent's diagnosed special need, including copies of medical, educational, and psychological reports, enrollment forms, correspondence and follow-up, and any other data relevant to the dependent's individual special needs' program files; and
- Benefits, including case management activities, and supports and services received related to the special need.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Homeland Security Act of 2002, Public Law 107–296, Federal Records Act, 44 U.S.C. 3101; 6 CFR part 5; 5 U.S.C. 301, and COMNDTINST 1754.7 (series).

PURPOSE(S):

The purpose of this system is to administer special needs requests of USCG military and civilian personnel to coordinate the special needs program's medical care, mental health treatment, and to provide case management for USCG military and civilian personnel and eligible dependants with special needs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

This system of records contains individually identifiable health information. The Department of Defense Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. Department of Defense 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney

Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where DOJ or DHS has agreed to represent the employee; or

4. The United States or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual who relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DHS's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, State, tribal, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To any member of the family when a signed release of information is documented in the case record, in furtherance of treating the family member with special needs.

I. To officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, developmental disabilities, and other public health and welfare programs.

K. To the federal, state or local governmental agencies when appropriate in the counseling and treatment of individuals or families with special medical or educational needs, or receiving early intervention or related services.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are stored electronically or on paper in a locked drawer behind a locked door. The records are stored on magnetic disc, tape, digital media, and CD–ROM.

RETRIEVABILITY:

Data may be retrieved by a Coast Guard military or civilian personnel's name and/or identification number (EMPLID).

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

Case records are maintained at a decentralized location until the USCG military or civilian personnel is separated or retired, eligible family member is no longer an eligible dependent, or the eligible dependent is no longer diagnosed as having a special need. Upon separation or retirement of the USCG military or civilian personnel, the eligible family member is no longer an eligible dependent, or when the eligible dependent is no longer diagnosed as having a special need, the record will be transferred to Commandant, CG–1112. After a 3-year retention, the record is destroyed (N1–026–07–9).

SYSTEM MANAGER AND ADDRESS:

Chief, Office of Work-Life, Director of Health, Safety and Work-Life, CG–11, United States Coast Guard, Washington, DC 20593–0001.

NOTIFICATION PROCEDURE:

Individuals seeking notification of and access to any open record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Work-Life field office where the case record is maintained. Individuals seeking notification of and access to any closed record contained in this system of records, or seeking to contest its content, may submit a request in writing to the Chief, Office of Work-Life, Director of Health, Safety and Work-Life, CG–11, United States Coast Guard, Washington, DC 20593–0001.

When seeking records about yourself or your minor dependent from this system of records or any other USCG system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted by you under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Director, Disclosure and FOIA, *http://www.dhs.gov* or 1–866–431–0486.

In addition you should provide the following:

- An explanation of why you believe the Department would have information on you,
- Specify when you believe the records would have been created,
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the USCG may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

See "Notification procedure" above.

RECORD SOURCE CATEGORIES:

Records are obtained from medical reports that are provided to the USCG.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 23, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–10756 Filed 5–2–11; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–693, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–693, Report of Medical Examination and Vaccination Record, OMB Control No. 1615–0033.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until July 5, 2011.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please add the OMB Control Number 1615–0033 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved information collection.

(2) *Title of the Form/Collection:* Report of Medical Examination and Vaccination Record.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–693. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: *Individuals or households.* The information on the application will be used by USCIS in considering the eligibility for adjustment of status under 8 CFR part 209 and 8 CFR 210.5, 245.1, and 245a.3.

(5) *An estimate of the total annual number of respondents and the amount of time estimated for an average respondent to respond:* 800,000 responses at 2.5 hours per response.

(6) *An estimate of the total annual public burden (in hours) associated with the collection:* 2,000,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the USCIS Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Room 5012, Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 27, 2011.

Sunday A. Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–10645 Filed 5–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–639; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form G–639, Freedom of Information/Privacy Act Request; OMB Control No. 1615–0102.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 5, 2011.

During this 60 day period, USCIS will be evaluating whether to revise the Form G–639. Should USCIS decide to revise Form G–639 we will advise the

public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form G–639.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0102 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at: *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–639; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form G–639 is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under Freedom of Information/Privacy Act (FOIA/PA).

(5) *An estimate of the total annual number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes per response.

(6) *An estimate of the total annual public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: April 27, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–10660 Filed 5–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–929, Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form I–929, Petition for Qualifying Family Member of a U–1 Nonimmigrant, OMB Control No. 1615–0106.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 24, 2011, at 76 FR 10387, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 2, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0106 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Petition for Qualifying Family Member of a U–1 Nonimmigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–929. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. Section 245(m) of the Immigration and Nationality Act (Act) allows certain qualifying family members who have never held U nonimmigrant status to seek lawful permanent residence or apply for immigrant visas. Before such family members may apply for adjustment of status or seek immigrant visas, the U–1 nonimmigrant who has been granted adjustment of status must file an immigrant petition on behalf of the qualifying family member using Form I–929. This information collection is necessary in order for USCIS to make a determination that the eligibility requirements and conditions are met regarding the qualifying family member.

(5) *An estimate of the total annual number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 1 hour per response.

(6) *An estimate of the total annual public burden (in hours) associated with the collection:* 2,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: April 27, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–10655 Filed 5–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Forms G–325, G–325A, G–325B, and G–325C; Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day notice of information collection under review: Forms G–325, G–325A, G–325B, and G–325C, Biographic Information; OMB Control No. 1615–0008.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on February 7, 2011, at 76 FR 6629, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 2, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, Clearance Officer, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov*, and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov*. When submitting comments by e-mail please make sure to add OMB Control Number 1615–0008 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms G–325, G–325A, G–325B, and G- 325C; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* USCIS uses Forms G–325, G–325A, G–325B, and G–325C when it is necessary to check other agency records on applications or petitions submitted by applicants for certain benefits under the Immigration and Nationality Act (Act).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form G–325—200,000 responses at 15 minutes (.25) per response; Form G–325A—583,921 responses at 15 minutes (.25) per response; Form G–325B—500,000 responses at 25 minutes (.416) per response; and Form G–325C—140,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 438,980 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov*.

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: April 27, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–10659 Filed 5–2–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–40]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Assessment System (PHAS) Memorandum of Agreement (MOA), MOA Monthly Report, and Improvement Plan (IP)

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.

A Public Housing Agency (PHA) which is designated Troubled or substandard under the Public Housing Assessment System (PHAS) must enter into a Memorandum of Agreement (MOA) with HUD to outline its planned improvements. Similarly, a PHA which is a standard performer, but receives a total PHAS score between 70% and 60% must submit an Improvement Plan (IP). These plans are designed to address deficiencies in a PHA's operations found through the PHAS assessment process (management, financial, physical, or resident related) and any other deficiencies identified by HUD through independent assessments or other methods.

DATES: *Comments Due Date:* June 2, 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 (2577–0237) 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: Public Housing Assessment System (PHAS) Memorandum of Agreement (MOA), MOA Monthly Report, and Improvement Plan (IP).

OMB Approval Number: 2577–0237.

Form Numbers: HUD–53336–A, HUD–53336–B, HUD–53337, HUD–53338.

Description of the Need for the Information and Its Proposed Use: A Public Housing Agency (PHA) which is designated Troubled or substandard under the Public Housing Assessment System (PHAS) must enter into a Memorandum of Agreement (MOA) with HUD to outline its planned improvements. Similarly, a PHA which is a standard performer, but receives a total PHAS score between 70% and 60% must submit an Improvement Plan (IP). These plans are designed to address deficiencies in a PHA's operations found through the PHAS assessment process (management, financial, physical, or resident related) and any other deficiencies identified by HUD through independent assessments or other methods.

Frequency of Submission: Quarterly, Other When designated troubled.

	Numbers of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	354	6.169		11.50		25,134

Total Estimated Burden Hours: 25,134.

Status: Reinstatement, without change, of previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April, 26, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–10627 Filed 5–2–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–39]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Physical Needs Assessment

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.

PHAs will complete a PNA once every 5 years, will update the PNA annually, and will submit information electronically to HUD. The information is used by PHAs as a strategic and capital planning tool. The information uploaded to HUD will be used for aggregation of an estimate of the capital needs across the Public Housing portfolio and evaluation of the impact of the Capital Fund in meeting the physical needs based upon review of the annual updates.

DATES: *Comments Due Date:* June 2, 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 (2577–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: Public Housing Physical Needs Assessment.

OMB Approval Number: 2577–Pending.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: PHAs will complete a PNA once every 5 years, will update the PNA annually, and will submit information electronically to HUD. The information is used by PHAs as a strategic and capital planning tool. The information uploaded to HUD will be used for aggregation of an estimate of the capital needs across the Public Housing portfolio and evaluation of the impact of the Capital Fund in meeting the physical needs based upon review of the annual updates.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	3,100	10		265.367		82,264

Total Estimated Burden Hours: 82,264.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: *April 26, 2011.*

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–10630 Filed 5–2–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 11 a.m., Tuesday, May 10, 2011.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Determinations on three petitions for reconsideration in original jurisdiction cases (28 CFR 2.27).

CONTACT PERSON FOR MORE INFORMATION: Patricia W. Moore, Staff Assistant to the Chairman, U.S. Parole Commission, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, (301) 492–5933.

Dated: April 28, 2011.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 2011–10819 Filed 4–29–11; 11:15 am]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Request for Examination and/or Treatment

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, "Request for Examination and/or Treatment," Form LS–1, to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 2, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The Request for Examination and/or Treatment, Form LS–1, is used by employers to authorize medical treatment for injured workers and by physicians to report findings of physical examinations and treatment recommended. This information collection is subject to the PRA.

A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally

not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0029. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 15, 2010 (75 FR 78270).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1240–0029. The OMB is particularly interested in comments that:

- 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 submission of responses.

Agency: Office of Worker Compensation Programs (OWCP).

Title of Collection: Request for Examination and/or Treatment.

OMB Control Number: 1240–0029.

Affected Public: Private Sector—Businesses or other for profits; Individuals or Households.

Total Estimated Number of Respondents: 96,000.

Total Estimated Number of Responses: 144,000.

Total Estimated Annual Burden Hours: 78,000.

Total Estimated Annual Costs Burden: $3,417,840.

Dated: April 27, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–10610 Filed 5–2–11; 8:45 am]

BILLING CODE 4510–CF–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Claim for Continuance of Compensation

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, "Claim for Continuance of Compensation," Form CA–12, to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before June 2, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The Claim for Continuance of Compensation, Form CA–12, is used to obtain information from eligible survivors receiving death benefits for an extended period of time. This information is necessary to ensure that compensation being paid is accurate. While the DOL has revised the form to collect a beneficiary's Social Security Number and to make a few formatting changes that require identifying this submission as a revision, those changes are not expected materially to affect the public burden in responding to this information collection.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0015. The current OMB approval is scheduled to expire on May 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on December 29, 2010 (75 FR 82075).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1240–0015. The OMB is particularly interested in comments that:

- 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 submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Title of Collection: Claim for Continuance of Compensation.

OMB Control Number: 1240–0015.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 4570.

Total Estimated Number of Responses: 4570.

Total Estimated Annual Burden Hours: 379.

Total Estimated Annual Costs Burden: $2011.

Dated: April 27, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–10686 Filed 5–2–11; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,975]

Digital River Education Services, Inc., a Division of Digital River, Inc., Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Through Journey Education Marketing (JEM), Including On-Site Lease Workers From Serenity Staffing, Accountemps, Silicon Valley, and Liaison Resources, Austin and Dallas, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 28, 2011, applicable to workers of Digital River Education Services, Inc., a division of Digital River, Inc., including on-site leased workers from Serenity Staffing, Accountemps, Silicon Valley and Liaison Resources, Austin and Dallas, Texas. The notice was published in the **Federal Register** on February 10, 2011 (76 FR 7587).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provide reselling services to third-party vendors, publishers, and product manufactures.

Information shows that Digital River Education Services acquired Journey Education Marketing (JEM) in August 2010. Some workers separated from employment at the Austin and Dallas, Texas locations of the subject firm had their wages reported under a separated unemployment insurance (UI) tax account under the name Journey Education Marketing (JEM).

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the acquisition of services from a foreign country.

The amended notice applicable to TA–W–74,975 is hereby issued as follows:

All workers of Digital River Education Services, Inc., a division of Digital River, Inc., including workers whose unemployment insurance (UI) wages are paid through Journey Education Marketing (JEM), and including on-site leased workers from Serenity Staffing, Accountemps, Silicon Valley, and Liaison Resources, Austin and Dallas, Texas, who became totally or partially separated from employment on or after December 7, 2009 through January 28, 2013, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 21st day of April 2011.

Michael W. Jaffe

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–10602 Filed 5–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of April 18, 2011 through April 22, 2011.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely

affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,931	Matrix Tool and Mold, Inc	Trinity, NC	October 30, 2009.
75,003	Velsicol Chemical, LLC, True Specialties Corp., Quarles Building Maintenance, and Murray Guard.	Memphis, TN	December 15, 2009.
75,102	Guilford Mills, Inc., Pine Grove Facility; Leased Workers from One Source.	Pine Grove, PA	February 10, 2010.
75,207	The Pierce Company, Inc., A Subsidiary of Avis Industrial Corporation.	Upland, IN	February 9, 2010.
75,247	Jones Distribution Corporation, A Subsidiary of The Jones Group; Leased Workers of Southwest Staffing, Inc.	Socorro, TX	February 11, 2010.
75,291	CCI Systems, Inc	Iron Mountain, MI	February 14, 2010.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,810	Symantec Corporation, SQA Engineering, VCS and VCS–One Group.	Austin, TX	November 1, 2009.
74,810A	Symantec Corporation, SQA Engineering, VCS and VCS–One Group.	Mountain View, CA	November 1, 2009.
74,810B	Symantec Corporation, SQA Engineering, VCS and VCS–One Group.	Beaverton, OR	November 1, 2009.
75,113	Thomas & Betts Corporation, HVAC Division	Mercer, PA	January 14, 2010.
75,155	Hitachi Global Storage Technologies, Inc., Hitachi Global Storage Technologies Holdings PTE., LTD, Manpower, Inc..	San Jose, CA	January 31, 2010.
75,203	Sigue Corporation	Sylmar, CA	February 7, 2010.

TA–W No.	Subject firm	Location	Impact date
75,217	MEMC Electronic Materials, Inc., Including On-Site Leased Workers from Adecco.	St. Peters, MO	May 24, 2010.
75,231	Comcast Corporation, Call Center	Nashville, TN	February 10, 2010.
75,238	McNeil Consumer Healthcare, McNeil-PPC, Inc., Johnson & Johnson, Leased Workers of Worksense.	Fort Washington, PA	January 11, 2010.
75,262	Highmark, Health Plan Operations, Workers Working from Home in PA.	Pittsburgh, PA	February 11, 2010.
75,262A	Highmark, Health Plan Operations Division	Camp Hill, PA	February 11, 2010.
75,262B	Highmark, Health Plan Operations Division	Erie, PA	February 11, 2010.
75,262C	Highmark, Health Plan Operations Division	Johnstown, PA	February 11, 2010.
75,290	CSC, Managed Services Sector Division Working at Client Sites in Schaumburg, IL.	Schaumburg, IL	February 14, 2010.
75,290A	CSC, Managed Services Sector Division Working at Client Sites in Phoenix, AZ.	Phoenix, AZ	February 14, 2010.
75,290B	CSC, Managed Services Sector Division Working at Client Sites in Woodland Hills.	Woodland Hills, CA	February 14, 2010.
75,290C	CSC, Managed Services Sector Division Working at Client Sites in Los Angeles, CA.	Los Angeles, CA	February 14, 2010.
75,290D	CSC, Managed Services Sector Division Working at Client Sites in Simi Valley, CA.	Simi Valley, CA	February 14, 2010.
75,290E	CSC, Managed Services Sector Division Working at Client Sites in Davie, FL.	Davie, FL	February 14, 2010.
75,290F	CSC, Managed Services Sector Division Working at Client Sites in Alpharetta, GA.	Alpharetta, GA	February 14, 2010.
75,290G	CSC, Managed Services Sector Division Working at Client Sites in Pocatello, ID.	Pocatello, ID	February 14, 2010.
75,290H	CSC, Managed Services Sector Division Working at Client Sites in Olathe, KS.	Olathe, KS	February 14, 2010.
75,290I	CSC, Managed Services Sector Division Working at Client Sites in Overland Park, KS.	Overland Park, KS	February 14, 2010.
75,290J	CSC, Managed Services Sector Division Working at Client Sites in Baltimore, MD.	Baltimore, MD	February 14, 2010.
75,290K	CSC, Managed Services Sector Division Working at Client Sites in Owings Mills, MD.	Owings Mills, MD	July 29, 2011.
75,290L	CSC, Managed Services Sector Division Working at Client Sites in Caledonia, MI.	Caledonia, MI	February 14, 2010.
75,290M	CSC, Managed Services Sector Division Working at Client Sites in Omaha, NE.	Omaha, NE	February 14, 2010.
75,290N	CSC, Managed Services Sector Division Working at Client Sites in Melville, NY.	Melville, NY	February 14, 2010.
75,290O	CSC, Managed Services Sector Division Working at Client Sites in New York, NY.	New York, NY	February 14, 2010.
75,290P	CSC, Managed Services Sector Division Working at Client Sites in Independence, OH.	Independence, OH	February 14, 2010.
75,290Q	CSC, Managed Services Sector Division Working at Client Sites in Oklahoma City, OK.	Oklahoma City, OK	February 14, 2010.
75,290R	CSC, Managed Services Sector Division Teleworkers from AZ, CA, CO, FL, GA, etc.	Teleworkers from AZ, CA, CO, FL, GA, etc.	February 14, 2010.
75,311	Agilent Technologies, Inc., Chemical Analysis Group, Little Falls Procurement; Remote and Leased Workers.	Wilmington, DE	February 14, 2010.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
74,899	Tasman Hartford, LLC	Hartford, WI	November 17, 2009.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criterion under paragraph (a)(1), or (b)(1), or (c)(1)(employment decline or threat of separation) of section 222 has not been met.

TA–W No.	Subject firm	Location	Impact date
75,140	Donald A. Holland Consulting	Enumclaw, WA	

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
74,878	GKN Aerospace Chem-Tronics, Inc., A Division of GKN America Corporation.	Kent, WA	
74,900	ISP Stitching and Bindery Products, A Subsidiary of Samuel Strapping Systems.	Racine, WI	
75,024	Havells USA, Inc., Havells Netherlands, Havells India, SLI Lighting Products, Olsten Staffing.	Mullins, SC	
75,026	C & R Lumber Mill, LLC	Charleston, ME	
75,133	McComb Mill Warehouse	McComb, MS	
75,138	Ashland Foundry and Machine Works, Inc	Ashland, PA	
75,183	Reynolds Food Packaging, LLC, A Subsidiary of Reynolds Group Holding Limited.	Grove City, PA	
75,211	US Airways, Inc., Fleet Service Operations, Buffalo-Niagara International Airport.	Buffalo, NY	
75,292	ConocoPhillips Alaska Natural Gas Company, A Joint Venture with Marathon Oil; Kenai Plant.	Nikiski, AK	
75,312	R.J. Reynolds Tobacco Company, Subsidiary of Reynolds American, Inc.; Leased Workers from Debbie's Staffing.	Winston Salem, NC	

I hereby certify that the aforementioned determinations were issued during the period of April 18, 2011 through April 22, 2011. Copies of these determinations may be requested under the Freedom of Information Act. Requests may be submitted by fax, courier services, or mail to FOIA Disclosure Officer, Office of Trade Adjustment Assistance (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 or *tofoiarequest@dol.gov.* These determinations also are available on the Department's Web site at *http://www.doleta.gov/tradeact* under the searchable listing of determinations.

Dated: April 26, 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–10604 Filed 5–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Funding Opportunity and Solicitation for Grant Applications (SGA) for H–1B Technical Skills Training Grants

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA PY 10–13.

SUMMARY: Through this notice, the Employment and Training Administration (ETA), U.S. Department of Labor (DOL or the Department), announces the availability of approximately $240 million in funds for an H–1B Technical Skills Training Grants program. This grant program is designed to provide education, training, and job placement assistance in the occupations and industries for which employers are using H–1B visas to hire foreign workers, and the related activities necessary to support such training. H–1B technical skills training grants are financed by a user fee paid by employers to bring foreign workers into the United States under the H–1B nonimmigrant visa program. This technical skills training program was authorized under Section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), as amended (29 U.S.C. 2916a). Grant awards will be made only to the extent that funds are available.

The Department will make awards to two types of training grants: those that provide On-the-Job Training (OJT) to all participants and those that use other training strategies. Of the awards granted through this Solicitation, at least $150 million will be awarded to grantees that provide OJT to all participants. Between the two types of grants awarded (OJT and other training strategies), DOL intends to fund at least $45 million to applicants proposing to provide training for occupations in the health care industry and at least $60 million to applicants that serve long-term unemployed individuals. While this Solicitation is open, DOL anticipates that additional funding will accrue for this grant program. Such additional funding may be made available for awards during the second round of funding, depending on the quality of applications received.

The Department expects to award approximately 75–100 grants ranging from $1 million to $5 million with up to a 48-month period of performance. The Department will award grants to a partnership of private and public sector entities as defined in ACWIA. This partnership must include at least two entities from among the following groups: (1) Businesses or business-related nonprofit organizations, such as trade associations; (2) education and training providers, including community colleges and other community-based organizations; and (3) entities involved in administering the workforce investment system established under Title I of the WIA, and economic development agencies.

The complete SGA is available in detail on ETA's Web site at *http://www.doleta.gov/grants/find_grants.cfm* or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: There are two closing dates for receipt of applications which are June 2, 2011 and November 17, 2011.

FOR FURTHER INFORMATION CONTACT: Jeannette Flowers, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210; Telephone: 202–693–3322; E-mail: *flowers.jeannette@dol.gov.*

Signed in Washington, DC, this 25th day of April, 2011.

Laura Patton Watson,

Grant Officer, Employment and Training Administration.

[FR Doc. 2011–10306 Filed 5–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 13, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 26th day of April 2011.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

17 TAA PETITIONS INSTITUTED BETWEEN 4/18/11 AND 4/22/11

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
75314	JP Morgan (State/One-Stop)	Lewisville, TX	04/19/11	12/09/10
80111	International Game Technology (Company)	Las Vegas, NV	04/18/11	04/12/11
80112	STK, LLC (Company)	Coconut Creek, FL	04/18/11	04/15/11
80113	Diversey, Inc. (Company)	Sturtevant, WI	04/19/11	04/15/11
80114	Ceva Logistics (Company)	Van Wert, OH	04/19/11	04/18/11
80115	Domtar Paper Co LLC (State/One-Stop)	Ashdown, AR	04/19/11	04/18/11
80116	TE Connectivity Ltd. (Company)	Fort Mill, SC	04/19/11	04/18/11
80117	Precision Dynamics Corporation (Company)	Valencia, CA	04/19/11	04/18/11
80118	PSC Industrial (State/One-Stop)	Kelso, WA	04/19/11	04/18/11
80119	ASC (Union)	Ponca City, OK	04/19/11	04/12/11
80120	Premier Manufacturing Corporation (Union)	Cleveland, OH	04/20/11	04/11/11
80121	Nexergy (State/One-Stop)	Escondido, CA	04/20/11	04/19/11
80122	Honeywell International (Company)	Skaneateles Falls, NY	04/20/11	04/20/11
80123	Harman (Company)	Washington, MO	04/21/11	04/18/11
80124	Bestway Inc. (Company)	Saint Marys, PA	04/21/11	04/20/11
80125	Shine Electronics Co, Inc. (Workers)	Long Island City, NY	04/22/11	02/07/11
80126	Ryder Integrated Logistics (Company)	Highland Park, MI	04/22/11	04/21/11

[FR Doc. 2011–10603 Filed 5–2–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation Proposed Renewal of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. 3506(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 Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Miner's Claim for Benefits under the Black Lung Benefits Act (CM–911) and Employment History (CM–911A). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 5, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1447, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Division of Coal Mine Workers' Compensation administers the Black Lung Benefits Act (30 U.S.C. 901 *et seq.*), which provides benefits to coal miners totally disabled due to pneumoniosis, and their surviving dependents. A miner who applies for black lung benefits must complete the CM–911 (application form). The completed form gives basic identifying information about the applicant and is the beginning of the development of the black lung claim. The applicant must complete a CM–911a at the same time the black lung application form is submitted. This form when completed renders a complete history of employment and helps to establish if the miner currently or

formerly worked in the nation's coal mines. The person filing for benefits must have worked in the nation's coal mines or be a survivor of a coal miner as described under Title IV of the Federal Mine Safety and Health Act of 1977, as amended, in order for benefits to be pursued. This information collection is currently approved for use through September 30, 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 Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to administer the Black Lung Benefits Act.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Miner's Claim for Benefits under the Black Lung Benefits Act (CM–911) and Employment History (CM–911A).

OMB Number: 1240–0038.

Agency Number: CM–911 and CM–911A.

Affected Public: Individuals or households.

Form	Time to complete	Frequency of response	Number of respondents	Number of responses	Hours burden
CM–911	30	once	4,000	4,000	3,000
CM–911A	40	once	5,500	5,500	3,667
Totals			9,500	9,500	6,667

Total Respondents: 9,500.

Total Annual Responses: 9,500.

Average Time per Response: 42 minutes.

Estimated Total Burden Hours: 6,667.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,771.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 27, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2011–10612 Filed 5–2–11; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Division of Coal Mine Workers' Compensation Proposed Renewal of Existing Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance 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. 3506(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 Office of Workers' Compensation Programs is soliciting comments concerning the proposed collection: Representative Payee Report (CM–623), Representative Payee Report, Short Form (CM–623S) and Physician's/Medical Officer's Statement (CM–787). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 5, 2011.

ADDRESSES: Mr. Vincent Alvarez, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0372, fax (202) 693–1447, E-mail *Alvarez.Vincent@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Division of Coal Mine Workers' Compensation administers the Black Lung Benefits Act (30 U.S.C. 901 *et seq.*), which provides benefits to coal miners totally disabled due to pneumoniosis, and their surviving dependents. The CM–623, Representative Payee Report is used to collect expenditure data regarding the disbursement of the beneficiary's benefits by the representative payee to assure that the beneficiary's needs are being met. The CM–623S, Representative Payee—Short Form, is a shortened version of the CM–623 that is used when the representative payee is a family member residing with the beneficiary. The CM–787, Physician's/Medical Officer's Statement is used to gather information from the beneficiary's physician about the capability of the beneficiary to manage monthly benefits. This form is used by OWCP to determine if it is in the beneficiary's best interest to have his/her benefits managed by another party. The regulatory authority for collecting this information is in 20 CFR 725.506, 510, 511, and 513. This information collection is currently approved for use through September 30, 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 Department of Labor seeks the approval for the extension of this currently-approved information collection in order to carry out its responsibility to administer the Black Lung Benefits Act.

Agency: Office of Workers' Compensation Programs.

Type of Review: Extension.

Title: Representative Payee Report (CM–623), Representative Payee Report, Short Form (CM–623S) and Physician's/Medical Officer's Statement (CM–787).

OMB Number: 1240–0020.

Agency Number: CM–623, CM–623S and CM–787.

Affected Public: Individuals or households, Business or other for-profit and Not-for-profit institutions.

Form	Time to complete	Frequency of response	Number of respondents	Number of responses	Hours burden
CM–623	90	Annually	900	900	1,350
CM–623S	10	Annually	100	100	17
CM–787	15	Once	1,100	1,100	275
Totals			2,100	2,100	1,642

Total Respondents: 2,100.

Total Annual Responses: 2,100.

Average Time per Response: 46.9 minutes.

Estimated Total Burden Hours: 1,642.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 27, 2011.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2011–10611 Filed 5–2–11; 8:45 am]

BILLING CODE 4510–CK–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request; Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: National Archives and Records Administration.

ACTION: Notice and request for comments.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, we are seeking comment on the development of the following proposed Generic Information Collection Request (Generic ICR): "Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery" for approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*). This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Consideration will be given to all comments received by July 5, 2011.

ADDRESSES: Submit comments by one of the following methods:

• *E-mail: tamee.fechhelm@nara.gov.*

• *Fax:* (301) 713–7409.

Comments submitted in response to this notice may be made available to the public through relevant Web sites. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an e-mail comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–1694, or fax number 301–713–7409.

SUPPLEMENTARY INFORMATION: *Title:* Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Abstract: The proposed information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

• The collections are voluntary;

• The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;

• The collections are non-controversial and do not raise issues of concern to other Federal agencies;

• Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;

• Personally identifiable information (PII) is collected only to the extent necessary and is not retained;

• Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;

• Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: New collection of information.

Type of Review: New Collection.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: 25,000.

Below we provide projected average estimates for the next three years:

Average Expected Annual Number of activities: 20.

Average Number of Respondents per Activity: 1,250.

Annual Responses: 1.

Frequency of Response: Once per request.

Average Minutes per Response: 30.

Burden Hours: 12,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and use technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection at Regulations.gov.

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 Office of Management and Budget control number.

Dated: April 22, 2011.

Michael L. Wash,

Assistant Archivist for Information Services.

[FR Doc. 2011–10790 Filed 5–2–11; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Meeting; Notice of a Matter To Be Added to the Agenda for Consideration at an Agency Meeting

TIME AND DATE: 2 p.m., Thursday, May 4, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE ADDED: 2. Consideration of Supervisory Activity. Closed pursuant to exemptions (8), (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–10848 Filed 4–29–11; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Chemistry, #1191.

Date and Time: May 12, 2011, 8:30 a.m.–5 p.m.; May 13, 2011, 8:30 a.m.–2 p.m.

Place: Center for Chemistry at the Space-Time Limit, University of California, Irvine.

Type of Meeting: Part-open.

Contact Person: Robert Kuczkowski, Program Director, Chemistry Centers Program, Division of Chemistry, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–4454.

Purpose of Meeting: To conduct an in depth evaluation of performance, to assess progress towards goals, and to provide recommendations.

Agenda

Thursday, May 12, 2011

8:30 a.m.–10 a.m. Open—Welcome, CCI presentations

10 a.m.–12 p.m. Open—Coffee break and Poster Session
12 p.m.–1:30 p.m. Closed—Lunch and panel deliberations
1:30 p.m.–3:30 p.m. Open—Additional CCI Presentations
3:30 p.m.–5 p.m. Closed—Panel Deliberations

Friday, May 13, 2011

8:30 a.m.–10 a.m. Open—Management Discussions
10 a.m.–1 p.m. Closed—Panel prepares report
1 p.m.–2 p.m. Open—Outbrief, CCI Leadership

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including privileged intellectual property and personal information. These matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: April 27, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–10601 Filed 5–2–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Chemistry #1191.

Date and Time: May 17, 2011, 8:30 a.m.–5 p.m.; May 18, 2011, 8:30 a.m.–2 p.m.

Place: Center for Enabling New Transformations in Catalysis (CENTC); University of Washington, Seattle, Washington.

Type of Meeting: Part-open.

Contact Person: Katharine Covert, Acting Deputy Division Director, Chemistry Centers Program, Division of Chemistry, Room 1055, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–4950.

Purpose of Meeting: To provide advice and recommendations for continued funding of CENTC.

Agenda

Tuesday, May 17, 2011

8:30 a.m.–10 a.m. Open—Welcome, CCI presentations
10 a.m.–12 p.m. Open—Coffee break and Poster Session
12 p.m.–1:30 p.m. Closed—Lunch and Panel Deliberations
1:30 p.m.–3:30 p.m. Open—Additional CCI Presentations
3:30 p.m.–5 p.m. Closed—Panel Deliberations

Wednesday, May 18, 2011

8:30 a.m.–10 a.m. Open—Management Discussions with CCI
10 a.m.–1 p.m. Closed—Panel prepares report
1 p.m.–2 p.m. Open—Outbrief, CCI Leadership

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposal. These matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government Sunshine Act.

Dated: April 27, 2011.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2011–10600 Filed 5–2–11; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: May 10, 2011 at 8 a.m. through May 11, 2011 at 3:15 p.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. Public visitors must arrange for a visitor's badge in advance. Call 703–292–7000 or e-mail *NationalScienceBrd@nsf.gov* and leave your name and place of business to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting.

STATUS: Some portions open, some portions closed.

UPDATES: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

Open Sessions (May 10, 2011)

8 a.m.–8:15 a.m.
8:15 a.m.–9 a.m.
9 a.m.–10:30 a.m.
11 a.m.–12 p.m.
1 p.m.–2:30 p.m.
2:30 p.m.–4 p.m.

Closed Session (May 10, 2011)

10:30 a.m.–11 a.m.

Open Sessions (May 11, 2011)

8 a.m.–9 a.m.
9 a.m.–10 a.m.
10 a.m.–10:30 a.m.
10:30 a.m.–11 a.m.
11:15 a.m.–12:15 p.m.
1:15 p.m.–1:30 p.m.
2:15 p.m.–3:15 p.m.

Closed Sessions (May 11, 2011)

11 a.m.–11:15 a.m.
1:30 p.m.–1:45 p.m.
1:45 p.m.–2:15 p.m.

Matters To Be Discussed

May 10, 2011

Open Session—Chairman's Introductory Remarks 8 a.m.–8:15 a.m.

CPP Subcommittee on Polar Issues (SOPI)

Open Session: 8:15 a.m.–9 a.m.
- Chairman's Remarks
- Approval of Minutes
- OPP Director's Remarks
- Report on CTAM Camp
- Update on Outreach Activities

Committee on Audit and Oversight (A&O)

Open Session 9 a.m.–10:30 a.m.
- Chairman's Remarks
- Approval of Minutes
- FY 2010 Merit Review Report
- OIG Semi-Annual Report Transmittal
- Inspector General's Update
- FY 2011 Financial Statement Audit
- Chief Financial Officer's Update
- Human Resources Update

A&O Closed Session 10:30 a.m.–11 a.m.
- Chairman's Remarks
- Approval of Minutes
- Procurement Activities
- Investigative Update

Plenary

Open Session: 11 a.m.–12 p.m.
- Presentation from Dr. Charles Vest, Vannevar Bush Award Recipient
- Presentation from Dr. Casey Dunn, Alan T. Waterman Award Recipient

Task Force on Merit Review (MR)

Open Session: 1 p.m.–2:30 p.m.
- Chairman's Remarks
- Approval of Minutes
- Summary of Input from Stakeholder

Groups
- Discussion of Preliminary Task Force Recommendations

Committee on Science and Engineering Indicators (SEI)

Open Session: 2:30 p.m.–4 p.m.
- Chairman's Remarks
- Approval of Minutes
- Review of *Science and Engineering Indicators 2012* Chapter Drafts
- Discussion of *Science and Engineering Indicators 2012* Companion Piece Topics

May 11, 2011

Committee on Education and Human Resources (CEH)

Open Session: 8 a.m.–9 a.m.
- Chairman's Remarks
- Approval of Minutes
- Discussion of CEH STEM Education Priority "Action Items"
- Strategic Planning for the NSF Education Portfolio
- Discussion of CEH STEM Education Prospective Horizon "Action Items"

CSB Task Force on Data Policies

Open Session: 9 a.m.–10 a.m.
- Chairman's Remarks
- Approval of Minutes
- Discussion of March Workshop
- Update on related activities from NSF

CPP Task Force on Unsolicited Mid-Scale Research (MS)

Open Session: 10 a.m.–10:30 a.m.
- Approval of Minutes
- Summary of March 31, 2011 Discussion Group Meeting
- Summary of April 19, 2011 Task Force Teleconference
- Update on the Survey and June 5–7, 2011 Workshop Planning

Committee on Strategy & Budget (CSB)

Open Session 10:30 a.m.–11 a.m.
- Chairman's Remarks
- Approval of Minutes
- Development and Approval Process of RFPs for Recompetitions
- NSF FY 2011 and FY 2012 Budget Updates
- Status of ARRA Funding

CSB Closed Session 11 a.m.–11:15 a.m.
- FY 2013 Budget Development
- Long Range Planning

Plenary

Open Session: 11:15 a.m.–12:15 p.m.
- Presentation from Dr. Moira Gunn, Public Service Award Recipient, Individual
- Presentation from Dr. Dennis Bartels for the Exploratorium, Public Service Award Recipient, Group

Executive Committee

Open Session: 1:15p.m.–1:30 p.m.
- Chairman's Remarks
- Approval of Minutes
- Approval of the Executive Committee Annual Report

Plenary

Executive Closed Session: 1:30 p.m.–1:45 p.m.
- Approval of Minutes
- Election of Executive Committee Members
- Board Office Personnel

Plenary

Closed Session: 1:45 p.m.–2:15 p.m.
- Approval of Minutes
- Awards and Agreements
- Closed Committee Reports

Plenary

Open Session: 2:15 p.m.–3:15 p.m.
- Approval of Minutes
- Chairman's Report
- Director's Report
- Open Committee Reports

Meeting Adjourns 3:15 p.m.

Ann Ferrante,

National Science Board Office.

[FR Doc. 2011–10846 Filed 4–29–11; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of National Science Board business and other matters specified, as follows:

AGENCY HOLDING MEETING: National Science Board.

DATE AND TIME: May 9, 2011 at 8 a.m. through 6:15 p.m.

PLACE: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230. All visitors must report to the NSF visitor desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge. Public visitors must arrange for a visitor's badge in advance. Call 703–292–7000 or e-mail *NationalScienceBrd@nsf.gov* and leave your name and place of business to request your badge, which will be ready for pick-up at the visitor's desk on the day of the meeting.

STATUS: Some portions open, some portions closed.

UPDATES: Please refer to the National Science Board Web site *http://www.nsf.gov/nsb* for additional information and schedule updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/.*

AGENCY CONTACT: Jennie L. Moehlmann, *jmoehlma@nsf.gov,* (703) 292–7000.

PUBLIC AFFAIRS CONTACT: Dana Topousis, *dtopousi@nsf.gov,* (703) 292–7750.

Open Sessions

8 a.m.–11:30 a.m.
2:15 p.m.–4:30 p.m.

Closed Sessions

12:30 p.m.–2 p.m.
4:30 p.m.–6:15 p.m.

Matters To Be Discussed

May 9, 2011

CSB Subcommittee on Facilities (SCF)

Open Session: 8 a.m.–11:30 a.m.
- Chairman's Remarks
- Approval of Minutes
- Best Practices Update
- Annual Portfolio Review Discussion
- Progress on Mid-Scale Information

SCF Closed Session 12:30 p.m.–2 p.m.
- Future MREFC Projects

Committee on Programs and Plans (CPP)

Open Session 2:15 p.m.–4:30 p.m.
- Chairman's Remarks
- Approval of Minutes
- Discussion Item: CPP Program Portfolio Reviews
- Discussion Item: Recompetition Policy Discussion
- Information Item: Status Deep Underground Science and Engineering Laboratory
- Information Item: High Performance Computing Acquisition
- Information Item: DataNet Program
- Information Item: LIGO Science Results

CPP Closed Session 4:30 p.m.–6:15 p.m.
- Chairman's Remarks
- Approval of Minutes
- Information Item: EPSCoR Research Infrastructure Improvement
- Action Item: Support for IRIS
- Action Item: Support for NSCL
- Action Item: Support for OCI project

Meeting Adjourns 6:15 p.m.

Ann Ferrante,

National Science Board Office.

[FR Doc. 2011–10845 Filed 4–29–11; 4:15 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0065]

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 its 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:* Grant and Cooperative Agreement Provisions.

2. *Current OMB approval number:* 3150–0107.

3. *How often the collection is required:* Technical performance reports are required every six months; other information is submitted on occasion, as needed.

4. *Who is required or asked to report:* Grant and Cooperative Agreement Recipients.

5. *The number of annual respondents:* 350.

6. *The number of hours needed annually to complete the requirement or request:* 8,077 (7,540 reporting hours plus 537 recordkeeping hours).

7. *Abstract:* The Division of Contracts is responsible for awarding grants and cooperative agreements (financial assistance) for the NRC. The Division of Contracts collects information from assistance recipients in accordance with grant and cooperative agreement provisions in order to administer NRC's financial assistance program. The information collected under the provisions ensures that the Government's rights are protected, the agency adheres to public laws, the work proceeds on schedule, and that disputes between the Government and the recipient are settled.

Submit, by July 5, 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, O1–F21, 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–2011–0065. 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–2011–0065. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed 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 27th day of April 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–10649 Filed 5–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0059]

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 450, "General Assignment."

2. *Current OMB approval number:* 3150–0114.

3. *How often the collection is required:* Once during the contract closeout process.

4. *Who is required or asked to report:* Contractors.

5. *An estimate of the number of annual respondents:* 60.

6. *An estimate of the number of hours needed annually to complete the requirement or request:* 120.

7. *Abstract:* During the contract closeout process for cost-reimbursement and time-and-materials type contracts, the NRC requires the contractor to execute NRC Form 450, General Assignment. Execution of this form grants to the government all rights, title, and interest to refunds arising out of the contractor performance.

Submit, by July 5, 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–2011–0059. 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–2011–0059. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed 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 27th day of April 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–10648 Filed 5–2–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0090]

Solicitation for Public Comment on Potential Alternatives To Resolve Generic Safety Issue 191, Pressurized Water Reactor Sump Performance

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Solicitation of public comment.

SUMMARY: The NRC is seeking public comment on potential alternatives for risk informing the path forward to resolve Generic Safety Issue (GSI) 191, Pressurized Water Reactor (PWR) Sump Performance.

DATES: Submit comments by July 5, 2011.

ADDRESSES: Please include Docket ID NRC–2011–0090 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–2011–0090. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

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, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0090.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Bailey, Chief of Safety Issue Resolution Branch, telephone (301) 415–1321, *e-mail: Stewart.Bailey@nrc.gov,* or in writing at the Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Background

The NRC identified a potential susceptibility of PWR emergency core cooling system (ECCS) recirculation sump screens and associated flow paths to debris blockage during design basis accidents that require recirculation operation. As a result, all operating PWR licensees were requested in Generic Letter (GL) 2004–02, Potential Impact of Debris Blockage on Emergency Recirculation during Design Basis Accidents at Pressurized-Water Reactors, to perform a mechanistic evaluation of the recirculation functions and, as appropriate, to take additional actions (*e.g.,* plant modifications) to ensure system functionality.

An overview of licensee and NRC staff actions to address GSI–191 can be found in Policy Issue Notation Vote Paper (SECY–10–0113) which presented to the Commission the regulatory path forward options for closure. In a Staff Requirement Memorandum (SRM) dated December 23, 2010, the Commission directed the staff, in part, to explore alternative paths forward for resolving GSI–191.

Discussion

While GSI–191 has not yet been fully resolved, the NRC believes that measures taken thus far in response to the sump-clogging issue have contributed greatly to the safety of US nuclear power plants. Given the vastly enlarged advanced strainers installed, compensatory measures already taken, and the low probability of challenging pipe breaks, adequate levels of safety and defense-in-depth are currently being maintained. In light of these factors, the Commission directed that the staff should take the time needed to consider all options to a risk-informed, safety conscious resolution to GSI–191.

The SRM to SECY–10–0113 stated that the staff should employ innovation and creativity in fully exploring the policy and technical implications of all available alternatives for risk informing the path forward. These alternatives were to include, but not be limited to, how proposed rule for Title 10 of the *Code of Federal Regulations,* Section 50.46a might impact this issue, and how the application of a "no-transition-break-size" approach might work. SECY–10–0113 is publically available in the Agencywide Documents Access and Management System (ADAMS) under accession No. ML101820296. The SRM to SECY–10–0113 is also publically

available in ADAMS under accession No. ML103570354. Stakeholders and interested parties are encouraged to introduce other options, issues, and information for the NRC's consideration.

In an effort to facilitate public involvement, the staff previously solicited public input during the 2011 NRC Regulatory Information Conference (RIC), held in Rockville, MD. During the RIC, GSI–191 was the subject of one of the RIC technical sessions. Information concerning the 2011 RIC is available at *http://www.nrc.gov/public-involve/conference-symposia/ric.* The GSI–191 technical session agenda and links to all presentation documents can be found at *https://ric.nrcgateway.gov/docs/abstracts/SessionAbstract_7.htm.*

Dated at Rockville, Maryland, this 14th day of April 2011.

For the Nuclear Regulatory Commission.

Sher Bahadur,

Acting Director, Division of Safety Systems, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–10712 Filed 5–2–11; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2011–0095]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. 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 April 7, 2011, to April 20, 2011. The last biweekly notice was published on April 19, 2011 (76 FR 21917 to 21928).

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) 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.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852.

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 Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public NRC Library on the Internet at the NRC Web site, *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, then 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 ten (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 EIE, 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 Commission's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available records will be accessible from the ADAMS Public NRC Library on the Internet at the NRC Web site, *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., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: April 6, 2011.

Description of amendment request: The proposed amendment would revise the Technical Specification (TSs) to define a new time limit for restoring inoperable reactor coolant system (RCS) leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. These changes are consistent with NRC-approved Revision 3 to TSTF Standard Technical Specification Change Traveler TSTF–514, "Revise BWR Operability Requirements and Actions for RCS Leakage Instrumentation," as part of the consolidated line item improvement process. In addition, the proposed amendment would make a minor editorial change to correct a formatting issue to be consistent with the Technical Specifications Task Force TSTF–GG–05–01, "Writer's Guide for Plant Specific Improved Technical Specifications," and the BWR6 TS format.

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 clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that this change does not involve a significant increase in the probability of 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 clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the drywell atmospheric gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the drywell atmospheric gaseous radiation monitor operable increase the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that 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: Terence A. Burke, Associate General Counsel—Nuclear Entergy Services, Inc., 1340 Echelon Parkway, Jackson, Mississippi 39213.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of amendment request: September 22, 2010, as supplemented by letter dated April 7, 2011.

Description of amendment request: This notice is being reissued in its entirety due to a modified submittal received from Exelon Generation Company, LLC. The original notice was published in the **Federal Register** on November 30, 2010 (75 FR 74095). The proposed amendment would relocate the list of pumps, fans, and valves in Technical Specification (TS) 4.5.1.1b,

Sequence and Power Transfer Test, to the Three Mile Island, Unit 1 (TMI–1) Updated Final Safety Analysis Report. In place of the TS equipment listing there will be a more general reference to the permanently-connected and automatically-connected emergency loads which are tested through the load sequencer. In addition, TS 4.5.1.2b, TS 4.5.2.2a, and TS 4.5.2.2b refer to this test and are proposed for revision to reflect the proposed change to TS 4.5.1.1b.

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 proposed license amendment does not add, delete or modify plant equipment. The proposed changes are administrative in nature. The proposed amendment would relocate the list of pumps, fans and valves in Technical Specification (TS) 4.5.1.lb, Sequence and Power Transfer Test, to the TMI–1 Updated Final Safety Analysis Report (UFSAR) Section 8.2, Table 8.2–11, Engineered Safeguards Loading Sequence. In addition, TS 4.5.1.1b and TS 4.5.1.2b are being modified to include a high level description of equipment required to be included in the Sequence and Power Transfer Test, and the Sequence Test, respectively.

The proposed changes relocate surveillance requirement details that are not required by 10 CFR 50.36. The proposed changes do not change current surveillance requirements. The subject list of pumps, fans and valves that will be relocated to UFSAR Section 8.2, Table 8.2–11, will be controlled under 10 CFR 50.59.

The probability of an accident is not increased by these proposed changes because neither the Sequence and Power Transfer Test nor the Sequence Test are initiators of any design basis event. Additionally, the proposed changes do not involve any physical changes to plant structures, systems, or components (SSCs), or the manner in which these SSCs are operated, maintained, or controlled. The consequences of an accident will not be increased because the proposed administrative changes to the Sequence and Power Transfer Test, and the Sequence Test, will continue to provide a high degree of assurance that the Electric Power System will meet its safety related function.

Therefore, the proposed changes do 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 previously evaluated?

Response: No.

The proposed changes do not alter the physical design, safety limits, safety analyses assumptions, or the manner in which the plant is operated or tested. The proposed changes are administrative in nature and the surveillance requirements remain the same. Accordingly, the proposed changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant SSC in the performance of their safety function.

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.

The margin of safety is associated with the confidence in the ability of the fission product barriers (i.e., fuel cladding, reactor coolant pressure boundary, and containment structure) to limit the level of radiation to the public. There are no physical changes to SSCs or operating and testing procedures associated with the proposed amendment.

The proposed changes do not impact the assumptions of any design basis accident, and do not alter assumptions relative to the mitigation of an accident or transient event. The proposed changes are administrative in nature and the surveillance requirements remain the same.

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: J. Bradley Fewell, Esquire, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Harold K. Chernoff.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 28, 2011.

Description of amendment request: The proposed amendment would modify the Hope Creek Generating Station (HCGS) Technical Specifications (TSs) to revise the existing TS for the Control Room Emergency Filtration (CREF) system and to add a new TS for the Control Room Air Conditioning (AC) system. The proposed amendment is based, in part, on Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) Standard TS (STS) Change Traveler TSTF–477, Revision 3, "Adding an Action Statement for Two Inoperable Control Room Air Conditioning Subsystems." Plant-specific deviations from TSTF–477 are proposed to accommodate differences between the HCGS TSs and the STSs originally used to develop TSTF–477.

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 proposed changes add a separate Technical Specification (TS) for the Control Room Air Conditioning (AC) system, and renumbers and revises the existing TS for the Control Room Emergency Filtration (CREF) system. Consistent with Technical Specification Task Force (TSTF) Standard TS Change Traveler TSTF–477, the proposed change also adds an action statement for two inoperable Control Room AC subsystems.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). The proposed changes add a separate TS for the Control Room AC system and an action statement for two inoperable control room subsystems. The equipment qualification temperature of the control room equipment is not affected. Future changes to the Bases or licensee-controlled document[s] will be evaluated pursuant to the requirements of 10 CFR 50.59, "Changes, test and experiments," to ensure that such changes do not result in more than a minimal increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not adversely affect the ability of structures, systems and components (SSCs) to perform their intended safety function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological consequences of any accident previously evaluated. Further, the proposed changes do not increase the types and the amounts of radioactive effluent that may be released, nor significantly increase individual or cumulative occupation/public radiation exposures.

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 proposed changes add a separate TS for the Control Room AC system and an

action statement for two inoperable control room subsystems. The changes do not involve a physical altering of the plant (i.e., no new or different type of equipment will be installed) or a change in methods governing normal plant control room temperature within the design limits.

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.

The proposed changes add a separate TS for the Control Room AC system and an action statement for two inoperable control room subsystems. Instituting the proposed changes will continue to maintain the control room temperature within design limits. Changes to the Bases or license[e-]controlled document[s] are performed in accordance with 10 CFR 50.59. This approach provides an effective level of regulatory control and ensures that the control room temperature will be maintained within design limits.

The proposed changes maintain sufficient controls to preserve the current margins of safety.

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: Jeffrie J. Keenan, PSEG Nuclear LLC—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Branch Chief: Harold K. Chernoff.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant (BFN), Units 2 and 3, Limestone County, Alabama

Date of amendment request: February 25, 2011.

Description of amendment request: The proposed amendments would delete Technical Specification (TS) Surveillance Requirement 3.5.1.12, which requires the verification of the capability to automatically transfer the power supply from the normal source to the alternate source for each Low Pressure Coolant Injection (LPCI) subsystem inboard injection valve and each recirculation pump discharge valve on a 24-month frequency.

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 Technical Specification change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The 480V RMOV Boards D or E, the equipment they power, or the automatic power transfer feature provided for these boards are not precursors to any accident previous evaluated in the Updated Final Safety Analysis Report (UFSAR). Therefore, the probability of an evaluated accident is not increased by modifying this equipment. The proposed deletion of the requirement to maintain the automatic transfer capability for the power supply to the LPCI inboard injection valves, RHR [residual heat removal] minimum flow valves and recirculation pump discharge valves does not change the number of Emergency Core Cooling System (ECCS) subsystems credited in the BFN licensing basis. The proposed change does not affect the operational characteristics or function of systems, structures, or components (SSCs), the interfaces between credited SSCs and other plant systems, or the reliability of SSCs. The proposed change does not impact the capability of credited SSCs to perform their required safety functions.

Therefore, the proposed TS changes will not significantly increase the consequences of an accident previously evaluated.

2. Does the proposed Technical Specification change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed deletion of the requirement to maintain an automatic transfer capability for the power supply to the LPCI inboard injection valves, RHR minimum flow valves and recirculation pump discharge valves does not introduce new equipment, which could create a new or different kind of accident.

The proposed change does not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. The capability of credited SSCs to perform their required function will not be affected by the proposed change. In addition, the proposed change does not affect the interaction of plant SSCs with other plant SSCs whose failure or malfunction can initiate an accident or transient. As such, no new failure modes are being introduced. No new external threats, release pathways, or equipment failure modes are created. Therefore, the proposed deletion of the requirement to maintain an automatic transfer capability for the power supply to the LPCI inboard injection valves, RHR minimum flow valves and recirculation pump discharge valves will not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed Technical Specification change involve a significant reduction in a margin of safety?

Response: No.

The proposed deletion of the requirement to maintain an automatic transfer capability for the power supply to the LPCI inboard injection valves, RHR minimum flow valves and recirculation pump discharge valves does not change the conditions, operating configurations, or minimum amount of operating equipment credited in the safety analyses for accident or transient mitigation. The proposed change does not alter the assumptions contained in the safety analyses. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not impact the safety analysis credited redundancy or availability of SSCs required for accident or transient mitigation, or the ability of the plant to cope with design basis events as assumed in safety analyses. In addition, no changes are proposed in the manner in which the credited SSCs provide plant protection or which create new modes of plant operation. The requirements of 10 CFR 50.46 and Appendix K continue to be met. 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 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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, 6A West Tower, Knoxville, Tennessee 37902.

NRC Branch Chief: Douglas A. Broaddus.

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 Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public NRC Library on the internet at the NRC Web site, *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 email to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: April 29, 2010, as supplemented by letters dated June 9, July 22, July 29, September 29, October 12, November 9, November 18, and December 16, 2010; March 16, and April 6, 2011.

Brief description of amendments: The proposed license amendments revised the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, Technical Specification 5.6.5.b by adding AREVA topical report, BAW–10247PA, "Realistic Thermal-Mechanical Fuel Rod Methodology for Boiling Water Reactors," Revision 0, April 2008, to the list of analytical methods that have been reviewed and approved by the NRC for determining core operating limits. The proposed amendments changed the BSEP Technical Specifications to support transition to ATRIUM 10XM fuel and associated core design methodologies.

Date of issuance: April 8, 2011.

Effective date: Date of issuance, to be implemented prior to startup from the 2011 refueling outage (RFO) for Unit 2, and prior to startup from the 2012 RFO for Unit 1.

Amendment Nos.: Unit 1—256 and Unit 2—284.

Renewed Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 2010 (75 FR 48373). The supplemental letters dated June 9, July 29, September 29, October 12, November 9, November 18, and December 16, 2010; March 16 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 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 April 8, 2011.

No significant hazards consideration comments received: No.

Carolina Power and Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: April 29, 2010, as supplemented by letters dated June 9, July 22, July 29, September 29, October 12, November 9, November 18, and December 16, 2010, and April 6, 2011.

Brief description of amendments: The proposed license amendments revised the Brunswick Steam Electric Plant (BSEP), Units 1 and 2, Technical Specification (TS) 5.6.5.b by adding the AREVA, topical report, ANP–10298PA, "ACE/ATRIUM 10XM Critical Power Correlation," Revision 0, March 2010, to the list of analytical methods that have been reviewed and approved by the NRC for determining core operating limits. The proposed amendments changed the BSEP Units 1 and 2 TSs to support transition to ATRIUM 10XM fuel and associated core design methodologies.

Date of issuance: April 8, 2011.

Effective date: Upon date of issuance and implemented prior to startup from the 2011 refueling outage (RFO) for Unit 2 and prior to start-up from the 2012 RFO for Unit 1.

Amendment Nos.: Unit 1—257 and Unit 2—285.

Renewed Facility Operating License Nos. DPR–71 and DPR–62: Amendments revised the TSs.

Date of initial notice in **Federal Register:** August 10, 2010 (75 FR 48372). The supplemental letters dated June 9, July 29, September 29, October 12, November 9, November 18, and December 16, 2010, 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 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 April 8, 2011.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of application for amendment: June 17, 2010, as supplemented by letters dated January 17, 20, and 31 and March 7, 2011.

Brief description of amendment: The amendment revised Technical Specification 6.5.16, "Containment Leakage Rate Testing Program," to allow for the extension of the 10-year frequency of the Arkansas Nuclear One, Unit 2 Type A or Integrated Leak Rate Test to 15 years on a permanent basis.

Date of issuance: April 7, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 292.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of initial notice in **Federal Register:** July 27, 2010 (75 FR 44024). The supplemental letters dated January 17, 20, and 31 and March 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 amendment is contained in a Safety Evaluation dated April 7, 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; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendment: December 14, 2010.

Brief description of amendment: The amendments revised Technical Specification (TS) 5.5.9, "Steam Generator (SG) Program," to exclude portions of the tubes within the tubesheet from periodic steam generator (SG) inspections and plugging or repair. In addition, these amendments revise TS 5.6.9, "Steam Generator (SG) Tube

Inspection Report," to remove reference to previous interim alternate repair criteria and provide reporting requirements specific to the temporary alternate criteria.

Date of issuance: April 13, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days for Braidwood Station, Units 1 and 2, for Byron Station, Unit Nos. 1 and 2 prior to conducting the SG inspections required by TS 5.5.9 for the Byron Station, Unit No. 2, fall 2011 refueling outage (B2R16).

Amendment Nos.: 166 and 172.

Facility Operating License Nos. NPF–72, NPF–77, NPF–37, and NPF–66: The amendments revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** February 1, 2011 (76 FR 5617).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 13, 2011.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: April 19, 2010, as supplemented by letters dated October 15, 2010, and March 14, 2011.

Brief description of amendments: The amendment request proposed changes to the technical specifications (TSs) to revise TS 3.4.11, "RCS [reactor coolant system] Pressure and Temperature (P/T) [or P–T] Limits," to incorporate revised P–T curves that are valid for up to 32 effective full power years (EFPYs) of operation.

Date of issuance: April 15, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 201/188.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** June 29, 2010 (75 FR 37475).

The October 15, 2010, and March 14, 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 April 15, 2011.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station (LGS), Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendment: March 25, 2010, as supplemented by letters dated April 26, 2010, June 29, 2010, July 22, 2010, July 28, 2010 (2), August 10, 2010, August 12, 2010 (2), August 30, 2010, December 17, 2010, and January 7, 2011.

Brief description of amendment: The changes implemented an increase of approximately 1.65 percent in rated thermal power from the current licensed thermal power of 3458 megawatts thermal (MWt) to 3515 MWt. The changes are based on increased feedwater flow measurement accuracy, which will be achieved by utilizing Cameron International (formerly Caldon) CheckPIus Leading Edge Flow Meter ultrasonic flow measurement instrumentation. The changes also modified certain technical specification setpoints and channel surveillance requirements associated with average power range monitor simulated thermal power. Additionally, the proposed changes include a modification to the Standby Liquid Control System, that allows operators to select two pumps instead of three for the automatic start function on an Anticipated Transient Without Scram signal.

Date of issuance: April 8, 2011.

Effective date: For LGS Unit 1, as of the date of issuance and shall be implemented within 90 days of issuance. For LGS Unit 2, as of the date of issuance and shall be implemented within 90 days of the completion of refueling outage Li2R11.

Amendment Nos.: 201 and 163.

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:** June 8, 2010 (75 FR 32512). The supplements dated April 26, 2010, June 29, 2010, July 22, 2010, July 28, 2010 (2), August 10, 2010, August 12, 2010 (2), August 30, 2010, December 17, 2010, and January 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 NRC staff's original proposed no significant hazards determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 2011.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: October 21, 2010, as supplemented by letters dated February 2, 2011, and March 17, 2011.

Brief description of amendment: This license amendment modified Technical Specification 2.1.1, "Reactor Core SLs," by incorporating revised safety limit minimum critical power ratio values resulting from a plant-specific analysis performed for PNPP Cycle 14 core.

Date of issuance: April 18, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 155.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** January 11, 2011 (76 FR 1649).

The February 2, 2011 and March 17, 2011 supplements contained clarifying information and did not change the NRC staff's initial proposed finding of significant hazards consideration published in the **Federal Register** (76 FR 1649, January 11, 2011).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 18, 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: December 8, 2008, as supplemented by letters dated January 16, January 27, February 20, April 17 (two letters), May 8, May 15, June 1, July 24, August 20, September 4 (two letters), September 10, October 2, November 20, November 25, and December 17 of 2009; January 14, February 4 (two letters), March 5, April 20, July 8, July 29, August 12, September 3, October 12, and November 16 of 2010; January 27 and February 10 of 2011.

Brief description of amendments: The amendments modified the requirements of TS 3.4.16, "RCS [reactor coolant system] Specific Activity," and TS 3.7.13, "Secondary Specific Activity," as related to the use of an alternate source term (AST) associated with accident offsite and control room dose consequences. Implementation of the AST supports adoption of the control room envelope habitability controls in accordance with NRC-approved TS Task

Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, "Control Room Habitability." To support this change, the amendment modified the following: 1) TS 1.1, "Definitions"; 2) TS 3.7.9, "Control Room Emergency Filtration System (CREFS)," Limiting Condition for Operation 3.7.9, including Surveillance Requirements 3.7.9.2, 3.7.9.3, and 3.7.9.6; 3) TS 5.5.15, "Containment Leakage Rate Testing Program"; 4) the addition of TS 5.5.18, "Control Room Envelope Habitability." Finally, TS 5.6.4, "Core Operating Limits Report (COLR)," will incorporate the addition of the NRC-approved analytical methodology as described in WCAP–16259–P–A, "Westinghouse Methodology for Application of 3–D Transient Neutronics to Non-LOCA Analyses."

Date of issuance: April 14, 2011.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 240, 244.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the License, Appendix C, and the Technical Specifications.

Date of initial notice in **Federal Register:** October 12, 2010 (75 FR 62602).

The supplemental letters contained clarifying information and did not change the 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 April 14, 2011.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket No. 52–008, North Anna Early Site Permit (ESP) Site, Louisa County, Virginia

Date of amendment request: September 2, 2010.

Description of amendment request: The amendment revised the North Anna Early Site Permit by deleting condition 3.G, which prescribes the notification and certification requirements associated with beginning the site preparation and preliminary construction activities approved by ESP–003.

Date of issuance: April 13, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: Two.

Early Site Permit No. ESP–003: Amendment revised the North Anna site ESP.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes.

Date of initial notice in the **Federal Register** *(FR):* November 30, 2010 (75 FR 74105). The November 30, 2010 FR notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the requested approval of the amendment, and state consultation, are contained in a safety evaluation dated April 13, 2011. The NRC staff determined that the amendment satisfied the categorical exclusion criterion of 10 CFR 51.22(c) and no environmental assessment was required.

Attorney for the licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Hossein Hamzehee.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: May 6, 2010.

Brief description of amendment: These amendments revised TS 4.2.1, "Fuel Assemblies," to add Optimized ZIRLO™ as an acceptable fuel rod cladding material. In addition, the amendments revised TS 5.6.5.b to add the Westinghouse topical report for Optimized ZIRLO™ to the list of analytical methods used to determine the core operating limits.

Date of issuance: April 14, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 263 and 244.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments changed the licenses and the technical specifications.

Date of initial notice in **Federal Register:** August 27, 2010 (75 FR 52781).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 14, 2011.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 2010.

Brief description of amendment: The amendment corrected a typographical error in Technical Specification (TS) 5.0, "ADMINISTRATIVE CONTROLS." The current TSs, on page 5.0–31, has two paragraphs numbered as 5.7.2.d.3. The amendment renumbered the second paragraph as 5.7.2.d.4.

Date of issuance: April 19, 2011.

Effective date: As the date of issuance and shall be implemented within 90 days of the date of issuance.

Amendment No.: 196.

Renewed Facility Operating License No. NPF–42. The amendment revised the Operating License and Technical Specifications.

Date of initial notice in **Federal Register:** December 14, 2010 (75 FR 77917).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 21st day of April 2011.

For the Nuclear Regulatory Commission.

Robert A. Nelson,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–10405 Filed 5–2–11; 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 May 2, 9, 16, 23, 30, June 6, 13, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 2, 2011

Tuesday, May 3, 2011

9 a.m. Information Briefing on Emergency Preparedness (Public Meeting). (*Contact:* Robert Kahler, 301–415–7528.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 9, 2011—Tentative

Thursday, May 12, 2011

9:30 a.m. Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following the Events in Japan (Public Meeting) (*Contact:* Nathan Sanfilippo, 301–415–3951.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 16, 2011—Tentative

There are no meetings scheduled for the week of May 16, 2011.

Week of May 23, 2011—Tentative

Friday, May 27, 2011

9 a.m. Briefing on Results of the Agency Action Review Meeting (AARM) (Public Meeting). (*Contact:* Rani Franovich, 301–415–1868.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 30, 2011—Tentative

Thursday, June 2, 2011

9:30 a.m. Briefing on Human Capital and Equal Employment Opportunity (EEO) (Public Meeting). (*Contact:* Susan Salter, 301–492–2206.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 6, 2011—Tentative

Monday, June 6, 2011

10 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting). (*Contact:* Tanny Santos, 301–415–7270.)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of June 13, 2011—Tentative

Thursday, June 16, 2011

9:30 a.m. Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting). (*Contact:* Nathan Sanfilippo, 301–415–3951.)

This meeting will be webcast live at the Web address—*http://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.*

Dated: April 28, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–10858 Filed 4–29–11; 4:15 pm]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Magnum d'Or Resources, Inc.; Order of Suspension of Trading

April 29, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Magnum d'Or Resources, Inc. ("Magnum") because of questions regarding the accuracy of assertions by Magnum in its Web site and in press releases to investors concerning, among other things: (1) The company's current financial condition; and (2) the company's current operations.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities in the above-listed company is suspended for the period from 9:30 a.m. EDT on April 29, 2011, through 11:59 p.m. EDT, on May 12, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–10850 Filed 4–29–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64345; File No. SR–BX–2011–022]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the NASDAQ OMX Group, Inc.'s By-Laws

April 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2011, NASDAQ OMX BX, Inc. ("BX" 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to file a rule change related to the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=BXRulefilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX recently made certain clarifying amendments to its By-Laws.[3] Specifically, the recently approved NASDAQ OMX rule change: (i) Amended the name of the Nominating Committee to the Nominating & Governance Committee; (ii) amended the Phlx reference to reflect a recent conversion to a limited liability company; and (iii) clarified By-Law Article IV, Section 4.4 that broker nonvotes are not counted as a vote cast either "for" or "against" a Director in an uncontested election.[4]

NASDAQ OMX By-Laws previously provided for a Nominating Committee which is appointed pursuant to the By-Laws. In addition to the responsibilities listed in By-Law Article IV, Section 4.13(h), the Nominating Committee also conducts certain governance functions such as consulting with the Board and the management to determine the characteristics, skills and experience desired for the Board as a whole and for its individual members, overseeing the annual director evaluation, and reviewing the overall effectiveness of the Board. Accordingly, NASDAQ OMX renamed and changed all references to the "Nominating Committee" in the By-Laws, to the "Nominating & Governance Committee" so that the title of the committee accurately reflects all of its current functions, including those that are deemed governance functions. The proposal to rename the Nominating Committee did not change the function of the committee, but was intended to clarify the current functions and its governance role with respect to the Board selection process.

Additionally, NASDAQ OMX amended Article 1, Section (o) of NASDAQ OMX's By-Laws to change the reference to "NASDAQ OMX PHLX, Inc." to "NASDAQ OMX PHLX LLC" to reflect a recently filed rule change by NASDAQ OMX PHLX from a Delaware corporation to a Delaware limited liability company.[5]

Finally, NASDAQ OMX added the words "and broker nonvotes" to NASDAQ OMX's By-Law Article IV, Section 4.4 to make clear that broker nonvotes will not be counted as a vote cast either "for" or "against" that director's election. In its filing to amend NASDAQ OMX's By-Laws, NASDAQ Stock Market LLC noted that NASDAQ OMX's past practice has been to not count a broker nonvote as a vote cast either for or against a director's election.[6] Accordingly, this change clarifies this practice by codifying it into the By-Laws, especially in light of NASDAQ OMX's recent change to a majority vote standard in the uncontested election of directors.

In 2010, NASDAQ OMX amended its By-Laws to state that in an uncontested election, a majority voting standard would apply to the election of its directors, requiring directors to be elected by the holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present in an uncontested election.[7] A plurality standard would still remain in a contested election. While in its filing to amend NASDAQ OMX's By-Laws, NASDAQ Stock Market LLC noted that it has always been NASDAQ OMX's practice to not count broker nonvotes "for" or "against" in director elections, as the Commission noted in its Approval Order the impact of the broker nonvote and how such votes are counted will take on added significance under NASDAQ OMX's newly adopted majority vote standard for director elections. Although in its filing NASDAQ Stock Market LLC stated that under Delaware case law,[8] broker nonvotes are not considered as votes cast for or against a proposal or director nominee, the Exchange proposes the change for clarity and transparency purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(1) and 6(b)(5) of the Act,[10] in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes changing the name of the Nominating Committee to the Nominating and Governance Committee and amending references to an exchange name to reflect a corporate change to a limited liability company are both clarifying in nature. The changes will ensure that the committee's title accurately reflects its functions and will ensure that the By-Laws accurately and properly reflect an exchange entity name. As discussed above, the amendment that broker nonvotes will not be counted as a vote either "for" or "against" in director elections will codify NASDAQ OMX's past practice, providing clarity and transparency. Accordingly the Exchange believes that the amendments are consistent with investor protection and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the

[3] *See* Securities Exchange Act Release No. 64285 (April 8, 2011) (SR–NASDAQ–2011–025) ("Approval Order"). SR–NASDAQ–2011–025 was filed by NASDAQ Stock Market LLC on behalf of NASDAQ OMX to amend the By-Laws of its parent corporation.

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR–Phlx–2010–104).

[6] *See* Securities Exchange Act Release No. 63925 (February 17, 2011), 76 FR 10418 (February 24, 2011) (SR–NASDAQ–2011–025).

[7] *See* Securities Exchange Act Release No. 63925 [sic] (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR–NASDAQ–2010–025).

[8] *See* Berlin v. Emerald Partners, 552 A.2d 482 494 (Del Supr. 1988).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(1), (5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) (iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to ensure that NASDAQ OMX is able to implement the rule changes.

The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission notes in waiving the 30-day operative delay that the Commission published for comment in the **Federal Register** the initial filing to amend NASDAQ OMX's By-Laws, did not receive any comments,[15] and subsequently approved the proposed rule change.[16] Further, the Commission notes that the Exchange's proposal is identical to the proposed rule change previously approved by the Commission.[17] Accordingly, the Commission finds that it is consistent with investor protection and the public interest to waive the 30-day operative delay in accordance with 19b–4(f)(6)(iii) so that NASDAQ OMX's By-Laws can be effective without undue delay, and therefore designates the proposal operative upon filing.[18]

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–BX–2011–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2011–022. 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–BX–2011–022 and should be submitted on or before May 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10650 Filed 5–2–11; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra* note 6.

[16] *See supra* note 3.

[17] *Id.*

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64357; File No. SR–NYSEArca–2011–18]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade the Meidell Tactical Advantage ETF

April 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2011, NYSE Arca, Inc. ("Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 ("Managed Fund Shares"): The Meidell Tactical Advantage ETF. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade the following Managed Fund Shares [3] ("Shares") under NYSE Arca

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company

Equities Rule 8.600: The Meidell Tactical Advantage ETF ("Fund").[4] The Shares will be offered by AdvisorShares Trust ("Trust"), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment adviser to the Fund is AdvisorShares Investments, LLC ("Adviser"). American Wealth Management is the Fund's sub-adviser ("Sub-Adviser") and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC ("Distributor") is the principal underwriter and distributor of the Fund's Shares.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the Investment Company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a "fire wall" between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such Investment Company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a "fire wall" between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, they will be required to implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to a portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

According to the Registration Statement, the Fund's investment objective is to seek to provide long-term capital appreciation with a secondary emphasis on capital preservation. The Fund is an actively managed exchange-traded fund ("ETF") and thus does not seek to replicate the performance of a specified index. The Fund is considered a "fund-of-funds" that seeks to achieve its investment objective by primarily investing in other ETFs that offer diversified exposure to global regions, countries, styles (market capitalization, value, growth, etc.) or sectors, and other exchange-traded products ("ETPs," and, together with ETFs, "Underlying ETPs"),[7] including but not limited to exchange-traded notes ("ETNs"),[8] exchange-traded currency trusts, and closed-end funds.[9] The Fund will primarily invest in U.S.-listed domestic and foreign equity-based, fixed income-based, currency-based, and commodity-based Underlying ETPs.

The Sub-Adviser will seek to achieve the Fund's investment objective by managing a tactical strategy that has the ability to dynamically rebalance the Fund's portfolio from as much as 100% equity-based assets to 100% fixed income-based assets or cash and cash equivalents depending on market trends. This is a long-only tactical strategy that seeks to minimize portfolio losses by rotating out of higher volatility assets and into lower volatility assets when the Sub-Adviser believes there are significant risks in the equity markets. Risk management is an integral part of the Sub-Adviser's investment strategy. The Fund will not invest in leveraged, inverse, or inverse leveraged Underlying ETPs.

The Sub-Adviser uses a quantitative tactical methodology to identify the Underlying ETPs believed to be participating in long-term "durable trends" within the market. This model enables the Sub-Adviser to evaluate, rank, and select the appropriate mix of investments in Underlying ETPs given market conditions.

The Sub-Adviser's investment philosophy emphasizes investments in broad market indexes and market sector indexes. In general, the Fund will

registered under the Investment Company Act of 1940 (15 U.S.C. 80a) ("1940 Act") organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index, or combination thereof.

[4] The Commission approved NYSE Arca Equities Rule 8.600 and the listing and trading of certain funds of the PowerShares Actively Managed Exchange-Traded Funds Trust on the Exchange pursuant to Rule 8.600 in Securities Exchange Act Release No. 57619 (April 4, 2008) 73 FR 19544 (April 10, 2008) (SR–NYSEArca–2008–25). The Commission also has approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF).

[5] The Trust is registered under the 1940 Act. On March 15, 2011, the Trust filed with the Commission Post-Effective Amendment No. 20 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a) and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) ("Registration Statement"). The description of the operation of the Trust and the Fund herein is based on the Registration Statement.

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds.

[8] ETNs are debt obligations of investment banks that are traded on exchanges and the returns of which are linked to the performance of market indexes.

[9] The Fund, through its investment in Underlying ETPs, may invest in closed-end funds, pooled investment vehicles that are registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges.

purchase or increase its exposure to Underlying ETPs that track equity markets or market sectors when the Sub-Adviser's quantitative tactical asset allocation model and risk analysis indicates that the applicable market or sector is at low risk of losing value or presents opportunity for growth and appreciation. The Fund will generally sell interests in, or reduce investment exposure to, Underlying ETPs tracking equity markets or market sectors in favor of fixed income-based Underlying ETPs or cash positions when the Sub-Adviser's quantitative tactical asset allocation model and risk analysis indicates that such markets have become, or are becoming, risky.

The Sub-Adviser uses a quantitative metric to rank and select the appropriate mix of investments given prevailing market conditions. The Sub-Adviser's quantitative tactical asset allocation model determines asset allocation between bonds and stocks, equity selection, sector concentration, as well as limiting portfolio drawdown. The general guidelines for the Fund's portfolio are as follows:

ASSETS HELD BY UNDERLYING ETPS	
Equity-Based	0%–100%
Fixed Income-Based/Cash	0%–100%

Depending on the economic and market climate, the portfolio may increase or decrease portfolio concentrations within the ranges shown below.

Foreign Equity	0%–50%
Large Cap Equity	0%–50%
Mid Cap Equity	0%–30%
Small Cap Equity	0%–30%
Commodities	0%–20%
Currencies	0%–10%

The Fund's portfolio may temporarily exceed these percentage ranges for short periods without notice, and the Sub-Adviser may alter the percentage ranges when it deems appropriate.

Additional quantitative tools are used to evaluate the probability of investment success within the equity market. These tools allow the Sub-Adviser to get into or out of equity positions, and include but are not limited to:

- Interest rate spreads.
- Options activity.
- Market breadth.
- Equity index trends.

The Fund intends to invest primarily in the securities of Underlying ETPs consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986, as amended ("Code").[10]

The Fund, through its investment in Underlying ETPs, may invest in equity securities. Equity securities represent ownership interests in a company or partnership and consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, investments in master limited partnerships securities traded in the U.S. on registered exchanges or the over-the-counter market, rights, and Depositary Receipts.[11]

The Fund, through its investments in Underlying ETPs, may invest in the equity securities of foreign issuers, including the securities of foreign issuers in emerging market countries. Emerging or developing markets exist in countries that are considered to be in the initial stages of industrialization.

The Fund, through its investment in Underlying ETPs, may invest in debt securities. A debt security is a security consisting of a certificate or other evidence of a debt (secured or unsecured) on which the issuing company or governmental body promises to pay the holder thereof a fixed, variable, or floating rate of interest for a specified length of time, and to repay the debt on the specified maturity date. Some debt securities, such as zero coupon bonds, do not make regular interest payments, but are issued at a discount to their principal or maturity value. Debt securities include a variety of fixed income obligations, including, but not limited to, corporate debt securities, government securities, municipal securities, convertible securities, and mortgage-backed securities. Debt securities include investment-grade securities, non-investment-grade securities, and unrated securities. Debt securities are subject to a variety of risks, such as interest rate risk, income risk, call/prepayment risk, inflation risk, credit risk, and currency risk.

The Fund, or the Underlying ETPs in which it invests, may invest in U.S. government securities, U.S. Treasury zero-coupon bonds, and real estate investment trusts.

Other Investments

To respond to adverse market, economic, political, or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through Underlying ETPs. The Fund may be invested in these instruments for extended periods, depending on the Sub-Adviser's assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase and reverse repurchase agreements,[12] and bonds that are BBB or higher.

The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer, or (ii) acquire more than 10% of the outstanding voting securities of any one issuer. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective Depositary Receipt.[13]

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or

[10] 26 CFR 1.817–5.

[11] American Depositary Receipts ("ADRs"), as well as Global Depositary Receipts ("GDRs"), are certificates evidencing ownership of shares of a foreign issuer. Depositary Receipts may be sponsored or unsponsored. These certificates are issued by depositary banks and generally trade on an established market in the United States or elsewhere. The underlying shares are held in trust by a custodian bank or similar financial institution in the issuer's home country. The depositary bank may not have physical custody of the underlying securities at all times and may charge fees for various services, including forwarding dividends and interest and corporate actions.

[12] The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund follows certain procedures designed to minimize the risks inherent in such agreements. These procedures include effecting repurchase transactions only with large, well-capitalized and well-established financial institutions whose condition will be continually monitored by the Sub-Adviser. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. In the event of a default or bankruptcy by a selling financial institution, the Fund will seek to liquidate such collateral. In addition, the Fund may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

[13] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

instrumentalities, or shares of investment companies. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective ADRs or GDRs.[14]

The Fund may not purchase illiquid securities.[15]

Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company ("RIC") pursuant to Subchapter M under the Code.[16]

The Fund calculates net asset value ("NAV") by: (i) Taking the current market value of its total assets; (ii) subtracting any liabilities; and (iii) dividing that amount by the total number of Shares owned by shareholders. The NAV of the Fund will normally be determined as of the close of the regular trading session on the New York Stock Exchange ("NYSE") (ordinarily 4:00 p.m. Eastern Time) on each business day. In calculating NAV, the Fund generally values investment portfolios at market price. If market prices are unavailable or are unreliable, or when the value of a security has been materially affected by events occurring after the relevant market closes, the Fund will price those securities at fair value as determined in good faith using methods approved by the Fund's Board of Trustees.

Creations and redemptions of Shares occur in large specified blocks of Shares, referred to as "Creation Units." According to the Registration Statement, the Shares of the Fund are "created" at their NAV by Authorized Participants only in block-size Creation Units of 25,000 Shares or more. An Authorized Participant enters into an agreement ("Participant Agreement") with the Fund's Distributor or a Depository Trust Company participant that has executed a Participant Agreement with the Distributor, and deposits into the Fund a portfolio of securities closely approximating the holdings of the Fund and a specified amount of cash, together totaling the NAV of the Creation Unit(s), in exchange for 25,000 Shares of the Fund (or multiples thereof). Similarly, Shares can only be redeemed in Creation Units, generally 25,000 Shares or more, principally in-kind for a portfolio of securities held by the Fund and a specified amount of cash together totaling the NAV of the Creation Unit(s). Shares are not redeemable from the Fund except when aggregated in Creation Units. The prices at which creations and redemptions occur are based on the next calculation of NAV after an order is received in a form prescribed in the Participant Agreement.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[17] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*http://www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the Prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV ("Bid/Ask Price"),[18] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[19]

On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable); name of security or financial instrument; number of Shares or dollar value of financial instruments held in the portfolio; and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund.

[14] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[15] The Commission has stated that long-standing Commission guidelines have required open-end funds to hold no more than 15% of their net assets in illiquid securities and other illiquid assets. *See* Investment Company Act Release No. 28193 (March 11, 2008), 73 FR 14617 (March 18, 2008), footnote 34. *See also,* Investment Company Act Release No. 5847 (October 21, 1969), 35 FR 19989 (December 31, 1970) (Statement Regarding "Restricted Securities"); Investment Company Act Release No. 18612 (March 12, 1992), 57 FR 9828 (March 20, 1992) (Revisions of Guidelines to Form N–1A). A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the ETF. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[16] 26 U.S.C. 851. One of several requirements for RIC qualification is that the Fund must receive at least 90% of the Fund's gross income each year from dividends, interest, payments with respect to securities loans, gains from the sale or other disposition of stock, securities or foreign currencies, or other income derived with respect to the Fund's investments in stock, securities, foreign currencies and net income from an interest in a qualified publicly traded partnership ("90% Test"). A second requirement for qualification as a RIC is that the Fund must diversify its holdings so that, at the end of each fiscal quarter of the Fund's taxable year: (a) At least 50% of the market value of the Fund's total assets is represented by cash and cash items, U.S. Government securities, securities of other RICs, and other securities, with these other securities limited, in respect to any one issuer, to an amount not greater than 5% of the value of the Fund's total assets or 10% of the outstanding voting securities of such issuer; and (b) not more than 25% of the value of its total assets are invested in the securities (other than U.S. Government securities or securities of other RICs) of any one issuer or two or more issuers which the Fund controls and which are engaged in the same, similar, or related trades or businesses, or the securities of one or more qualified publicly traded partnership ("Asset Test").

[17] 17 CFR 240.10A–3.

[18] The Bid/Ask Price of the Fund is determined using the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[19] Under accounting procedures followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

Investors can also obtain the Trust's Statement of Additional Information ("SAI"), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *http://www.sec.gov*. Information regarding market price and trading volume of the Shares is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association ("CTA") high-speed line, and, for the Underlying ETPs, will be available from the national securities exchange on which they are listed. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session by one or more major market data vendors. The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[20] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m. Eastern Time in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation ("MPV") for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[21] In addition, the Exchange could obtain information from the U.S. exchanges on which the Underlying ETPs are listed and traded.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit ("ETP") Holders in an Information Bulletin ("Bulletin") of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4:00 p.m. Eastern Time each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[22] that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will

[20] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[21] For a list of the current members of ISG, *see http://www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. All Underlying ETPs are listed on national securities exchanges, all of which are members of ISG.

[22] 15 U.S.C. 78f(b)(5).

be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable Federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. All Underlying ETPs will be listed on national securities exchanges, all of which are members of ISG, and the listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. The Fund will not invest in leveraged, inverse, or inverse leveraged Underlying ETPs. The Fund may not purchase illiquid securities. Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last-sale information for the Shares will be available via the CTA high-speed line and, for the Underlying ETPs, will be available from the national securities exchange on which they are listed. In addition, the Portfolio Indicative Value will be disseminated by the Exchange at least every 15 seconds during the Core Trading Session. The Fund's Web site will include a form of the Prospectus for the Fund that may be downloaded, as well as additional quantitative information updated on a daily basis. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: Ticker symbol (if applicable); name of security or financial instrument; number of Shares or dollar value of financial instruments held in the portfolio; and percentage weighting of the security or financial instrument in the portfolio. The Web site for the Fund will include a form of the Prospectus for the Fund and additional data relating to NAV and other applicable quantitative information. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of additional types of actively-managed exchange-traded products that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2011–18 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–NYSEArca–2011–18. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2011–18 and should be submitted on or before May 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10717 Filed 5–2–11; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64353; File No. SR–FINRA–2011–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to FINRA's Trading Activity Fee Rate for Transactions in Covered Equity Securities

April 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2011, the Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Section 1 of Schedule A to the FINRA By-Laws to adjust the rate of FINRA's Trading Activity Fee ("TAF") for transactions in covered equity securities.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA, 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, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA's primary member regulatory pricing structure consists of the following fees: The Personnel Assessment (PA); the Gross Income Assessment (GIA); and the Trading Activity Fee (TAF). These fees are used to fund FINRA's regulatory activities, including examinations; financial monitoring; and FINRA's policymaking, rulemaking, and enforcement activities.[3] Because the proceeds from these fees are used to fund FINRA's regulatory mandate, Section 1 of Schedule A to FINRA's By-Laws notes that "FINRA shall periodically review these revenues in conjunction with costs to determine the applicable rate."[4]

FINRA initially adopted the TAF in 2002 as a replacement for an earlier regulatory fee based on trades reported to Nasdaq's Automated Confirmation Transaction system then in place.[5] Currently, the TAF is generally assessed on the sale of all exchange registered securities wherever executed (except debt securities that are not TRACE–Eligible Securities), over-the-counter equity securities, security futures, TRACE–Eligible Securities (provided that the transaction is a Reportable TRACE Transaction), and all municipal securities subject to Municipal Securities Rulemaking Board ("MSRB") reporting requirements. The rules governing the TAF also include a list of transactions exempt from the TAF.[6]

The current TAF rates are $0.000075 per share for each sale of a covered equity security, with a maximum charge of $3.75 per trade; $0.002 per contract for each sale of an option; $0.04 per contract for each round turn transaction of a security future; and $0.00075 per bond for each sale of a covered TRACE–Eligible Security and/or municipal security, with a maximum charge of $0.75 per trade. In addition, if the execution price for a covered security is less than the TAF rate on a per share, per contract, or round turn transaction basis, then no TAF is assessed.

The current TAF rate for covered equity securities of $0.000075 per share has been in place for over six years.[7] Over that time period, FINRA has proposed the restructuring of both the GIA and the PA. For example, effective January 1, 2010, the GIA and PA were restructured to stabilize cash flows by shifting a greater portion of the regulatory fees from the GIA, which is based on industry revenue, to the PA, which is based on the more constant figure of registered persons, while seeking to remain revenue neutral to FINRA.[8]

As FINRA noted when it restructured the GIA and the PA, because the GIA is assessed based on a member's annual gross revenue for the preceding calendar year, FINRA's revenues derived from the GIA are subject to the year-to-year volatility of members' revenues. A similar unpredictability of revenue flows exists with the TAF. The TAF generally is assessed on sales of securities by members and is collected from clearing firms on a monthly basis. Although the TAF is generally charged on transactions in equity securities, TRACE-reportable securities, options, and futures, over 95% of TAF revenue is generated by transactions in covered equity securities. Thus, FINRA's revenue from the TAF is substantially affected by changes in trading volume in the equities markets. Because of the substantial decrease in average daily share volumes (ADSV) since 2009, FINRA has seen a commensurate substantial decline in revenue from the TAF.

To stabilize revenue flows necessary to support FINRA's regulatory mission, FINRA is proposing an increase to the

[23] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* FINRA By-Laws, Schedule A, § 1(a).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002).

[6] *See* FINRA By-Laws, Schedule A, § 1(b)(2).

[7] *See* Securities Exchange Act Release No. 50485 (October 1, 2004), 69 FR 60445 (October 8, 2004); NASD *Notice to Members* 04–84 (November 2004).

[8] *See* Securities Exchange Act Release No. 61042 (November 20, 2009), 74 FR 62616 (November 30, 2009); *see also Regulatory Notice* 09–68 (November 2009).

TAF rate for covered equity securities from $0.000075 per share to $0.000090 per share, with a corresponding increase to the per-transaction cap for covered equity securities from $3.75 to $4.50.[9] As noted above, FINRA has not adjusted the TAF rate for covered equity securities in over six years,[10] and FINRA believes that increasing the TAF rate on these securities by $0.000015 per share is the minimum increase necessary to bring the revenue from the TAF to its needed levels to adequately fund FINRA's member regulatory obligations. As with the prior restructuring of the GIA and PA described above, the proposed increase to the TAF rate on transactions in covered equity securities seeks to remain revenue neutral to FINRA (*i.e.*, as adjusted, FINRA would aim to receive a substantially similar amount in revenue from the TAF as the TAF has generated in prior years).

The effective date of the proposed rule change will be July 1, 2011. FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice.*

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,[11] which requires, among other things, that FINRA rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that FINRA operates or controls. As noted above, FINRA has not adjusted the TAF rate for transactions in covered equity securities for over six years. Because of the recent decrease in trading volumes in the equity markets, FINRA believes that the proposed rate change to the TAF is now necessary to ensure that FINRA can continue to maintain a robust regulatory program and meet its regulatory obligations effectively while attempting to remain revenue neutral.

[9] Because, as noted above, transactions in covered equity securities account for over 95% of TAF revenues, FINRA is not proposing adjustments to the TAF rates for other types of securities.

[10] In 2004, FINRA decreased the TAF rate for covered equity securities. Before the adjustment, the TAF rate for covered equity securities was $0.0001 per share with a maximum charge of $10 per trade. In 2004, FINRA also expanded the scope of the TAF to cover transactions in corporate debt securities reportable to TRACE and transactions in municipal securities subject to the MSRB reporting requirements. *See* NASD *Notice to Members* 04–84 (November 2004).

[11] 15 U.S.C. 78*o*-3(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which 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–FINRA–2011–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2011–020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–FINRA–2011–020 and should be submitted on or before May 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Cathy H. Ahn,

Deputy Secretary.

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64351; File No. SR–NYSE–2011–19]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 440B (Short Sales) To Modify the Exchange's Procedures for Early Termination of the Short Sale Price Test Restrictions of Rule 201 of Regulation SHO Based on a Triggering Transaction that Another Exchange or a Self-Regulatory Organization Has Determined Was a Clearly Erroneous Execution

April 27, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that April 25, 2011, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 440B (Short Sales) to modify the Exchange's procedures for early termination of the short sale price test restrictions of Rule 201 of Regulation SHO ("Rule 201") [4] under the Act based on a triggering transaction that another exchange or a self-regulatory organization ("SRO") has determined was a clearly erroneous execution pursuant to the rules of that exchange or SRO. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201.[5] In order to implement the provisions of revised Rule 201, the Exchange amended Rule 440B (Short Sales) to (1) Establish procedures for the Exchange, as a listing market, to determine that the short sale price test restrictions of Rule 201 have been triggered for a covered security, (2) establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the short sale price test restrictions of Rule 201 are triggered, including establishing what types of short sale orders will be re-priced to achieve a Permitted Price (as defined and calculated in Rule 440B(e)), in accordance with Rule 201, during a period when the short sale price test restrictions of Rule 201 are in effect ("Short Sale Period"), (3) establish the Exchange's procedures regarding the execution and display of permissible orders during a Short Sale Period, and the execution and display of orders marked "short exempt" during such a period, (4) establish the Exchange's procedures regarding the permissible execution price of short sale orders in single-priced opening, re-opening and closing transactions during a Short Sale Period, and (5) provide that, during a Short Sale Period, Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid, except as otherwise provided by Rule 440B and consistent with Rule 201.[6]

Under Rule 440B(c), when the Exchange is the listing market for a covered security, Exchange systems will determine whether the short sale price test restrictions of Rule 201 have been triggered (*i.e.,* that a covered security has experienced a decrease in price of 10% or more from the security's closing price as of the end of regular trading hours on the prior day) and will notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.[7] Once the short sale price test restrictions of Rule 201 are triggered by the listing market, those restrictions will remain in effect until the close of trading on the next trading day.[8]

If, however, the Exchange determines that the short sale price test for a covered security was triggered because of a clearly erroneous execution on the Exchange,[9] pursuant to Rule 440B(d)(1), the Exchange may lift the short sale price test restrictions before the Short Sale Period ends for a security for which the Exchange is the listing market or, for a security listed on another market, notify the other market of the Exchange's determination that the triggering transaction was a clearly erroneous execution.

For securities for which the Exchange is the listing market, Exchange Rule 440B currently addresses only clearly erroneous triggering transactions deemed to be clearly erroneous executions under the Exchange's rules, and does not address situations where another exchange or a SRO determines, under its respective rules, that a triggering transaction was a clearly erroneous execution. To address this scenario, the Exchange proposes to amend Rule 440B(d)(1) to provide that the Exchange may also lift the short sale price test restrictions before the Short Sale Period ends, for covered securities for which the Exchange is the listing market, if the Exchange has been informed by another exchange or a SRO that a transaction in the covered security that occurred at the Trigger Price [10] was a clearly erroneous execution, as determined by that exchange or SRO under its rules.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to refine the Exchange's written policies and procedures reasonably designed to prevent the execution or display of a

[4] 17 CFR 242.201.

[5] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7–08–09; Amendments to Regulation SHO) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

[6] *See* Securities Exchange Act Release No. 63977 (February 25, 2011), 76 FR 12165 (March 4, 2011) (SR–NYSE–2011–05).

[7] *See* 17 CFR 242.201(b)(3); 17 CFR 242.603(b). *See also* Rule 201(a)(6) of Regulation SHO, which defines the term "plan processor" to have the same meaning as in Rule 600(b)(55) of Regulation NMS. 17 CFR 242.600(b)(55). The single plan processors are "exclusive processors" as defined under Section 3(a)(22) of the Act. *See* 15 U.S.C. 78c(a)(22).

[8] The short sale price test restrictions will remain in effect at all times when quotation information and the national best bid is collected, processed and disseminated pursuant to a national market system plan. This may extend beyond regular trading hours. Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Q&A 2.1.

[9] Determination of a "clearly erroneous" execution will be made in accordance with Exchange Rule 128.

[10] The term "Trigger Price" is used in Rule 440B to refer to a decrease of 10% or more in a security's price from the security's closing price on the listing market as of the end of regular trading hours on the prior day. Under Rule 440B(c), the short sale price test restrictions of Rule 201 are triggered if a transaction in a covered security occurs at a Trigger Price.

[11] The Exchange will only lift the short sale price test restrictions before the Short Sale Period ends under these circumstances when informed by another exchange or a SRO that a triggering transaction has been determined to be a clearly erroneous execution under the rules of the exchange or SRO, consistent with the authority of that exchange or SRO for making such determinations.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

short sale order of a covered security in violation of the short sale price test restrictions established in Rule 201. To that end, the proposed rule change expands the ability of the Exchange, as a listing market, to lift short sale price test restrictions to include situations where another exchange or a SRO has determined that a triggering transaction was a clearly erroneous execution under the rules of that exchange or SRO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission has considered the Exchange's request to waive the 30-day operative delay, and hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will permit the Exchange to lift Rule 201's short sale price test restrictions, in a covered security for which the Exchange is the listing market, when such restrictions were triggered by a transaction that another exchange or a SRO has determined to be a clearly erroneous execution, pursuant to the rules of that exchange or SRO.[18] For this reason, the Commission designates the proposed rule change to be operative upon filing.

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–NYSE–2011–19 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2011–19. 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 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–19 and should be submitted on or before May 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10657 Filed 5–2–11; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64350; File No. SR–NYSEAmex–2011–29]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 440B (Short Sales) To Modify the Exchange's Procedures for Early Termination of the Short Sale Price Test Restrictions of Rule 201 of Regulation SHO Based on a Triggering Transaction That Another Exchange or a Self-Regulatory Organization Has Determined Was a Clearly Erroneous Execution

April 27, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 25, 2011, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 440B (Short Sales) to modify the Exchange's procedures for early termination of the short sale price test restrictions of Rule 201 of Regulation SHO ("Rule 201")[4] under the Act based on a triggering transaction that another exchange or a self-regulatory organization ("SRO") has determined was a clearly erroneous execution pursuant to the rules of that exchange or SRO. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201.[5] In order to implement the provisions of revised Rule 201, the Exchange amended NYSE Amex Equities Rule 440B (Short Sales) to (1) establish procedures for the Exchange, as a listing market, to determine that the short sale price test restrictions of Rule 201 have been triggered for a covered security, (2) establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the short sale price test restrictions of Rule 201 are triggered, including establishing what types of short sale orders will be re-priced to achieve a Permitted Price (as defined and calculated in NYSE Amex Equities Rule 440B(e)), in accordance with Rule 201, during a period when the short sale price test restrictions of Rule 201 are in effect ("Short Sale Period"), (3) establish the Exchange's procedures regarding the execution and display of permissible orders during a Short Sale Period, and the execution and display of orders marked "short exempt" during such a period, (4) establish the Exchange's procedures regarding the permissible execution price of short sale orders in single-priced opening, re-opening and closing transactions during a Short Sale Period, and (5) provide that, during a Short Sale Period, Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid, except as otherwise provided by NYSE Amex Equities Rule 440B and consistent with Rule 201.[6]

Under NYSE Amex Equities Rule 440B(c), when the Exchange is the listing market for a covered security, Exchange systems will determine whether the short sale price test restrictions of Rule 201 have been triggered (i.e., that a covered security has experienced a decrease in price of 10% or more from the security's closing price as of the end of regular trading hours on the prior day) and will notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.[7] Once the short sale price test restrictions of Rule 201 are triggered by the listing market, those restrictions will remain in effect until the close of trading on the next trading day.[8]

If, however, the Exchange determines that the short sale price test for a covered security was triggered because of a clearly erroneous execution on the Exchange,[9] pursuant to NYSE Amex Equities Rule 440B(d)(1), the Exchange may lift the short sale price test restrictions before the Short Sale Period ends for a security for which the Exchange is the listing market or, for a security listed on another market, notify the other market of the Exchange's determination that the triggering transaction was a clearly erroneous execution.

For securities for which the Exchange is the listing market, Exchange Rule 440B currently addresses only clearly erroneous triggering transactions deemed to be clearly erroneous executions under the Exchange's rules, and does not address situations where another exchange or a SRO determines, under its respective rules, that a triggering transaction was a clearly erroneous execution. To address this scenario, the Exchange proposes to amend NYSE Amex Equities Rule 440B(d)(1) to provide that the Exchange may also lift the short sale price test restrictions before the Short Sale Period ends, for covered securities for which the Exchange is the listing market, if the Exchange has been informed by another exchange or a SRO that a transaction in the covered security that occurred at the Trigger Price[10] was a clearly erroneous execution, as determined by that exchange or SRO under its rules.[11]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to refine the Exchange's written policies and procedures reasonably designed to

[4] 17 CFR 242.201.

[5] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7–08–09; Amendments to Regulation SHO) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

[6] *See* Securities Exchange Act Release No. 63974 (February 25, 2010), 76 FR 11198 (March 4, 2010) (SR–NYSEAmex–2011–09).

[7] *See* 17 CFR 242.201(b)(3); 17 CFR 242.603(b). *See also* Rule 201(a)(6) of Regulation SHO, which defines the term "plan processor" to have the same meaning as in Rule 600(b)(55) of Regulation NMS. 17 CFR 242.600(b)(55). The single plan processors are "exclusive processors" as defined under Section 3(a)(22) of the Act. *See* 15 U.S.C. 78c(a)(22).

[8] The short sale price test restrictions will remain in effect at all times when quotation information and the national best bid is collected, processed and disseminated pursuant to a national market system plan. This may extend beyond regular trading hours. Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Q&A 2.1.

[9] Determination of a "clearly erroneous" execution will be made in accordance with NYSE Amex Equities Rule 128.

[10] The term "Trigger Price" is used in NYSE Amex Equities Rule 440B to refer to a decrease of 10% or more in a security's price from the security's closing price on the listing market as of the end of regular trading hours on the prior day. Under NYSE Amex Equities Rule 440B(c), the short sale price test restrictions of Rule 201 are triggered if a transaction in a covered security occurs at a Trigger Price.

[11] The Exchange will only lift the short sale price test restrictions before the Short Sale Period ends under these circumstances when informed by another exchange or a SRO that a triggering transaction has been determined to be a clearly erroneous execution under the rules of the exchange or SRO, consistent with the authority of that exchange or SRO for making such determinations.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

prevent the execution or display of a short sale order of a covered security in violation of the short sale price test restrictions established in Rule 201. To that end, the proposed rule change expands the ability of the Exchange, as a listing market, to lift short sale price test restrictions to include situations where another exchange or a SRO has determined that a triggering transaction was a clearly erroneous execution under the rules of that exchange or SRO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [14] and Rule 19b–4(f)(6) thereunder.[15] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission has considered the Exchange's request to waive the 30-day operative delay, and hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will permit the Exchange to lift Rule 201's short sale price test restrictions, in a covered security for which the Exchange is the listing market, when such restrictions were triggered by a transaction that another exchange or a SRO has determined to be a clearly erroneous execution, pursuant to the rules of that exchange or SRO.[18] For this reason, the Commission designates the proposed rule change to be operative upon filing.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–29 and should be submitted on or before May 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10656 Filed 5–2–11; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64346; File No. SR–PHLX–2011–54]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the NASDAQ OMX Group, Inc.'s By-Laws

April 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2011, NASDAQ OMX PHLX LLC ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to file a rule change related to the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX recently made certain clarifying amendments to its By-Laws.[3] Specifically, the recently approved NASDAQ OMX rule change: (i) Amended the name of the Nominating Committee to the Nominating & Governance Committee; (ii) amended the PHLX reference to reflect a recent conversion to a limited liability company; and (iii) clarified By-Law Article IV, Section 4.4 that broker nonvotes are not counted as a vote cast either "for" or "against" a Director in an uncontested election.[4]

NASDAQ OMX By-Laws previously provided for a Nominating Committee which is appointed pursuant to the By-Laws. In addition to the responsibilities listed in By-Law Article IV, Section 4.13(h), the Nominating Committee also conducts certain governance functions such as consulting with the Board and the management to determine the characteristics, skills and experience desired for the Board as a whole and for its individual members, overseeing the annual director evaluation, and reviewing the overall effectiveness of the Board. Accordingly, NASDAQ OMX renamed and changed all references to the "Nominating Committee" in the By-Laws, to the "Nominating & Governance Committee" so that the title of the committee accurately reflects all of its current functions, including those that are deemed governance functions. The proposal to rename the Nominating Committee did not change the function of the committee, but was intended to clarify the current functions and its governance role with respect to the Board selection process.

Additionally, NASDAQ OMX amended Article 1, Section (o) of NASDAQ OMX's By-Laws to change the reference to "NASDAQ OMX PHLX, Inc." to "NASDAQ OMX PHLX LLC" to reflect a recently filed rule change by the Exchange from a Delaware corporation to a Delaware limited liability company.[5]

Finally, NASDAQ OMX added the words "and broker nonvotes" to NASDAQ OMX's By-Law Article IV, Section 4.4 to make clear that broker nonvotes will not be counted as a vote cast either "for" or "against" that director's election. In its filing to amend NASDAQ OMX's By-Laws, NASDAQ Stock Market LLC noted that NASDAQ OMX's past practice has been to not count a broker nonvote as a vote cast either for or against a director's election.[6] Accordingly, this change clarifies this practice by codifying it into the By-Laws, especially in light of NASDAQ OMX's recent change to a majority vote standard in the uncontested election of directors.

In 2010, NASDAQ OMX amended its By-Laws to state that in an uncontested election, a majority voting standard would apply to the election of its directors, requiring directors to be elected by the holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present in an uncontested election.[7] A plurality standard would still remain in a contested election. While in its filing to amend NASDAQ OMX's By-Laws, NASDAQ Stock Market LLC noted that it has always been NASDAQ OMX's practice to not count broker nonvotes "for" or "against" in director elections, as the Commission noted in its Approval Order the impact of the broker nonvote and how such votes are counted will take on added significance under NASDAQ OMX's newly adopted majority vote standard for director elections. Although in its filing NASDAQ Stock Market LLC stated that under Delaware case law,[8] broker nonvotes are not considered as votes cast for or against a proposal or director nominee, the Exchange proposes the change for clarity and transparency purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(1) and 6(b)(5) of the Act,[10] in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes changing the name of the Nominating Committee to the Nominating and Governance Committee and amending references to an exchange name to reflect a corporate change to a limited liability company are both clarifying in nature. The changes will ensure that the committee's title accurately reflects its functions and will ensure that the By-Laws accurately and properly reflect an exchange entity name. As discussed above, the amendment that broker nonvotes will not be counted as a vote either "for" or "against" in director elections will codify NASDAQ OMX's past practice, providing clarity and transparency. Accordingly the Exchange believes that the amendments are consistent with investor protection and the public interest.

[3] *See* Securities Exchange Act Release No. 64285 (April 8, 2011) (SR–NASDAQ–2011–025) ("Approval Order"). SR–NASDAQ–2011–025 was filed by NASDAQ Stock Market LLC on behalf of NASDAQ OMX to amend the By-Laws of its parent corporation.

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR–Phlx–2010–104).

[6] *See* Securities Exchange Act Release No. 63925 (February 17, 2011), 76 FR 10418 (February 24, 2011) (SR–NASDAQ–2011–025).

[7] *See* Securities Exchange Act Release No. 63925 [sic] (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR–NASDAQ–2010–025).

[8] *See* Berlin v. Emerald Partners, 552 A.2d 482 494 (Del Supr. 1988).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(1),(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) (iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to ensure that NASDAQ OMX is able to implement the rule changes.

The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission notes in waiving the 30-day operative delay that the Commission published for comment in the **Federal Register** the initial filing to amend NASDAQ OMX's By-Laws, did not receive any comments,[15] and subsequently approved the proposed rule change.[16] Further, the Commission notes that the Exchange's proposal is identical to the proposed rule change previously approved by the Commission.[17] Accordingly, the Commission finds that it is consistent with investor protection and the public interest to waive the 30-day operative delay in accordance with 19b–4(f)(6)(iii) so that NASDAQ OMX's By-Laws can be effective without undue delay, and therefore designates the proposal operative upon filing.[18]

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–Phlx–2011–54 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–54. 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–Phlx–2011–54 and should be submitted on or before May 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10651 Filed 5–2–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra* note 6.

[16] *See supra* note 3.

[17] *Id.*

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64347; File No. SR–NASDAQ–2011–054]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Amendments to the NASDAQ OMX Group, Inc.'s By-Laws

April 27, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market LLC proposes to file a rule change related to the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com*, at the principal office of the Exchange, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ OMX recently made certain clarifying amendments to its By-Laws.[3] Specifically, the recently approved NASDAQ OMX rule change: (i) Amended the name of the Nominating Committee to the Nominating & Governance Committee; (ii) amended the Phlx reference to reflect a recent conversion to a limited liability company; and (iii) clarified By-Law Article IV, Section 4.4 that broker nonvotes are not counted as a vote cast either "for" or "against" a Director in an uncontested election.[4]

NASDAQ OMX By-Laws previously provided for a Nominating Committee which is appointed pursuant to the By-Laws. In addition to the responsibilities listed in By-Law Article IV, Section 4.13(h), the Nominating Committee also conducts certain governance functions such as consulting with the Board and the management to determine the characteristics, skills and experience desired for the Board as a whole and for its individual members, overseeing the annual director evaluation, and reviewing the overall effectiveness of the Board. Accordingly, NASDAQ OMX renamed and changed all references to the "Nominating Committee" in the By-Laws, to the "Nominating & Governance Committee" so that the title of the committee accurately reflects all of its current functions, including those that are deemed governance functions. The proposal to rename the Nominating Committee did not change the function of the committee, but was intended to clarify the current functions and its governance role with respect to the Board selection process.

Additionally, NASDAQ OMX amended Article 1, Section (o) of NASDAQ OMX's By-Laws to change the reference to "NASDAQ OMX PHLX, Inc." to "NASDAQ OMX PHLX LLC" to reflect a recently filed rule change by NASDAQ OMX PHLX from a Delaware corporation to a Delaware limited liability company.[5]

Finally, NASDAQ OMX added the words "and broker nonvotes" to NASDAQ OMX's By-Law Article IV, Section 4.4 to make clear that broker nonvotes will not be counted as a vote cast either "for" or "against" that director's election. In its filing to amend NASDAQ OMX's By-Laws, NASDAQ noted that NASDAQ OMX's past practice has been to not count a broker nonvote as a vote cast either for or against a director's election.[6] Accordingly, this change clarifies this practice by codifying it into the By-Laws, especially in light of NASDAQ OMX's recent change to a majority vote standard in the uncontested election of directors.

In 2010, NASDAQ OMX amended its By-Laws to state that in an uncontested election, a majority voting standard would apply to the election of its directors, requiring directors to be elected by the holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present in an uncontested election.[7] A plurality standard would still remain in a contested election. While in its filing to amend NASDAQ OMX's By-Laws, NASDAQ noted that it has always been NASDAQ OMX's practice to not count broker nonvotes "for" or "against" in director elections, as the Commission noted in its Approval Order the impact of the broker nonvote and how such votes are counted will take on added significance under NASDAQ OMX's newly adopted majority vote standard for director elections. Although in its filing NASDAQ Stock Market LLC stated that under Delaware case law,[8] broker nonvotes are not considered as votes cast for or against a proposal or director nominee, the Exchange proposes the change for clarity and transparency purposes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[9] in general, and with Sections 6(b)(1) and 6(b)(5) of the Act,[10] in particular, in that the proposal enables the Exchange to be so organized as to have the capacity to be able to carry out the purposes of the Act, the rules and regulations thereunder, and self-regulatory organization rules, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange believes changing the name of the Nominating Committee to the Nominating and Governance Committee and amending references to an exchange name to reflect a corporate change to a limited liability company are both clarifying in nature. The changes will ensure that the committee's title accurately reflects its functions and will ensure that the By-Laws accurately and properly reflect an exchange entity name. As discussed above, the amendment that broker nonvotes will not be counted as a vote either "for" or "against" in director elections will codify NASDAQ OMX's past practice, providing clarity and transparency. Accordingly the Exchange believes that the amendments are consistent with investor protection and the public interest.

[3] *See* Securities Exchange Act Release No. 64285 (April 8, 2011) (SR–NASDAQ–2011–025) ("Approval Order"). SR–NASDAQ–2011–025 was filed by NASDAQ Stock Market LLC on behalf of NASDAQ OMX to amend the By-Laws of its parent corporation.

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 62783 (August 27, 2010), 75 FR 54204 (September 3, 2010) (SR–Phlx–2010–104).

[6] *See* Securities Exchange Act Release No. 63925 (February 17, 2011), 76 FR 10418 (February 24, 2011) (SR–NASDAQ–2011–025).

[7] *See* Securities Exchange Act Release No. 63925 [sic] (April 8, 2010), 75 FR 19436 (April 14, 2010) (SR–NASDAQ–2010–025).

[8] *See* Berlin v. Emerald Partners, 552 A.2d 482 494 (Del Supr. 1988).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(1), (5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12] Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) (iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [13] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[14] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay to ensure that NASDAQ OMX is able to implement the rule changes.

The Commission finds that waiver of the operative delay is consistent with the protection of investors and the public interest. The Commission notes in waiving the 30-day operative delay that the Commission published for comment in the **Federal Register** the initial filing to amend NASDAQ OMX's By-Laws, did not receive any comments,[15] and subsequently approved the proposed rule change.[16] Further, the Commission notes that the Exchange's proposal is identical to the proposed rule change previously approved by the Commission.[17] Accordingly, the Commission finds that it is consistent with investor protection and the public interest to waive the 30-day operative delay in accordance with 19b–4(f)(6)(iii) so that NASDAQ OMX's By-Laws can be effective without undue delay, and therefore designates the proposal operative upon filing.[18]

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–2011–054 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–2011–054. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of 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–2011–054 and should be submitted on or before May 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10652 Filed 5–2–11; 8:45 am]

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[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra* note 6.

[16] *See supra* note 3.

[17] *Id.*

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64348; File No. SR–Phlx–2011–58]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Increase the Position Limit for Options on the Standard and Poor's® Depositary Receipts (SPDRs®)

April 27, 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 April 18, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Phlx Rule 1001 (Position Limits) to increase the position limit for options on the Standard and Poor's Depositary Receipts ("SPDRs®").[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to amend Rule 1001 to increase the position limit applicable to options on SPDRs®, which are trading under the symbol SPY, from 300,000 to 900,000 contracts on the same side of the market.[4]

The Exchange began trading options on SPDRs® on the Exchange's electronic trading platform for options, Phlx XL, on January 10, 2005. That year, the position limit for these options was increased to the current limit of 300,000 contracts on the same size of the market, and has remained unchanged.[5] However, institutional and retail traders have greatly increased their demand for options on SPDRs® for hedging and trading purposes, such that these options have experienced an explosive gain in popularity and have been the most actively traded options for the last two years. For example, options on SPDRs® (SPY), the most actively traded options in the U.S. in terms of volume, traded a total of 33,341,698 contracts across all exchanges from March 1, 2011 through March 16, 2011. In contrast, over the same time period options on the Nasdaq-100 Index® Tracking Stock ("QQQ℠"),[6] the third most actively traded options, traded a total of 8,730,718 contracts (less than 26.2% of the volume of options on SPDRs®).

Currently, SPY options have a position limit of only 300,000 contracts on the same side on the market while the significantly lesser-volume QQQ℠ options, which are comparable to SPY options, have a position limit of 900,000 contracts on the same side of the market. The Exchange believes that SPY options should, like options on QQQ℠, have a position limit of 900,000 contacts. Given the increase in volume and continuous unprecedented demand for trading options on SPDRs®, the Exchange believes that the current position limit of 300,000 contracts[7] is entirely too low and inadequate and is a deterrent to the optimal use of the product for hedging and trading purposes. There are multiple reasons to increase the position limit for SPY options.

First, traders have informed the Exchange that the current SPY option position limit of 300,000 contracts, which has remained flat for more than five years despite the tremendous trading volume increase, is no longer sufficient for optimal trading and hedging purposes. SPY options are, as noted, used by large institutions and traders as a means to invest in or hedge the overall direction of the market. Second, options on SPDRs® are 1/10th the size of options on the S&P 500® Index, traded under the symbol SPX. Thus, a position limit of 300,000 contracts in options on SPDRs® is equivalent to a 30,000 contract position limit in options on SPX.[8] Traders who trade options on SPDRs® to hedge positions in SPX options (and the SPDRs® ETF based on SPX, SPDRs® Trust Series 1) have indicated on several occasions that the current position limit for options on SPDRs® is simply too restrictive,[9] which may adversely affect their (and the Exchange's) ability to provide liquidity in this product. And third, the products that are perhaps most comparable to options on SPDRs®, namely options on QQQ℠, are subject to a 900,000 contract position limit on the same side of the market.[10] This has, in light of the huge run-up in SPY option trading making them the number one nationally-ranked option in terms of volume, resulted in a skewed and unacceptable SPY option position limit. Specifically, the position limit for options on SPDRs® at 300,000 contracts is but 33% of the position limit for the less active options on QQQ℠ at 900,000 contracts.[11] The Exchange proposes that options on SPDRs® similarly be subject to a position limit of 900,000 contracts.[12]

The volume and notional value of options on SPDRs® and QQQ℠, as well as the volume and market capitalizations of their underlying ETFs, are set forth below:

[3] "SPDRs®", "Standard & Poor's®", "S&P®", "S&P 500®", "Standard & Poor's 500", and "500" are trademarks of The McGraw-Hill Companies, Inc. SPDRs®, also sometimes referred to colloquially as "spiders", are exchange traded funds ("ETFs") based on the S&P 500® Index. Each share of the traditional SPDRs® ETF (SPDRs® Trust Series 1) holds a stake in the 500 stocks represented by the S&P 500®, SPDRs®, and options thereon, are generally used by large institutions and traders as bets on the overall direction of the market. They are also used by individual retail investors who believe in passive management (index investing).

[4] By virtue of Rule 1002, which is not amended by this filing, exercise limits on options on SPDRs® would be similar to position limits established in Rule 1001.

[5] *See* Securities Exchange Act Release No. 51071 (January 21, 2005), 70 FR 4911 (January 31, 2005) (SR–Phlx–2005–05) (approval order increasing position and exercise limits for options on SPDRs® from 75,000 to 300,000 contracts on the same side of the market) (the "last position increase order"). *See also* Securities Exchange Act Release Nos. 51043 (January 14, 2005), 70 FR 3402 (January 24, 2005) (SR–Amex–2005–06) (approval order); 51041 (January 14, 2005), 70 FR 3408 (January 24, 2005) (SR–CBOE–2005–06) (approval order); and 51042 (January 14, 2005), 70 FR 3412 (January 24, 2005) (SR–ISE–2005–05) (approval order).

[6] QQQ℠ options were formerly traded under the ticker symbol QQQQ℠. QQQ℠, Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, Nasdaq-100 Index Tracking Stock℠, and are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq").

[7] Rule 1001.

[8] Chicago Board Options Exchange, which lists and trades SPX options, has established that there is no position limit on SPX options. *See* CBOE Rule 24.4 and Securities Exchange Act Release No. 44994 (October 26, 2001), 66 FR 55722 (November 2, 2001) (SR–CBOE–2001–22) (order approving permanent elimination of SPX options position limit).

[9] *See supra* note 3.

[10] *See* Rule 1001 and Securities Exchange Act Release No. 51322 (March 4, 2005), 70 FR 12260 (March 11, 2005) (SR–Phlx–2005–17) (notice of filing and immediate effectiveness).

[11] Similarly to options on SPDRs® (SPY) being 1/10th the size of options on the related index S&P 500®Index (SPX), so options on the Nasdaq–100 Index® Tracking Stock (QQQ℠) are 1/10th the size of options on the related index NASDAQ–100 Index (NDX). The position limit for QQQ℠ options and its related index NDX have a comparable relationship to that of SPY options and SPX. That is, the position limit for options on QQQ℠ is 900,000 contracts and there is no positions limit for NDX options. *See* supra note 9 and Securities Exchange Act Release No. 52650 (October 21, 2005), 70 FR 62147 (October 28, 2005) (SR–CBOE–2001–41) (order approving elimination of NDX options position limit).

[12] The position limit for IWM options on yet another large ETF entitled iShares Russell 2000 Index Fund, (which options have significantly less trading volume than the number one ranked SPY options, as also the QQQ℠ options) are set at 500,000 contracts.

Option nat'l rank 2010	Option symbol	Name of underlying ETF	Option ADV 2010	Option notional value * December 31, 2010	Current options position limit position limit
1	SPY	SPDR Trust Series 1	3,625,904 contracts	$177,823,76 million	300,000 contracts.
4	QQQ	Powershares QQQ Trust	963,502 contracts	$27,141,91 million	900,000 contracts.

* Notional value is calculated as follows: OI × Close × 100; where OI = underlying security's open interest (in contracts), Close = closing price of underlying security on 12/31/2010.

ETF nat'l rank 2010	Name of ETF	ETF ADV 2010	ETF market capitalization December 31, 2010	ETF avg dollar volume
1		SPDR Trust Series 1	210,232,241 shares	$90,280.71 million.
3	Powershares QQQ Trust	85,602,200 shares	$23,564.8 million	$3,593 million .

The options reporting requirement would continue unabated. Thus, the Exchange would require that, just like for options on QQQ℠, each member or member organization that maintains a position in SPDRs® options on the same side of the market, for its own account or for the account of a customer, must report certain information. This information would include, but would not be limited to, the option position, whether such position is hedged and if so, a description of the hedge and if applicable, the collateral used to carry the position. Exchange specialists and Registered Options Traders ("ROTs") [13] would continue to be exempt from this reporting requirement as specialist and ROT information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts ("large positions") would remain at this level for options on SPDRs®.[14]

The Exchange believes that position and exercise limits, at their current levels, no longer serve their stated purpose. There has been a steadfast and significant increase over the last decade in the overall volume of exchange-traded options; position limits, however, have not kept up with the volume. Part of this volume is attributable to a corresponding increase in the number of overall market participants, which has, in turn, brought about additional depth and increased liquidity in exchange-traded options.[15]

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at Phlx, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.[16]

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[17] Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the previously noted Rule 1003 requirement that members file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or its customer may try to maintain an inordinately large unhedged position in an option, particularly on SPDRs®. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member must maintain for a large position held by itself or by its customer. It should also be noted that the Exchange has the authority under Exchange Rule 722(c)(3) to impose a higher margin requirement upon a member or member organization when the Exchange determines a higher requirement is warranted. In addition, the Commission's net capital rule, Rule 15c3–1 under the Act,[18] imposes a capital charge on members to the extent of any margin deficiency resulting from the higher margin requirement.

Finally, the Exchange believes that while position limit on options on QQQs℠, which as noted are similar to options on SPDRs®, has been gradually expanded from 75,000 contracts to the current level of 900,000 contracts in 2005, there have been no adverse affects on the market as a result of this position limit increase. Likewise, there have been no adverse affects on the market from expanding the position limit for options on SPDRs® from 75,000 contracts to the current level of 300,000 contracts in 2005.

The Exchange believes that restrictive option position limits prevent large customers, such as mutual funds and pension funds, from using options to gain meaningful exposure to and hedging protection through the use of options on SPDRs®. This can result in lost liquidity in both the options market and the equity market. The proposed position limit increase will remedy this situation to the benefit of large as well as retail traders, investors, and public customers. The Exchange believes that increasing position and exercise limits for options on would lead to a more liquid and competitive market environment for options on SPDRs® that would benefit customers interested in this product.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b)

[13] For discussion regarding specialists and ROTs, *see* Rules 1020 and 1014(b)(ii), respectively.

[14] For reporting requirements, *see* Rule 1003.

[15] The Commission has previously observed that: Since the inception of standardized options trading, the options exchanges have had rules imposing limits on the aggregate number of options contracts that a member or customer could hold or exercise. These rules are intended to prevent the establishment of options positions that can be used or might create incentives to manipulate or disrupt the underlying market so as to benefit the options position. In particular, position and exercise limits are designed to minimize the potential for mini-manipulations and for corners or squeezes of the underlying market. In addition such limits serve to reduce the possibility for disruption of the options market itself, especially in illiquid options classes. *See* Securities Exchange Act Release No. 39489 (December 24, 1997), 63 FR 276 (January 5, 1998) (SR–CBOE–97–11) (order approving).

[16] These procedures have been effective for the surveillance of SPY options trading and will continue to be employed.

[17] 17 CFR 240.13d–1.

[18] 17 CFR 240.15c3–1.

of the Act [19] in general, and furthers the objectives of Section 6(b)(5) of the Act [20] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange is proposing to expand the position limit on options on SPDRs®. The Exchange believes that this proposal will be beneficial to large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Phlx–2011–58 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2011–58. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–58 and should be submitted on or before May 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10653 Filed 5–2–11; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64349; File No. SR–NYSEArca–2011–22]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.16 (Short Sales) To Modify the Exchange's Procedures for Early Termination of the Short Sale Price Test Restrictions of Rule 201 of Regulation SHO Based on a Triggering Transaction That Another Exchange or a Self-Regulatory Organization Has Determined Was a Clearly Erroneous Execution

April 27, 2011.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 25, 2011, NYSE Arca, Inc. (the "Exchange" or "NYSE Arca") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.16 (Short Sales) to modify the Exchange's procedures for early termination of the short sale price test restrictions of Rule 201 of Regulation SHO ("Rule 201") [4] under the Act based on a triggering transaction that another exchange or a self-regulatory organization ("SRO") has determined was a clearly erroneous execution pursuant to the rules of that exchange or SRO. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 242.201.

and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 26, 2010, the Commission adopted amendments to Rule 201.[5] In order to implement the provisions of revised Rule 201, the Exchange amended NYSE Arca Equities Rule 7.16 (Short Sales) to (1) Establish procedures for the Exchange, as a listing market, to determine that the short sale price test restrictions of Rule 201 have been triggered for a covered security, (2) establish the protocols for the handling of short sale orders by the Exchange, as a trading center, in the event the short sale price test restrictions of Rule 201 are triggered, including establishing what types of short sale orders will be re-priced to achieve a Permitted Price (as defined and calculated in NYSE Arca Equities Rule 7.16(f)(v)(C)), in accordance with Rule 201, during a period when the short sale price test restrictions of Rule 201 are in effect ("Short Sale Period"), (3) establish the Exchange's procedures regarding the execution and display of permissible orders during a Short Sale Period, and the execution and display of orders marked "short exempt" during such a period, and (4) provide that, during a Short Sale Period, Exchange systems will not execute or display a short sale order with respect to that security at a price that is less than or equal to the current national best bid, except as otherwise provided by NYSE Arca Equities Rule 7.16(f) and consistent with Rule 201.[6]

Under NYSE Arca Equities Rule 7.16(f)(iii), when the Exchange is the listing market for a covered security, Exchange systems will determine whether the short sale price test restrictions of Rule 201 have been triggered (i.e., that a covered security has experienced a decrease in price of 10% or more from the security's closing price as of the end of regular trading hours on the prior day) and will notify the single plan processor responsible for consolidation of information for the covered security pursuant to Rule 603(b) of Regulation NMS.[7] Once the short sale price test restrictions of Rule 201 are triggered by the listing market, those restrictions will remain in effect until the close of trading on the next trading day.[8]

If, however, the Exchange determines that the short sale price test for a covered security was triggered because of a clearly erroneous execution on the Exchange,[9] pursuant to NYSE Arca Equities Rule 7.16(f)(iv)(A), the Exchange may lift the short sale price test restrictions before the Short Sale Period ends for a security for which the Exchange is the listing market or, for a security listed on another market, notify the other market of the Exchange's determination that the triggering transaction was a clearly erroneous execution.

For securities for which the Exchange is the listing market, NYSE Arca Equities Rule 7.16 currently addresses only clearly erroneous triggering transactions deemed to be clearly erroneous executions under the Exchange's rules, and does not address situations where another exchange or a SRO determines, under its respective rules, that a triggering transaction was a clearly erroneous execution. To address this scenario, the Exchange proposes to amend NYSE Arca Equities Rule 7.16(f)(iv)(A)[10] to provide that the Exchange may also lift the short sale price test restrictions before the Short Sale Period ends, for covered securities for which the Exchange is the listing market, if the Exchange has been informed by another exchange or a SRO that a transaction in the covered security that occurred at the Trigger Price[11] was a clearly erroneous execution, as determined by that exchange or SRO under its rules.[12]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to, among other things, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposal is designed to refine the Exchange's written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security in violation of the short sale price test restrictions established in Rule 201. To that end, the proposed rule change expands the ability of the Exchange, as a listing market, to lift short sale price test restrictions to include situations where another exchange or a SRO has determined that a triggering transaction was a clearly erroneous execution under the rules of that exchange or SRO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[5] *See* Securities Exchange Act Release No. 61595 (February 26, 2010), 75 FR 11232 (March 10, 2010) (File No. S7–08–09; Amendments to Regulation SHO) ("Rule 201 Adopting Release"). In the Rule 201 Adopting Release, the Commission also adopted amendments to Rule 200(g) of Regulation SHO to include a "short exempt" marking requirement. 17 CFR 242.200(g).

[6] *See* Securities Exchange Act Release No. 63971 (February 25, 2011), 76 FR 12157 (March 4, 2011) (SR–NYSEArca–2011–05).

[7] *See* 17 CFR 242.201(b)(3); 17 CFR 242.603(b). *See also* Rule 201(a)(6) of Regulation SHO, which defines the term "plan processor" to have the same meaning as in Rule 600(b)(55) of Regulation NMS. 17 CFR 242.600(b)(55). The single plan processors are "exclusive processors" as defined under Section 3(a)(22) of the Act. *See* 15 U.S.C. 78c(a)(22).

[8] The short sale price test restrictions will remain in effect at all times when quotation information and the national best bid is collected, processed and disseminated pursuant to a national market system plan. This may extend beyond regular trading hours. Division of Trading & Markets: Responses to Frequently Asked Questions Concerning Rule 201 of Regulation SHO, at Q&A 2.1.

[9] Determination of a "clearly erroneous" execution will be made in accordance with NYSE Arca Equities Rule 7.10.

[10] The Exchange is also proposing two technical amendments to NYSE Arca Equities Rule 7.16 to correct references to the Exchange (in subparagraphs (f)(iv)(A) and (f)(iv)(B) of NYSE Arca Equities Rule 7.16).

[11] The term "Trigger Price" is used in NYSE Arca Equities Rule 7.16(f) to refer to a decrease of 10% or more in a security's price from the security's closing price on the listing market as of the end of regular trading hours on the prior day. Under NYSE Arca Equities Rule 7.16(f)(iii), the short sale price test restrictions of Rule 201 are triggered if a transaction in a covered security occurs at a Trigger Price.

[12] The Exchange will only lift the short sale price test restrictions before the Short Sale Period ends under these circumstances when informed by another exchange or a SRO that a triggering transaction has been determined to be a clearly erroneous execution under the rules of the exchange or SRO, consistent with the authority of that exchange or SRO for making such determinations.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission has considered the Exchange's request to waive the 30-day operative delay, and hereby grants the request. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it will permit the Exchange to lift Rule 201's short sale price test restrictions, in a covered security for which the Exchange is the listing market, when such restrictions were triggered by a transaction that another exchange or a SRO has determined to be a clearly erroneous execution, pursuant to the rules of that exchange or SRO.[19] For this reason, the Commission designates the proposed rule change to be operative upon filing.

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–NYSEArca–2011–22 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–NYSEArca-2011–22. 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 20549–1090. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2011–22 and should be submitted on or before May 24, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–10654 Filed 5–2–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For the purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7439]

30-Day Notice of Proposed Information Collection: Certificate of Eligibility for Exchange Visitor (J–1) Status; Form DS–2019, OMB No. 1405–0119.

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Certificate of Eligibility for Exchange Visitor (J–1) Status
- *OMB Control Number:* 1405–0119
- *Type of Request:* Extension of a Currently Approved Collection
- *Originating Office:* Office of Exchange Coordination & Designation, ECA/EC
- *Form Number:* Form DS–2019
- *Respondents:* U.S. Department of State Designated Sponsors
- *Estimated Number of Respondents:* 1460
- *Estimated Number of Responses:* 350,000 annually
- *Average Hours per Response:* 45 minutes
- *Total Estimated Burden:* 262,500 hours
- *Frequency:* On occasion
- *Obligation To Respond:* Required to Obtain or Retain a Benefit

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from May 3, 2011.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Stanley S. Colvin, Deputy Assistant Secretary for Private Sector Exchange, U.S. Department of State, SA–5, Floor 5, 2200 C Street, NW., Washington, DC 20522; or e-mail at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection

The collection is the continuation of information collected and needed by the Bureau of Educational and Cultural Affairs in administering the Exchange Visitor Program (J–Visa) under the provisions of the Mutual Educational and Cultural Exchange Act, as amended.

Methodology

Access to Form DS–2019 is made available to Department designated sponsors electronically via the Student and Exchange Visitor Information System (SEVIS).

Dated: *April 27, 2011.*

Stanley S. Colvin,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–10765 Filed 5–2–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Nineteenth Meeting: RTCA Special Committee 203: Unmanned Aircraft Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 203 meeting: Unmanned Aircraft Systems.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 203: Unmanned Aircraft Systems.

DATES: The meeting will be held May 17–19, 2011, from 9 a.m. to 5 p.m., unless stated otherwise in agenda.

ADDRESSES: The meeting will be held at RTCA, Inc., Conference Rooms, 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036, telephone (202) 833–9339, fax (202) 833–9434, Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., and Appendix 2), notice is hereby given for a Special Committee 203, Unmanned Aircraft Systems.

Agenda

Tuesday, May 17

- Morning—Opening Plenary Session
- Welcome/Introductions and Administrative Remarks
- Approval of Summary of 17th Plenary Summary
- Plenary Presentations
- Chairperson/Leadership Updates
- Designated Federal Official (DFO) Update
- Work Plan Status
- Work Group Update
- Overview of Product Team Breakout Session
- Closing Plenary Session
- Plenary Adjourns
- RTCA Workspace Web Tool
- Mid-Morning/Afternoon—Workgroup Breakout Sessions
  - Systems Engineering Workgroup
    - Requirements Status and Overview
    - AV2 Overview
  - Control and Communications Workgroup
  - Sense and Avoid Workgroup
    - Ad Hoc Group Report
    - Architecture Group Report
    - Modeling and Simulation Group Report
  - Safety Workgroup
    - Ad Hoc Activities Update

Wednesday, May 18

- All Day—Work Group Breakout Sessions
  - Systems Engineering Workgroup
    - Workgroup Support Discussion and Assignments
    - Work Products and Schedule
    - MASPS Discussion and Assignments
    - OV6c for SA Deployment
  - Control and Communications Workgroup
    - Spectrum Paper Update
    - Continuity Paper Update
    - Availability Paper Updates
  - Sense and Avoid Workgroup
    - Discussion of MASPS contents and Organization
  - Safety Workgroup
    - Severity and Probability Definitions Status
    - FHA Worksheet Review/ Development

Thursday, May 19

- Morning—Workgroup Breakout Session
  - Systems Engineering Workgroup
    - OV6c Continued
  - Control and Communications Workgroup
    - Modeling and Simulation
    - Requirements Review
  - Sense and Avoid Workgroup
    - High-level algorithm requirements
    - Schedule Update
  - Safety Workgroup
    - FHA worksheet Development
    - Schedule Review and Update
- Afternoon—1–2 p.m. (unless otherwise stated)
  - Workgroup Back Briefs
  - Other Business
  - Date, Place, and Time for next Plenary
  - Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 26, 2011.

Robert L. Bostiga,

RTCA Advisory Committee.

[FR Doc. 2011–10631 Filed 5–2–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0051]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for extension of a currently approved collection of information.

SUMMARY: This document solicits public comments on continuation of the requirements for the collection of information entitled "Motorcycle Helmet Labeling" (OMB Control Number: 2127–0518).

Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: You should submit your comments early enough to ensure that Docket Management receives them no later than July 5, 2011.

ADDRESSES: You may submit comments (identified by the DOT Docket ID Number above) by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

You may call the Docket at (202) 366–9324.

Regardless of how you submit your comments, you should mention the docket number of this document. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that two copies of the comment be provided.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Ms. Shashi Kuppa, U.S. Department of Transportation, NHTSA, 1200 New Jersey Avenue, SE., West Building Room W43–313, NVS–113, Washington, DC 20590. Ms. Kuppa's telephone number is (202) 366–3827 and fax number is (202) 366–7002. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How 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.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* 49 CFR 571.218, Motorcycle Helmets (Labeling).

OMB Number: 2127–0518.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: Extension of a currently approved collection.

Affected Public: Motorcycle helmet manufacturers.

Summary of the Collection of Information: The National Traffic Vehicle Safety statute at 49 U.S.C. subchapter II standards and compliance, sections 30111 and 30117, authorizes the issuance of Federal motor vehicle safety standards (FMVSS). The Secretary is authorized to issue, amend, and revoke such rules and regulations as he/she deems necessary. The Secretary is also authorized to require manufacturers to provide information to first purchasers of motor vehicles or motor vehicle equipment when the vehicle equipment is purchased, in the form of printed matter placed in the vehicle or attached to the motor vehicle or motor vehicle equipment.

Using this authority, the agency issued the initial FMVSS No. 218, "Motorcycle helmets," in 1974. Motorcycle helmets are devices used to protect motorcyclists from head injury in motor vehicle crashes. FMVSS No. 218 S5.6 requires that each helmet shall be labeled permanently and legibly in a manner such that the label(s) can be read easily without removing padding or any other permanent part.

Estimated Total Annual Burden: 5,000 hours.

Estimated Number of Respondents: 45.

Comments are invited on: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: 44 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued in Washington, DC, on April 28, 2011.

Christopher J. Bonanti,

Associate Administrator for Rulemaking.

[FR Doc. 2011–10705 Filed 5–2–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2011–0020; Notice 2]

Reports, Forms, and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice soliciting public comment on the ICR, with a 60-day comment period was published on February 25, 2011, at 76 FR 10635.

DATES: Comments must be submitted on or before June 2, 2011.

FOR FURTHER INFORMATION CONTACT: George Stevens, NHTSA 1200 New Jersey Avenue, SE., Room W43–490, Washington, DC 20590. Mr. Stevens' telephone number is (202) 366–5308. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 49 CFR Part 556, Exemption for Inconsequential Defect or Noncompliance.

OMB Number: 2127–0045.

Type of Request: Extension of a Currently Approved Collection.

Abstract: The National Highway Traffic Safety Administration's statute at 49 U.S.C. 30118, *Notification of Defects and Noncompliance,* and 49 U.S.C. 30120, *Remedies for Defects and Noncompliance,* generally requires manufacturers of motor vehicles and items of replacement equipment to conduct a notification and remedy campaign (recall) when their products are determined to contain a safety-related defect or a noncompliance with a Federal Motor Vehicle Safety Standard (FMVSS). Those sections require a manufacturer of motor vehicles or motor vehicle equipment to notify distributors, dealers, and purchasers if any of the manufacturer's products are determined to either contain a safety-related defect or fail to comply with an applicable FMVSS. The manufacturer is under a concomitant obligation to remedy such defect or noncompliance. Pursuant to 49 U.S.C. 30118(d) and 30120(h), Exemptions a manufacturer may seek an exemption from these notification and remedy requirements on the basis that the defect or noncompliance is inconsequential as it relates to motor vehicle safety. NHTSA exercised this statutory authority to excuse inconsequential defects or noncompliances when it promulgated 49 CFR part 566, Exemption for Inconsequential Defect or Noncompliance. This regulation establishes the procedures for manufacturers to submit exemption petitions to the agency and the procedures the agency will use in evaluating those petitions. Part 556 allows the agency to ensure that inconsequentiality petitions are both properly substantiated and efficiently processed.

Affected Public: Businesses or other for-profit entities that manufacture or import motor vehicles or motor vehicle replacement equipment.

Estimated Total Annual Burden: 150 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are Invited On: 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; the accuracy of the Agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: April 27, 2011.

Claude H. Harris,

Acting Associate Administrator for Enforcement.

[FR Doc. 2011–10726 Filed 5–2–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Mayer Brown LLP as outside counsel for BNSF Railway Company (WB461–17 (2)—04/26/11) for permission to use data from all fields from the Board's 1999 through 2009 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–10640 Filed 5–2–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee, Public Meeting

ACTION: Notice.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for May 25, 2011.

Date: May 25, 2011.

Time: 9 a.m. to 1 p.m.

Location: Conference Room A, United States Mint, 801 9th Street, NW., Washington, DC 20220.

Subject: Review and consideration of candidate designs for the 2012 National Infantry Museum and Soldier Center Commemorative Coin Program; candidate designs for the 100th Infantry Battalion, the 442nd Regimental Combat Team, and the Military Intelligence Service, collectively, Congressional Gold Medal; and draft narratives for the 2013 and 2014 Native American $1 Coin Program.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance With 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Greg Weinman, Acting United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: April 27, 2011.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2011–10710 Filed 5–2–11; 8:45 am]

BILLING CODE P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of (1) submission to Congress of amendments to the sentencing guidelines effective November 1, 2011; and (2) request for comment.

SUMMARY: The United States Sentencing Commission hereby gives notice of the following actions:

(1) Pursuant to its authority under 28 U.S.C. 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

(2) Amendment 2, pertaining to drug offenses, has the effect of lowering guideline ranges. The Commission requests comment regarding whether that amendment should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants. This notice sets forth the request for comment.

DATES: The Commission has specified an effective date of November 1, 2011, for the amendments set forth in this notice. Public comment regarding whether Amendment 2, pertaining to drug offenses, should be included as an amendment that may be applied retroactively to previously sentenced defendants should be received on or before June 2, 2011.

ADDRESSES: Comments should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, *Attention:* Public Affairs—Retroactivity Public Comment.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Office of Legislative and Public Affairs, 202–502–4502. The amendments and the request for comment set forth in this notice also may be accessed through the Commission's Web site at *http://www.ussc.gov.*

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

(1) Submission to Congress of Amendments to the Sentencing Guidelines

Notice of proposed amendments was published in the **Federal Register** on January 19, 2011 (*see* 76 FR 3193–02). The Commission held public hearings on the proposed amendments in Washington, DC, on February 16, 2011, and March 17, 2011. On April 28, 2011, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2011.

(2) Request for Comment on Amendment 2, Pertaining to Drug Offenses

Section 3582(c)(2) of title 18, United States Code, provides that "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

The Commission lists in § 1B1.10(c) the specific guideline amendments that the court may apply retroactively under 18 U.S.C. 3582(c)(2). The background commentary to § 1B1.10 lists the purpose of the amendment, the magnitude of the change in the guideline range made by the amendment, and the difficulty of applying the amendment retroactively to determine an amended guideline range under § 1B1.10(b) as among the factors the Commission considers in selecting the amendments included in § 1B1.10(c). To the extent practicable, public comment should address each of these factors.

Authority: 28 U.S.C. § 994(a), (o), (p), and (u); USSC Rules of Practice and Procedure 4.1, 4.3.

Patti B. Saris,

Chair.

(1) Submission to Congress of Amendments to the Sentencing Guidelines

1. *Amendment:* Section 2B1.1(b) is amended by redesignating subdivisions (8) through (17) as subdivisions (9) through (18); and by inserting after subdivision (7) the following:

"(8) If (A) the defendant was convicted of a Federal health care offense involving a Government health care program; and (B) the loss under subsection (b)(1) to the Government health care program was (i) more than $1,000,000, increase by 2 levels; (ii) more than $7,000,000, increase by 3 levels; or (iii) more than $20,000,000, increase by 4 levels.".

Section 2B1.1(b) is amended in subdivision (15), as redesignated by this amendment, by striking "(14)" and inserting "(15)".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 1 by inserting after the paragraph that begins "'Equity securities'" the following:

"'Federal health care offense' has the meaning given that term in 18 U.S.C. 24."; and by inserting after the

paragraph that begins " 'Foreign instrumentality' " the following:

" 'Government health care program' means any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by federal or state government. Examples of such programs are the Medicare program, the Medicaid program, and the CHIP program.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 3(F) by adding at the end the following:

"(viii) *Federal Health Care Offenses Involving Government Health Care Programs.* In a case in which the defendant is convicted of a Federal health care offense involving a Government health care program, the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss, *i.e.,* is evidence sufficient to establish the amount of the intended loss, if not rebutted.".

The Commentary to § 2B1.1 captioned "Application Notes" is amended in Note 7 by striking "(8)" and inserting "(9)" each place it appears;

In Note 8 by striking "(9)" and inserting "(10)" each place it appears;

In Note 9 by striking "(10)" and inserting "(11)" each place it appears;

In Note 10 by striking "(12)" and inserting "(13)" in both places;

In Note 11 and Note 12 by striking "(14)" and inserting "(15)" each place it appears;

In Note 13 by striking "(16)" and inserting "(17)" each place it appears and by striking "(14)" and inserting "(15)" in both places;

In Note 14 by striking "(b)(17)" and inserting "(b)(18)" each place it appears;

In Note 19 by striking "(16)" and inserting "(17)" and by striking "(11)" and inserting "(12)".

The Commentary to § 2B1.1 captioned "Background" is amended by inserting after the paragraph that begins "Subsection (b)(6)" the following:

"Subsection (b)(8) implements the directive to the Commission in section 10606 of Public Law 111–148.".

The Commentary to § 2B1.1 captioned "Background" is amended in the paragraph that begins "Subsection (b)(8)(D)" by striking "(8)" and inserting "(9)";

In the paragraph that begins "Subsection (b)(9)" by striking "(9)" and inserting "(10)";

In the paragraph that begins "Subsections (b)(10)(A)(i)" by striking "(10)" and inserting "(11)";

In the paragraph that begins "Subsection (b)(10)(C)" by striking "(10)" and inserting "(11)";

In the paragraph that begins "Subsection (b)(11)" by striking "(11)" and inserting "(12)";

In the paragraph that begins "Subsection (b)(13)(B)" by striking "(13)" and inserting "(14)";

In the paragraph that begins "Subsection (b)(14)(A)" by striking "(14)" and inserting "(15)";

In the paragraph that begins "Subsection (b)(14)(B)(i)" by striking "(14)" and inserting "(15)";

In the paragraph that begins "Subsection (b)(15)" by striking "(15)" and inserting "(16)"; and

In the paragraph that begins "Subsection (b)(16)" by striking "(16)" and inserting "(17)" in both places.

The Commentary to § 3B1.2 captioned "Application Notes" is amended in Note 3(A) by adding at the end the following:

"Likewise, a defendant who is accountable under § 1B1.3 for a loss amount under § 2B1.1 (Theft, Property Destruction, and Fraud) that greatly exceeds the defendant's personal gain from a fraud offense and who had limited knowledge of the scope of the scheme is not precluded from consideration for an adjustment under this guideline. For example, a defendant in a health care fraud scheme, whose role in the scheme was limited to serving as a nominee owner and who received little personal gain relative to the loss amount, is not precluded from consideration for an adjustment under this guideline.".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 12 U.S.C. 4641 the following:

"12 U.S.C. 5382 2H3.1";

By inserting after the in the line referenced to 15 U.S.C. 78u(c) the following:

"15 U.S.C. 78jjj(c)(1),(2) 2B1.1
15 U.S.C. 78jjj(d) 2B1.1";

In the line referenced to 29 U.S.C. 1131 by inserting "(a)" after "1131"; and

By inserting after the line referenced to 29 U.S.C. § 1141 the following:

"29 U.S.C. 1149 2B1.1".

Reason for Amendment: This amendment responds to the directive in section 10606(a)(2) of the Patient Protection and Affordable Care Act of 2010, Public Law 111–148 (the "Patient Protection Act"), and addresses certain new offenses created by the Patient Protection Act and by the Dodd-Frank Wall Street and Consumer Protection Act, Public Law 111–203 (the "Dodd-Frank Act").

Response to Directive

Section 10606(a)(2)(B) of the Patient Protection Act directed the Commission to—

amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs to provide that the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss by the defendant[.]

Section 10606(a)(2)(C) directed the Commission to amend the guidelines to provide—

(i) a 2-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than $1,000,000 and less than $7,000,000;

(ii) a 3-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than $7,000,000 and less than $20,000,000;

(iii) a 4-level increase in the offense level for any defendant convicted of a Federal health care offense relating to a Government health care program which involves a loss of not less than $20,000,000; and

(iv) if appropriate, otherwise amend the Federal Sentencing Guidelines and policy statements applicable to persons convicted of Federal health care offenses involving Government health care programs.

Section 10606(a)(3) required the Commission, in carrying out the directive, to "ensure reasonable consistency with other relevant directives and with other guidelines" and to "account for any aggravating or mitigating circumstances that might justify exceptions," among other requirements.

The amendment implements the directive by adding two provisions to § 2B1.1 (Theft, Property Destruction, and Fraud), both of which apply to cases in which "the defendant was convicted of a Federal health care offense involving a Government health care program".

The first provision is a new tiered enhancement at subsection (b)(8) that applies in such cases (*i.e.,* Federal health care offenses involving a Government health care program) if the loss is more than $1,000,000. The enhancement is 2 levels if the loss is more than $1,000,000, 3 levels if the loss is more than $7,000,000, and 4 levels if the loss is more than $20,000,000. The tiers of the enhancement apply to loss amounts "more than" the specified dollar amounts rather than to loss amounts "not less than" the specified dollar amounts to "ensure reasonable consistency" as required by the directive. The consistent practice in the

Guidelines Manual is to apply enhancements to loss amounts "more than" specified dollar amounts.

The second provision is a new special rule in Application Note 3(F) for determining intended loss in a case in which the defendant is convicted of a Federal health care offense involving a Government health care program. The special rule provides that, in such a case, "the aggregate dollar amount of fraudulent bills submitted to the Government health care program shall constitute prima facie evidence of the amount of the intended loss, *i.e.,* is evidence sufficient to establish the amount of the intended loss, if not rebutted". The special rule includes language making clear that the government's proof of intended loss may be rebutted by the defendant.

The amendment also adds definitions to the commentary in § 2B1.1 for the terms "Federal health care offense" and "Government health care program". "Federal health care offense" is defined to have the meaning given that term in 18 U.S.C. 24, as required by section 10606(a)(1) of the Patient Protection Act. "Government health care program" is defined to mean "any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by federal or state government." The amendment lists the Medicare program, the Medicaid program, and the CHIP program as examples of such programs. The Commission adopted this definition because health care fraud involving federally funded programs and health care fraud involving state-funded programs are similar offenses, committed in similar ways and posing similar harms to the taxpaying public. In addition, defining "Government health care program" in this manner avoids application difficulties likely to arise from a narrower definition that would require the disaggregation of losses program by program in cases in which the defendant defrauded both federal and state health care programs. Finally, the statutory language in the directive indicates congressional concern with health care fraud that adversely affects the public fisc beyond health care programs funded solely with federal funds.

Finally, the amendment amends Application Note 3(A) to § 3B1.2 (Mitigating Role) to make clear that a defendant who is accountable under § 1B1.3 (Relevant Conduct) for a loss amount under § 2B1.1 that greatly exceeds the defendant's personal gain from a fraud offense, and who had limited knowledge of the scope of the scheme, is not precluded from consideration for a mitigating role adjustment. The amended commentary provides as an example "a defendant in a health care fraud scheme, whose role in the scheme was limited to serving as a nominee owner and who received little personal gain relative to the loss amount". This part of the amendment is consistent with the directive in section 10606(a)(3)(D) of the Patient Protection Act that the Commission should "account for any aggravating or mitigating circumstances that might justify exceptions" to the new tiered enhancement.

New Offenses

In addition to responding to the directives, the amendment amends Appendix A (Statutory Index) to include offenses created by both the Patient Protection Act and the Dodd-Frank Act.

The Patient Protection Act created a new offense at 29 U.S.C. 1149 that prohibits making a false statement in connection with the marketing or sale of a multiple employer welfare arrangement under the Employee Retirement Income Security Act. Pursuant to 29 U.S.C. § 1131(b), a person who commits this new offense is subject to a term of imprisonment of not more than 10 years. The amendment references the new offense at 29 U.S.C. 1149 to 2B1.1 because the offense has fraud or misrepresentation as a element of the offense. As a clerical change, the amendment also amends Appendix A (Statutory Index) to make clear that 29 U.S.C. 1131(a), not the new § 1131(b), is referenced to § 2E5.3 (False Statements and Concealment of Facts in Relation to Documents Required by the Employee Retirement Income Security Act; Failure to Maintain and Falsification of Records Required by the Labor Management Reporting and Disclosure Act; Destruction and Failure to Maintain Corporate Audit Records).

The Dodd-Frank Act created two new offenses, 12 U.S.C. 5382 and 15 U.S.C. 78jjj(d). With regard to 12 U.S.C. 5382, under authority granted by sections 202–203 of the Dodd-Frank Act, the Secretary of the Treasury may make a "systemic risk determination" concerning a financial company and, if the company fails the determination, may commence the orderly liquidation of the company by appointing the Federal Deposit Insurance Corporation as receiver. Before making the appointment, the Secretary must either obtain the consent of the company or petition under seal for approval by a federal district court. The Dodd-Frank Act makes it a crime, codified at 12 U.S.C. 5382, to recklessly disclose a systemic risk determination or the pendency of court proceedings on such a petition. A person who violates 12 U.S.C. 5382 is subject to imprisonment for not more than five years. The amendment references 12 U.S.C. 5382 to 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information). Section 2H3.1 covers several criminal statutes with similar elements and the same maximum term of imprisonment.

The second new offense, 15 U.S.C. 78jjj(d), makes it a crime for a person to falsely represent that he or she is a member of the Security Investor Protection Corporation or that any person or account is protected or eligible for protection under the Security Investor Protection Act. *See* Dodd-Frank Act, Public Law 111–203, § 929V. Section 78jjj also contains two other offenses, at subsections (c)(1) and (c)(2), that are not referenced in Appendix A (Statutory Index). All three subsections are subject to the same maximum term of imprisonment of five years. In addition, all three concern fraud and deceit: the newly created 15 U.S.C. 78jjj(d) involves false representation; 15 U.S.C. 78jjj(c)(1) involves fraud in connection with or in contemplation of a liquidation proceeding; and 15 U.S.C. 78jjj(c)(2) involves fraudulent conversion of assets of the Security Investor Protection Corporation. The amendment references these offenses to § 2B1.1 because the elements of the offenses involve fraud and deceit.

2. *Amendment:* Sections 2D1.1, 2D1.14, 2D2.1, 2K2.4, 3B1.4, and 3C1.1, effective November 1, 2010 (*see* Appendix C, Amendment 748), as set forth in Supplement to the 2010 Guidelines Manual (effective November 1, 2010); *see also* 75 FR 66188 (October 27, 2010), are repromulgated as follows:

Part A

The Drug Quantity Table in § 2D1.1(c) and Note 10 of the Commentary to § 2D1.1 captioned "Application Notes" are repromulgated without change.

Part B

All provisions of § 2D1.1 not repromulgated by Part A of this amendment are repromulgated without change, except as follows:

The Commentary to § 2D1.1 captioned "Application Notes" is amended by striking Note 28 as follows:

"28. *Application of Subsection (b)(12).*—Subsection (b)(12) applies to a defendant who knowingly maintains a premises (*i.e.,* a 'building, room, or enclosure,' *see* '2D1.8, comment. (backg'd.)) for the purpose of

manufacturing or distributing a controlled substance.

Among the factors the court should consider in determining whether the defendant 'maintained' the premises are (A) whether the defendant held a possessory interest in (*e.g.,* owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises.

Manufacturing or distributing a controlled substance need not be the sole purpose for which the premises was maintained, but must be one of the defendant's primary or principal uses for the premises, rather than one of the defendant's incidental or collateral uses for the premises. In making this determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes.",

and inserting a new Note 28 as follows:

"28. *Application of Subsection (b)(12).*—Subsection (b)(12) applies to a defendant who knowingly maintains a premises (*i.e.,* a building, room, or enclosure) for the purpose of manufacturing or distributing a controlled substance, including storage of a controlled substance for the purpose of distribution.

Among the factors the court should consider in determining whether the defendant 'maintained' the premises are (A) whether the defendant held a possessory interest in (*e.g.,* owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises.

Manufacturing or distributing a controlled substance need not be the sole purpose for which the premises was maintained, but must be one of the defendant's primary or principal uses for the premises, rather than one of the defendant's incidental or collateral uses for the premises. In making this determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes.".

Sections 2D1.14, 2K2.4, 3B1.4, and 3C1.1 are repromulgated without change.

Part C

Section 2D2.1 is repromulgated without change.

Reason for Amendment: This multi-part amendment re-promulgates as permanent the temporary, emergency amendment (effective Nov. 1, 2010) that implemented the emergency directive in section 8 of the Fair Sentencing Act of 2010, Public Law 111–220 (the "Act"). The Act reduced the statutory penalties for cocaine base ("crack cocaine") offenses, eliminated the statutory mandatory minimum sentence for simple possession of crack cocaine, and contained directives to the Commission to review and amend the guidelines to account for specified aggravating and mitigating circumstances in certain drug cases.

The emergency amendment authority provided in section 8 of the Act required the Commission to promulgate the guidelines, policy statements, or amendments provided for in the Act, and to make such conforming changes to the guidelines as the Commission determines necessary to achieve consistency with other guideline provisions and applicable law, not later than 90 days after the date of enactment of the Act. Pursuant to this emergency directive, the Commission promulgated an amendment effective November 1, 2010, that made temporary, emergency revisions to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) and § 2D2.1 (Unlawful Possession; Attempt or Conspiracy). Conforming changes to certain other guidelines were also promulgated on a temporary, emergency basis. *See* USSG App. C, Amendment 748 (effective November 1, 2010).

This amendment re-promulgates the temporary, emergency amendment. Part A re-promulgates the revisions to the crack cocaine quantity levels in the Drug Quantity Table in § 2D1.1 without change. Part B re-promulgates the various aggravating and mitigating provisions in § 2D1.1 without change, except for a revision to the new Application Note 28 (relating to the new enhancement for maintaining premises). Part C re-promulgates the revision to § 2D2.1 accounting for the reduction in the statutory penalties for simple possession of crack cocaine without change.

Part A. Changes to the Drug Quantity Table for Offenses Involving Crack Cocaine

Part A re-promulgates without change the emergency, temporary revisions to the Drug Quantity Table in § 2D1.1 and related revisions to Application Note 10 to account for the changes in the statutory penalties made in section 2 of the Act. Section 2 of the Act reduced the statutory penalties for offenses involving manufacturing or trafficking in crack cocaine by increasing the quantity thresholds required to trigger a mandatory minimum term of imprisonment. The quantity threshold required to trigger the 5-year mandatory minimum term of imprisonment was increased from 5 grams to 28 grams, and the quantity threshold required to trigger the 10-year mandatory minimum term of imprisonment was increased from 50 grams to 280 grams. *See* 21 U.S.C. 841(b)(1)(A), (B), (C), 960(b)(1), (2), (3). The new mandatory minimum quantity threshold levels for crack cocaine offenses are consistent with the Commission's 2007 report to Congress, *Cocaine and Federal Sentencing Policy,* in which the Commission, based on available information, defined crack cocaine offenders who deal in quantities of one ounce (approximately 28 grams) or more in a single transaction as wholesalers.

To account for these statutory changes, the amendment conforms the guideline penalty structure for crack cocaine offenses to the approach followed for other drugs, *i.e.,* the base offense levels for crack cocaine are set in the Drug Quantity Table so that the statutory minimum penalties correspond to levels 26 and 32, which was the approach used for crack cocaine offenses prior to November 1, 2007. *See* § 2D1.1, comment. (backg'd.); USSG App. C, Amendment 706 (effective November 1, 2007). Accordingly, using the new drug quantities established by the Act, offenses involving 28 grams or more of crack cocaine are assigned a base offense level of 26, offenses involving 280 grams or more of crack cocaine are assigned a base offense level of 32, and other offense levels are established by extrapolating proportionally upward and downward on the Drug Quantity Table. Conforming the guideline penalty structure for crack cocaine offenses to the approach followed for all other drugs ensures that the quantity-based relationship established by statute between crack cocaine offenses and offenses involving all other drugs is consistently and proportionally reflected throughout the Drug Quantity Table at all drug quantities.

Estimating the likely future sentencing impact of the amendment to the Drug Quantity Table is difficult because the reductions in the statutory penalties for crack cocaine offenses may result in changes in prosecutorial and other practices. With that important caveat, the Commission estimates that approximately 63 percent of crack cocaine offenders sentenced after November 1, 2011, will receive a lower sentence as a result of the change to the

Drug Quantity Table, with an average sentence decrease of approximately 26 percent. For example, under the Drug Quantity Table in effect from November 1, 2007 through October 31, 2010, an offense involving 5 grams of crack cocaine was assigned a base offense level of 24, which corresponds to a guideline sentencing range of 51 to 63 months. Under the Drug Quantity Table as amended, 5 grams of crack cocaine is assigned a base offense level of 16, which corresponds to a guideline sentencing range of 21 to 27 months. Similarly, under the Drug Quantity Table in effect from November 1, 2007 through October 31, 2010, an offense involving 50 grams of crack cocaine was assigned a base offense level of 30, which corresponds to a guideline sentencing range of 97 to 121 months. Under the Drug Quantity Table as amended, 50 grams of crack cocaine is assigned a base offense level of 26, which corresponds to a guideline sentencing range of 63 to 78 months.

It is important to note that no crack cocaine offender will receive an increased sentence as a result of the amendment to the Drug Quantity Table. As indicated above, not all crack cocaine offenders sentenced after November 1, 2011, will receive a lower sentence as a result of the change to the Drug Quantity Table. This is the case for a variety of reasons. Among the reasons, compared to the Drug Quantity Table in effect from November 1, 2007 through October 31, 2010, the amendment does not lower the base offense levels, and therefore does not lower the sentences, for offenses involving the following quantities of crack cocaine: less than 500 milligrams; at least 28 grams but less than 35 grams; at least 280 grams but less than 500 grams; at least 840 grams but less than 1.5 kilograms; at least 2.8 kilograms but less than 4.5 kilograms; and 8.5 kilograms or more. In addition, some offenders are sentenced at the statutory mandatory minimum and therefore cannot have their sentences lowered by an amendment to the guidelines. *See* § 5G1.1(b) (Sentencing on a Single Count of Conviction). Other offenders are sentenced pursuant to §§ 4B1.1 (Career Offender) and 4B1.4 (Armed Career Criminal), which result in sentencing guideline ranges that are unaffected by a reduction in the Drug Quantity Table.

To provide a means of obtaining a single offense level in cases involving crack cocaine and one or more other controlled substances, the amendment also establishes a marihuana equivalency for crack cocaine under which 1 gram of crack cocaine is equivalent to 3,571 grams of marihuana. (The marihuana equivalency for any controlled substance is a constant that can be calculated using any threshold in the Drug Quantity Table by dividing the amount of marihuana corresponding to that threshold by the amount of the other controlled substance corresponding to that threshold. For example, the threshold quantities at base offense level 26 are 100,000 grams of marihuana and 28 grams of crack cocaine; 100,000 grams divided by 28 is 3,571 grams.) In the commentary to § 2D1.1, the amendment makes a conforming change to the rules for cases involving both crack cocaine and one or more other controlled substances. The amendment deletes the special rules in Note 10(D) for cases involving crack cocaine and one or more other controlled substances, and revises Note 10(C) so that it provides an example of such a case.

Part B. Aggravating and Mitigating Factors in Drug Trafficking Cases

Part B re-promulgates the temporary, emergency revisions to § 2D1.1 and accompanying commentary that account for certain aggravating and mitigating factors in drug trafficking cases. These changes implement directives to the Commission in sections 5, 6, and 7 of the Act. The emergency revisions are re-promulgated without change, except for the new Application Note 28 (relating to the new enhancement for maintaining a premises), as explained below.

First, Part B amends § 2D1.1 to add a sentence at the end of subsection (a)(5) (often referred to as the "mitigating role cap"). The new provision provides that if the offense level otherwise resulting from subsection (a)(5) is greater than level 32, and the defendant receives the 4-level ("minimal participant") reduction in subsection (a) of § 3B1.2 (Mitigating Role), the base offense level shall be decreased to level 32. This provision responds to section 7(1) of the Act, which directed the Commission to ensure that "if the defendant is subject to a minimal role adjustment under the guidelines, the base offense level for the defendant based solely on drug quantity shall not exceed level 32".

Second, Part B amends § 2D1.1 to create a new specific offense characteristic at subsection (b)(2) providing an enhancement of 2 levels if the defendant used violence, made a credible threat to use violence, or directed the use of violence. The new specific offense characteristic responds to section 5 of the Act, which directed the Commission to "ensure that the guidelines provide an additional penalty increase of at least 2 offense levels if the defendant used violence, made a credible threat to use violence, or directed the use of violence during a drug trafficking offense."

The amendment also revises the commentary to § 2D1.1 to clarify how this new specific offense characteristic interacts with subsection (b)(1), which provides an enhancement of 2 levels if a dangerous weapon (including a firearm) was possessed. Specifically, Application Note 3 is amended to provide that the enhancements in subsections (b)(1) and (b)(2) may be applied cumulatively. However, in a case in which the defendant merely possessed a dangerous weapon but did not use violence, make a credible threat to use violence, or direct the use of violence, subsection (b)(2) would not apply.

In addition, the amendment makes a conforming change to the commentary to § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) to address cases in which the defendant is sentenced under both § 2D1.1 (for a drug trafficking offense) and § 2K2.4 (for an offense under 18 U.S.C. § 924(c)). In such a case, the sentence under § 2K2.4 accounts for any weapon enhancement; therefore, in determining the sentence under § 2D1.1, the weapon enhancement in § 2D1.1(b)(1) does not apply. *See* § 2K2.4, comment. (n. 4). The amendment amends this commentary to similarly provide that, in a case in which the defendant is sentenced under both §§ 2D1.1 and 2K2.4, the new enhancement at § 2D1.1(b)(2) also is accounted for by § 2K2.4 and, therefore, does not apply.

Third, Part B amends § 2D1.1 to create a new specific offense characteristic at subsection (b)(11) providing an enhancement of 2 levels if the defendant bribed, or attempted to bribe, a law enforcement officer to facilitate the commission of the offense. The new specific offense characteristic responds to section 6(1) of the Act, which directed the Commission "to ensure an additional increase of at least 2 offense levels if * * * the defendant bribed, or attempted to bribe, a Federal, State, or local law enforcement official in connection with a drug trafficking offense".

The amendment also revises the commentary to § 2D1.1 to clarify how this new specific offense characteristic interacts with the adjustment at § 3C1.1 (Obstructing or Impeding the Administration of Justice). Specifically, new Application Note 27 provides that subsection (b)(11) does not apply if the purpose of the bribery was to obstruct or impede the investigation, prosecution, or sentencing of the

defendant because such conduct is covered by § 3C1.1.

Fourth, Part B amends § 2D1.1 to create a new specific offense characteristic at subsection (b)(12) providing an enhancement of 2 levels if the defendant maintained premises for the purpose of manufacturing or distributing a controlled substance. The new specific offense characteristic responds to section 6(2) of the Act, which directed the Commission to "ensure an additional increase of at least 2 offense levels if * * * the defendant maintained an establishment for the manufacture or distribution of a controlled substance, as generally described in section 416 of the Controlled Substances Act (21 U.S.C. 856)."

The amendment also adds commentary in § 2D1.1 at Application Note 28 providing that the enhancement applies to a defendant who knowingly maintains premises (*i.e.,* a building, room, or enclosure) for the purpose of maintaining or distributing a controlled substance. The new amendment differs from the temporary, emergency revisions in clarifying that distribution includes storage of a controlled substance for the purpose of distribution.

Application Note 28 also provides that among the factors the court should consider in determining whether the defendant "maintained" the premises are (A) whether the defendant held a possessory interest in (*e.g.,* owned or rented) the premises and (B) the extent to which the defendant controlled access to, or activities at, the premises. Application Note 28 also provides that manufacturing or distributing a controlled substance need not be the sole purpose for which the premises was maintained, but must be one of the defendant's primary or principal uses for the premises, rather than one of the defendant's incidental or collateral uses of the premises. In making this determination, the court should consider how frequently the premises was used by the defendant for manufacturing or distributing a controlled substance and how frequently the premises was used by the defendant for lawful purposes.

Fifth, Part B amends § 2D1.1 to create a new specific offense characteristic at subsection (b)(14) providing an enhancement of 2 levels if the defendant receives an adjustment under § 3B1.1 (Aggravating Role) and the offense involved one or more of five specified factors. The new specific offense characteristic responds to section 6(3) of the Act, which directed the Commission "to ensure an additional increase of at least 2 offense levels if * * * (A) the defendant is an organizer, leader, manager, or supervisor of drug trafficking activity subject to an aggravating role enhancement under the guidelines; and (B) the offense involved 1 or more of the following super-aggravating factors:

(i) The defendant—

(I) used another person to purchase, sell, transport, or store controlled substances;

(II) used impulse, fear, friendship, affection, or some combination thereof to involve such person in the offense; and

(III) such person had a minimum knowledge of the illegal enterprise and was to receive little or no compensation from the illegal transaction.

(ii) The defendant—

(I) knowingly distributed a controlled substance to a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual;

(II) knowingly involved a person under the age of 18 years, a person over the age of 64 years, or a pregnant individual in drug trafficking;

(III) knowingly distributed a controlled substance to an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct; or

(IV) knowingly involved an individual who was unusually vulnerable due to physical or mental condition, or who was particularly susceptible to criminal conduct, in the offense.

(iii) The defendant was involved in the importation into the United States of a controlled substance.

(iv) The defendant engaged in witness intimidation, tampered with or destroyed evidence, or otherwise obstructed justice in connection with the investigation or prosecution of the offense.

(v) The defendant committed the drug trafficking offense as part of a pattern of criminal conduct engaged in as a livelihood."

The amendment also revises the commentary to § 2D1.1 to provide guidance in applying the new specific offense characteristic at § 2D1.1(b)(14). Specifically, new Application Note 29 provides that if the defendant distributes a controlled substance to an individual or involves an individual in the offense, as specified in subsection (b)(14)(B), the individual is not a "vulnerable victim" for purposes of subsection (b) of § 3A1.1 (Hate Crime Motivation or Vulnerable Victim). Application Note 29 also provides that subsection (b)(14)(C) applies if the defendant committed, aided, abetted, counseled, commanded, induced, procured, or willfully caused the importation of a controlled substance. Subsection (b)(14)(C), however, does not apply if subsection (b)(3) or (b)(5) (as redesignated by the amendment) applies because the defendant's involvement in importation is adequately accounted for by those subsections. In addition, Application Note 29 defines "pattern of criminal conduct" and "engaged in as a livelihood" for purposes of subsection (b)(14)(E) as those terms are defined in § 4B1.3 (Criminal Livelihood).

The amendment also revises the commentary in § 3B1.4 (Using a Minor To Commit a Crime) and § 3C1.1 (Obstructing or Impeding the Administration of Justice) to specify how those adjustments interact with § 2D1.1(b)(14)(B) and (D), respectively. Specifically, Application Note 2 to § 3B1.4 is amended to clarify that the increase of two levels under this section would not apply if the defendant receives an enhancement under § 2D1.1(b)(14)(B). Similarly, Application Note 7 to § 3C1.1 is amended to clarify that the increase of two levels under this section would not apply if the defendant receives an enhancement under § 2D1.1(b)(14)(D).

Sixth, Part B amends § 2D1.1 to create a new specific offense characteristic at subsection (b)(15) providing a 2-level downward adjustment if the defendant receives the 4-level ("minimal participant") reduction in subsection (a) of § 3B1.2 (Mitigating Role) and the offense involved each of three additional specified factors: namely, the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense when the defendant was otherwise unlikely to commit such an offense; was to receive no monetary compensation from the illegal purchase, sale, transport, or storage of controlled substances; and had minimal knowledge of the scope and structure of the enterprise. The specific offense characteristic responds to section 7(2) of the Act, which directed the Commission to ensure that "there is an additional reduction of 2 offense levels if the defendant—

(A) otherwise qualifies for a minimal role adjustment under the guidelines and had a minimum knowledge of the illegal enterprise;

(B) was to receive no monetary compensation from the illegal transaction; and

(C) was motivated by an intimate or familial relationship or by threats or fear when the defendant was otherwise unlikely to commit such an offense."

Seventh, to reflect the renumbering of specific offense characteristics in § 2D1.1(b) by the amendment, technical and conforming changes are made to the commentary to § 2D1.1 and to § 2D1.14 (Narco-Terrorism).

Part C. Simple Possession of Crack Cocaine

Part C re-promulgates without change the temporary, emergency revisions to § 2D2.1 to account for the changes in the statutory penalties for simple possession of crack cocaine made in section 3 of the Act. Section 3 of the Act amended 21 U.S.C. 844(a) to eliminate the 5-year mandatory minimum term of imprisonment (and 20-year statutory maximum) for simple possession of more than 5 grams of crack cocaine (or, for certain repeat offenders, more than 1 gram of crack cocaine). Accordingly, the statutory penalty for simple possession of crack cocaine is now the same as for simple possession of most other controlled substances: For a first offender, a maximum term of imprisonment of one year; for repeat offenders, maximum terms of 2 years or 3 years, and minimum terms of 15 days or 90 days, depending on the prior convictions. *See* 21 U.S.C. 844(a). To account for this statutory change, the amendment deletes the cross-reference at § 2D2.1(b)(1) under which an offender who possessed more than 5 grams of crack cocaine was sentenced under the drug trafficking guideline, § 2D1.1.

3. *Amendment:* The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 8, in the first paragraph by adding at the end as the last sentence the following:

"Likewise, an adjustment under § 3B1.3 ordinarily would apply in a case in which the defendant is convicted of a drug offense resulting from the authorization of the defendant to receive scheduled substances from an ultimate user or long-term care facility. *See* 21 U.S.C. 822(g).".

Reason for Amendment: This amendment makes changes to the Commentary to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit These Offenses); Attempt or Conspiracy) in response to the Secure and Responsible Drug Disposal Act of 2010, Public Law 111–273 (the "Act"). Section 3 of the Act amended 21 U.S.C. 822 (Persons required to register) to authorize certain persons in possession of controlled substances (*i.e.,* ultimate users and long-term care facilities) to deliver the controlled substances for the purpose of disposal. Section 4 of the Act contained a directive to the Commission to "review and, if appropriate, amend" the guidelines to ensure that the guidelines provide "an appropriate penalty increase of up to 2 offense levels above the sentence otherwise applicable in Part D of the *Guidelines Manual* if a person is convicted of a drug offense resulting from the authorization of that person to receive scheduled substances from an ultimate user or long-term care facility as set forth in the amendments made by section 3."

The amendment implements the directive by amending Application Note 8 to § 2D1.1 to provide that an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) ordinarily would apply in a case in which the defendant is convicted of a drug offense resulting from the authorization of the defendant to receive scheduled substances from an ultimate user or long-term care facility. The amendment reflects the likelihood that in such a case the offender abused a position of trust (*i.e.,* the authority provided by 21 U.S.C. § 822 to receive controlled substances for the purpose of disposal) to facilitate the commission or concealment of the offense.

4. *Amendment:* The Commentary to § 2J1.1 captioned "Application Notes" is amended in Note 2 by inserting "In such a case, do not apply § 2B1.1(b)(8)(C) (pertaining to a violation of a prior, specific judicial order)." after "failed to pay.".

Reason for Amendment: This amendment addresses a circuit conflict on whether the specific offense characteristic at subsection (b)(8)(C) of § 2B1.1 (Theft, Property Destruction, and Fraud) applies to a defendant convicted of an offense involving the willful failure to pay court-ordered child support (*i.e.,* a violation of 18 U.S.C. 228). The specific offense characteristic in § 2B1.1(b)(8)(C) applies if the offense involved "a violation of any prior, specific judicial or administrative order, injunction, decree, or process not addressed elsewhere in the guidelines."

It provides an enhancement of 2 levels and a minimum offense level of level 10.

Offenses under section 228 are referenced in Appendix A (Statutory Index) to § 2J1.1 (Contempt), which directs the court to apply § 2X5.1 (Other Offenses), which in turn directs the court to apply the most analogous offense guideline. The commentary to § 2J1.1 provides that, in a case involving a violation of section 228, the most analogous offense guideline is § 2B1.1. *See* § 2J1.1, comment. (n.2).

Some circuits have disagreed over whether to apply § 2B1.1(b)(8)(C) in a case involving a violation of section 228. The Second and Eleventh Circuits have held that applying § 2B1.1(b)(8)(C) in a section 228 case is permissible because the failure to pay the child support and the violation of the order are distinct harms. *See United States* v. *Maloney,* 406 F.3d 149, 153–54 (2d Cir. 2005); *United States* v. *Phillips,* 363 F.3d 1167, 1169 (11th Cir. 2004). However, the Seventh Circuit has held that applying § 2B1.1(b)(8)(C) in a section 228 case is impermissible double counting. *See United States* v. *Bell,* 598 F.3d 366 (7th Cir. 2010) ("apply[ing] both the cross-reference for § 228 and the enhancement for violation of a court or administrative order is impermissible double counting").

The amendment resolves the conflict by amending the commentary to § 2J1.1 to specify that, in a case involving a violation of section 228, § 2B1.1(b)(8)(C) does not apply. The Commission determined that in a section 228 case the fact that the offense involved a violation of a court order is adequately accounted for by the base offense level.

5. *Amendment:* Section 2K2.1(a) is amended in subdivision (4)(B) by striking "or" before "(II) is"; and by adding at the end the following:

"or (III) is convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;";

And in subdivision (6) by striking "or" before "(B)"; and by adding at the end the following:

"or (C) is convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person;".

Section 2K2.1(b) is amended by striking subdivision (6) as follows:

"(6) If the defendant used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense, increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.", and inserting a new subdivision (6) as follows:

"(6) If the defendant—

(A) Possessed any firearm or ammunition while leaving or attempting to leave the United States, or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be transported out of the United States; or

(B) Used or possessed any firearm or ammunition in connection with another felony offense; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense,

increase by 4 levels. If the resulting offense level is less than level 18, increase to level 18.".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 13(D) by inserting "(B)" after "(b)(6)".

The Commentary to § 2K2.1 captioned "Application Notes" is amended in Note 14 by inserting "(B)" after "(b)(6)" each place it appears.

The Commentary to § 2K2.1 captioned "Application Notes" is amended by adding at the end the following:

"15. *Certain Convictions Under 18 U.S.C. 922(a)(6), 922(d), and 924(a)(1)(A).*—In a case in which the defendant is convicted under 18 U.S.C. 922(a)(6), 922(d), or 924(a)(1)(A), a downward departure may be warranted if (A) none of the enhancements in subsection (b) apply, (B) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense, and (C) the defendant received no monetary compensation from the offense.".

The Commentary to § 2M5.1 captioned "Statutory Provisions" is amended by inserting "22 U.S.C. 8512; 50 U.S.C. 1705; " after "2332d;".

Section 2M5.2(a)(2) is amended by inserting "(A)" before "non-fully"; and by striking "ten" and inserting "two, (B) ammunition for non-fully automatic small arms, and the number of rounds did not exceed 500, or (C) both".

The Commentary to § 2M5.2 captioned "Statutory Provisions" is amended by inserting ", 8512; 50 U.S.C. 1705" after "2780".

The Commentary to § 2M5.3 captioned "Statutory Provisions" is amended by inserting "22 U.S.C. 8512;" before "50 U.S.C. "; and by striking " §1701,".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 22 U.S.C. 4221 the following:

"22 U.S.C. 8512 2M5.1, 2M5.2, 2M5.3";

By striking the line referenced to 50 U.S.C. 1701;

And in the line referenced to 50 U.S.C. 1705 by inserting "2M5.1, 2M5.2," before "2M5.3".

Reason for Amendment: This multi-part amendment is a result of the Commission's review of offenses involving firearms crossing the border. The Commission undertook this review in response to concerns that the illegal flow of firearms across the southwestern border of the United States is contributing to violence along the border and ultimately harming the national security of the United States. The Commission has considered sentencing data, heard testimony, and received comment on the general concern of firearms crossing the border illegally and a specific concern that "straw purchasers" (*i.e.,* individuals who buy firearms on behalf of others, typically "prohibited persons" who are not allowed to buy or possess firearms themselves) are contributing to this illegal flow of firearms to a significant degree.

The amendment amends the primary firearms guideline, § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), to address the general concern of firearms crossing the border and the specific concern about straw purchasers. The amendment also amends the guideline for arms export violations, § 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License), to provide greater penalties for export offenses involving small arms and more guidance on export offenses involving ammunition. Finally, the amendment revises the references in Appendix A (Statutory Index) for certain offenses, including providing a reference for a new offense created by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111–195.

Firearms Leaving the United States

Subsection (b)(6) provides a 4-level enhancement, and a minimum offense level of 18, if the defendant used or possessed any firearm or ammunition in connection with another felony offense, or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense. The amendment establishes a new prong (A) in subsection (b)(6) that applies "if the defendant possessed any firearm or ammunition while leaving or attempting to leave the United States; or possessed or transferred any firearm or ammunition with knowledge, intent, or reason to believe that it would be transferred out of the United States", and redesignates the existing provision as prong (B). Under the amendment, a defendant receives the 4-level enhancement and minimum offense level 18 if either prong applies. The Commission determined that possessing a firearm while leaving or attempting to leave the United States is conduct sufficiently similar in seriousness to possessing a firearm in connection with another felony offense to warrant similar punishment. Likewise, possessing or transferring a firearm with knowledge, intent, or reason to believe that it would be transported out of the United States is conduct sufficiently similar in seriousness to possessing or transferring a firearm with knowledge, intent, or reason to believe that it would be used or possessed in connection with another felony offense to warrant similar punishment.

Prior to the amendment, some courts have applied subsection (b)(6) to cases in which the defendant has transported or attempted to transport firearms across the border. These courts have concluded that because transporting a firearm outside the United States is generally a felony under federal law, such conduct may qualify as "another felony offense" for purposes of subsection (b)(6). *See, e.g., United States* v. *Juarez,* 626 F.3d 246 (5th Cir. 2010) (holding that, under the guideline as amended by the Commission in 2008, the district court did not plainly err in applying § 2K2.1(b)(6) to a defendant who transferred firearms with reason to believe they would be taken across the border in a manner that would violate 22 U.S.C. 2778(b) and (c), which prohibits, among other things, the unlicensed export of defense articles and punishes such violations by up to 20 years' imprisonment). However, for clarity and to promote consistency of application, the Commission created a separate, distinct prong (A) in subsection (b)(6) to cover this conduct.

Straw Purchasers

Second, the amendment amends § 2K2.1 to address the concerns about straw purchasers. The amendment increases penalties for certain defendants convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) for making a false statement in connection with a firearms transaction. Specifically, the amendment increases penalties for a defendant who is convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person. The base offense level for a defendant convicted under either of these statutes has been level 12, or level 18 if the offense involved a firearm described in 26 U.S.C. 5845(a). *See*

§ 2K2.1(a)(5), (7). The amendment amends subsections (a)(4)(B) and (a)(6) to increase the base offense level for these defendants to level 14, or 20 if the offense involved either a semiautomatic firearm that is capable of accepting a large capacity magazine or a firearm described in 26 U.S.C. § 5845(a).

The amendment ensures that defendants convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) receive the same punishment as defendants convicted under a third statute used to prosecute straw purchasers, 18 U.S.C. 922(d), when the conduct is similar. Section 922(d) differs from 18 U.S.C. 922(a)(6) and 924(a)(1)(A) in that it requires as an element of the offense that the defendant sell or otherwise dispose of a firearm or ammunition to a prohibited person knowing or having reasonable cause to believe that such person is a prohibited person. Section 2K2.1 has accounted for the increased offense seriousness and offender culpability in violations of 18 U.S.C. 922(d) by providing base offense levels for convictions under section 922(d) that are generally 2 levels higher than for convictions under 18 U.S.C. 922(a)(6) and 924(a)(1)(A). *See* § 2K2.1(a)(4)(B), (a)(6)(B). The Commission determined that defendants who are convicted under 18 U.S.C. 922(a)(6) or 924(a)(1)(A) for making a false statement in connection with a firearms transaction and committed the offense with knowledge, intent, or reason to believe that the offense would result in the transfer of a firearm or ammunition to a prohibited person have engaged in conduct similar to the elements of 18 U.S.C. 922(d), are similarly culpable, and therefore warrant a similar sentence under § 2K2.1.

In addition, the amendment provides a new Application Note 15 stating that, in a case in which the defendant is convicted under any of the three statutes, a downward departure may be warranted if (A) none of the enhancements in subsection (b) of § 2K2.1 apply, (B) the defendant was motivated by an intimate or familial relationship or by threats or fear to commit the offense and was otherwise unlikely to commit such an offense, and (C) the defendant received no monetary compensation from the offense. The Commission determined that a defendant meeting these criteria may be less culpable than the typical straw purchaser.

Export Offenses Involving Small Arms or Ammunition

Third, the amendment amends § 2M5.2 to narrow the application of the alternative base offense level of 14 at subsection (a)(2). The alternative base offense level of 14 has applied "if the offense involved only non-fully automatic small arms (rifles, handguns, or shotguns) and the number of weapons did not exceed ten." *See* § 2M5.2(a)(2). The amendment reduces the threshold number of small arms in subsection (a)(2) from ten to two. The Commission determined that export offenses involving more than two firearms are more serious and more likely to involve trafficking. Narrowing the application of subsection (a)(2) also brings § 2M5.2 into greater conformity with § 2K2.1 in how it accounts for the number of firearms involved in the offense. *See* § 2K2.1(b)(1) (providing a tiered enhancement of 2 to 10 levels if the offense involved three or more firearms); § 2K2.1, comment. (n.13) (specifying that the trafficking enhancement in § 2K2.1(b)(5) applies if the offense involved two or more firearms and other requirements are also met).

The amendment also amends § 2M5.2 to address cases in which the defendant possessed ammunition, either in a case involving ammunition only or in a case involving ammunition and small arms. There appears to be differences in how § 2M5.2 is being applied by the courts in such cases. Under the amendment, a defendant with ammunition will receive the alternative base offense level of 14 if the ammunition consisted of not more than 500 rounds of ammunition for small arms. Such ammunition typically is sold in quantities of not more than 500 rounds, depending on the manufacturer and the type of ammunition. The Commission determined that, as with export offenses involving more than two firearms, export offenses involving more than 500 rounds of ammunition are more serious and more likely to involve trafficking.

References in Appendix A (Statutory Index)

Fourth, the amendment amends Appendix A (Statutory Index) to expand the number of guidelines to which offenses under 50 U.S.C. 1705 are referenced. Section 1705 makes it unlawful to violate, attempt to violate, conspire to violate, or cause a violation of any license, order, regulation, or prohibition issued under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). Any person who willfully commits, willfully attempts or conspires to commit, or aids or abets in the commission of such an unlawful act may be imprisoned for not more than 20 years. *See* 50 U.S.C. 1705(c). Appendix A (Statutory Index) previously contained two separate entries: the criminal offense, 50 U.S.C. 1705, was referenced to § 2M5.3 (Providing Material Support or Resources to Designated Foreign Terrorist Organizations or Specially Designated Global Terrorists, or For a Terrorist Purpose), while another statute that contains no criminal offense, 50 U.S.C. 1701, was referenced to § 2M5.3 as well as to §§ 2M5.1 (Evasion of Export Controls; Financial Transactions with Countries Supporting International Terrorism) and 2M5.2 (Exportation of Arms, Munitions, or Military Equipment or Services Without Required Validated Export License). The amendment revises the entry for 50 U.S.C. 1705 to include all three guidelines, §§ 2M5.1, 2M5.2, and 2M5.3, and deletes as unnecessary the entry for 50 U.S.C. 1701.

Finally, the amendment addresses a new offense created by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111–195. Section 103 of that Act (22 U.S.C. 8512) makes it unlawful to import into the United States certain goods or services of Iranian origin, or export to Iran certain goods, services, or technology, and provides that the penalties under 50 U.S.C. 1705 apply to a violation. The amendment amends Appendix A (Statutory Index) to reference the new offense at 22 U.S.C. 8512 to 2M5.1, 2M5.2, and 2M5.3.

6. *Amendment:* Section 2L1.2(b)(1)(A) is amended by inserting "if the conviction receives criminal history points under Chapter Four or by 12 levels if the conviction does not receive criminal history points" after "16 levels".

Section 2L1.2(b)(1)(B) is amended by inserting "if the conviction receives criminal history points under Chapter Four or by 8 levels if the conviction does not receive criminal history points" after "12 levels".

The Commentary to 2L1.2 captioned "Application Notes" is amended in Note 1 by adding at the end the following:

"(C) *Prior Convictions.*—In determining the amount of an enhancement under subsection (b)(1), note that the levels in subsections (b)(1)(A) and (B) depend on whether the conviction receives criminal history points under Chapter Four (Criminal History and Criminal Livelihood), while subsections (b)(1)(C), (D), and (E) apply without regard to whether the conviction receives criminal history points.".

The Commentary to 2L1.2 captioned "Application Notes" is amended in Note 7 by inserting after "warranted. (B)" the following: "In a case in which the 12-

level enhancement under subsection (b)(1)(A) or the 8-level enhancement in subsection (b)(1)(B) applies but that enhancement does not adequately reflect the extent or seriousness of the conduct underlying the prior conviction, an upward departure may be warranted. (C)".

Reason for Amendment: This amendment amends § 2L1.2 (Unlawfully Entering or Remaining in the United States) to limit the extent of the enhancement at subsection (b)(1) provided for certain offenders. Subsection (b)(1) provides an enhancement if the defendant previously was deported, or unlawfully remained in the United States, after a predicate conviction. The amount of the enhancement ranges from 16 levels to 4 levels, depending on the nature of the prior conviction. Specifically, prior to the amendment, subsection (b)(1)(A) has provided a 16-level increase for a prior conviction for a felony that is (i) A drug trafficking offense for which the sentence imposed exceeded 13 months, (ii) a crime of violence, (iii) a firearms offense, (iv) a child pornography offense, (v) a national security or terrorism offense, (vi) a human trafficking offense, or (vii) an alien smuggling offense; and subsection (b)(1)(B) has provided a 12-level increase for a felony drug trafficking offense for which the sentence imposed was 13 months or less. Both of these enhancements have applied regardless of whether the prior conviction received criminal history points under Chapter Four (Criminal History and Criminal Livelihood).

The amendment reduces the enhancements at subsections (b)(1)(A) and (B) to 12 or 8 levels, respectively, if the prior conviction does not receive criminal history points under Chapter Four. Subsections (b)(1)(A) and (B) as amended continue to provide a 16- or 12-level enhancement, as applicable, if the prior conviction receives criminal history points under Chapter Four. Thus, for reasons of proportionality, the amendment maintains the 4-level distinction between defendants who receive an enhancement under subsection (b)(1)(A) and those who receive an enhancement under subsection (b)(1)(B), regardless of whether the prior conviction receives criminal history points.

The amendment responds to case law and public comment regarding the magnitude of the enhancement when a defendant's predicate conviction does not receive criminal history points. *Compare United States* v. *Amezcua-Vasquez,* 567 F.3d 1050, 1055 (9th Cir. 2009) (defendant had two convictions that were 25 years old; court stated that the 16-level enhancement in § 2L1.2(b)(1)(A) "addresses the seriousness of the offense" but "does not * * * justify increasing a defendant's sentence *by the same magnitude* irrespective of the age of the prior conviction at the time of reentry" [emphasis in original]); *with United States* v. *Chavez-Suarez,* 597 F.3d 1137, 1139 (10th Cir. 2010) (defendant had a conviction that was 11 years old; court discussed *Amezcua-Vasquez* but was "not convinced that this conviction was so stale" as to require the sentencing court to vary downward from the 16-level enhancement).

Under the amendment, defendants with predicate offenses that qualify for an enhancement under subsections (b)(1)(A) and (B) continue to receive an enhancement, regardless of whether the prior convictions receive criminal history points under Chapter Four. Other provisions in the guidelines exclude consideration of a predicate conviction because of the age of the predicate conviction. *See, e.g.,* § 2K1.3 (Unlawful Receipt, Possession, or Transportation of Explosive Materials; Prohibited Transactions Involving Explosive Materials), comment. (n.9); § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition; Prohibited Transactions Involving Firearms or Ammunition), comment. (n.10); § 4B1.2 (Definitions of Terms Used in Section 4B1.1), comment. (n.3). The amendment conforms § 2L1.2(b)(1)(A) and (B) more closely to those provisions, but because of the seriousness of the predicate offenses covered by subsection (b)(1)(A) and (B) reduces, rather than eliminates, the 16- and 12-level enhancements. *See, e.g., Amezcua-Vasquez,* 567 F.3d at 1055 (acknowledging that it is "reasonable to take some account of an aggravated felony, no matter how stale, in assessing the seriousness of an unlawful reentry into the country"). *See also id.* at 1055 (in certain cases in which the prior conviction is "stale", an enhancement may be appropriate to address the "seriousness" of the prior conviction but need not be of the "same magnitude"); *Chavez-Suarez,* 597 F.3d at 1139 (same). For similar reasons, the amendment also adds an upward departure provision at Application Note 7 for cases in which the lower 12- or 8-level enhancement does not adequately reflect the extent or seriousness of the conduct underlying the prior conviction. Conforming changes to the Commentary are also made.

7. *Amendment:* The Commentary to § 3B1.2 captioned "Application Notes" is amended in Note 3(C) by inserting "is based on the totality of the circumstances and" after "adjustment,"; and by striking the last sentence.

The Commentary to § 3B1.2 captioned "Application Notes" is amended in Note 4 by striking the last sentence.

Reason for Amendment: This amendment deletes two sentences from the commentary to § 3B1.2 (Mitigating Role). Specifically, in Application Note 3(C), the amendment deletes the statement that "[a]s with any other factual issue, the court, in weighing the totality of the circumstances, is not required to find, based solely on the defendant's bare assertion, that such a role adjustment is warranted," while retaining the "totality of the circumstances" approach. In Application Note 4, the amendment deletes the sentence, "It is intended that the downward adjustment for a minimal participant will be used infrequently". The Commission determined that these two sentences are unnecessary and may have the unintended effect of discouraging courts from applying the mitigating role adjustment in otherwise appropriate circumstances.

8. *Amendment:* Section 5D1.1 is amended by striking subsection (a) and inserting the following:

"(a) The court shall order a term of supervised release to follow imprisonment—

(1) when required by statute (*see* 18 U.S.C. 3583(a)); or

(2) except as provided in subsection (c), when a sentence of imprisonment of more than one year is imposed.";

and in subsection (b) by adding at the end the following: "*See* 18 U.S.C. 3583(a).".

Section 5D1.1 is amended by adding at the end the following:

"(c) The court ordinarily should not impose a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment.".

The Commentary to § 5D1.1 captioned "Application Notes" is amended by striking Notes 1 and 2 and inserting the following:

"1. *Application of Subsection (a).*— Under subsection (a), the court is required to impose a term of supervised release to follow imprisonment when supervised release is required by statute or, except as provided in subsection (c), when a sentence of imprisonment of more than one year is imposed. The court may depart from this guideline and not impose a term of supervised release if supervised release is not required by statute and the court determines, after considering the factors

set forth in Note 3, that supervised release is not necessary.

2. *Application of Subsection (b).*—Under subsection (b), the court may impose a term of supervised release to follow a term of imprisonment in any other case, after considering the factors set forth in Note 3.

3. *Factors to Be Considered*—

(A) *Statutory Factors.*—In determining whether to impose a term of supervised release, the court is required by statute to consider, among other factors:

(i) The nature and circumstances of the offense and the history and characteristics of the defendant;

(ii) The need to afford adequate deterrence to criminal conduct, to protect the public from further crimes of the defendant, and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(iii) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(iv) The need to provide restitution to any victims of the offense.

See 18 U.S.C. 3583(c).

(B) *Criminal History.*—The court should give particular consideration to the defendant's criminal history (which is one aspect of the 'history and characteristics of the defendant' in subparagraph (A)(i), above). In general, the more serious the defendant's criminal history, the greater the need for supervised release.

(C) *Substance Abuse.*—In a case in which a defendant sentenced to imprisonment is an abuser of controlled substances or alcohol, it is highly recommended that a term of supervised release also be imposed. *See* § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse; Gambling Addiction).

4. *Community Confinement or Home Detention Following Imprisonment.*—A term of supervised release must be imposed if the court wishes to impose a 'split sentence' under which the defendant serves a term of imprisonment followed by a period of community confinement or home detention pursuant to subsection (c)(2) or (d)(2) of § 5C1.1 (Imposition of a Term of Imprisonment). In such a case, the period of community confinement or home detention is imposed as a condition of supervised release.

5. *Application of Subsection (c).*—In a case in which the defendant is a deportable alien specified in subsection (c) and supervised release is not required by statute, the court ordinarily should not impose a term of supervised release. Unless such a defendant legally returns to the United States, supervised release is unnecessary. If such a defendant illegally returns to the United States, the need to afford adequate deterrence and protect the public ordinarily is adequately served by a new prosecution. The court should, however, consider imposing a term of supervised release on such a defendant if the court determines it would provide an added measure of deterrence and protection based on the facts and circumstances of a particular case.".

Section 5D1.2(a) is amended in subdivision (1) by striking "three" and inserting "two"; and by adding at the end the following: "*See* 18 U.S.C. 3583(b)(1).".

Section 5D1.2(a) is amended in subdivision (2) by striking "two years" and inserting "one year"; and by adding at the end the following: "*See* 18 U.S.C. 3583(b)(2).".

Section 5D1.2(a) is amended in subdivision (3) by adding at the end the following: "*See* 18 U.S.C. 3583(b)(3).".

The Commentary to § 5D1.2 captioned "Application Notes" is amended by adding at the end the following:

"4. *Factors Considered.*—The factors to be considered in determining the length of a term of supervised release are the same as the factors considered in determining whether to impose such a term. *See* 18 U.S.C. 3583(c); Application Note 3 to § 5D1.1 (Imposition of a Term of Supervised Release). The court should ensure that the term imposed on the defendant is long enough to address the purposes of imposing supervised release on the defendant.

5. *Early Termination and Extension.*—The court has authority to terminate or extend a term of supervised release. *See* 18 U.S.C. 3583(e)(1), (2). The court is encouraged to exercise this authority in appropriate cases. The prospect of exercising this authority is a factor the court may wish to consider in determining the length of a term of supervised release. For example, the court may wish to consider early termination of supervised release if the defendant is an abuser of narcotics, other controlled substances, or alcohol who, while on supervised release, successfully completes a treatment program, thereby reducing the risk to the public from further crimes of the defendant.".

Reason for Amendment: This amendment makes revisions to the supervised release guidelines, § 5D1.1 (Imposition of a Term of Supervised Release) and § 5D1.2 (Term of Supervised Release), in response to both the findings in the Commission's July 2010 report, *Federal Offenders Sentenced to Supervised Release,* and changes in federal immigration law and the federal offender population in recent years.

First, the amendment creates an exception to the general rule in § 5D1.1(a) that a term of supervised release be imposed when a sentence of imprisonment of more than one year is imposed or when required by statute. The exception, which appears in a new subsection (c) in § 5D1.1, states that supervised release ordinarily should not be imposed in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment. A corresponding application note explains that imposing supervised release in such a case is generally unnecessary, although there may be particular cases in which it is appropriate. Non-citizens now are approximately half of the overall population of federal offenders, *see 2010 Sourcebook of Federal Sentencing Statistics,* Table 9 (showing that 47.5% of federal offenders in fiscal year 2010 were non-citizens), and supervised release is imposed in more than 91 percent of cases in which the defendant is a non-citizen, *see Federal Offenders Sentenced to Supervised Release* at 60. The Commission determined that such a high rate of imposition of supervised release for non-citizen offenders is unnecessary because "recent changes in our immigration law have made removal nearly an automatic result for a broad class of noncitizen offenders." *Padilla* v. *Kentucky,* 130 S. Ct. 1473, 1481 (2010); *see also id.* at 1478 ("[D]eportation or removal * * * is now virtually inevitable for a vast number of noncitizens convicted of crimes."). Furthermore, such offenders likely would face prosecution for a new offense under the federal immigration laws if they were to return illegally to the United States.

Second, the amendment lowers the minimum term of supervised release required by the guidelines for certain defendants (regardless of their citizenship status) when a statute does not require a higher minimum term. Section 5D1.2 requires the court to impose a term of supervised release of at least three years when the defendant is convicted of a Class A or B felony and at least two years when the defendant is convicted of a Class C or D felony. The amendment lowers these minimum terms to two years for a defendant convicted of a Class A and B felony and one year for a defendant convicted of a Class C or D felony. Thus, for reasons of proportionality, the amendment

maintains a 1-year distinction in the minimum term of supervised release between a defendant convicted of a Class A or B felony and a defendant convicted of a Class C or D felony. The Commission determined that these lesser minimum terms should be sufficient in most cases because research indicates that the majority of defendants who violate a condition of supervised release do so during the first year of the term of supervised release. *See Federal Offenders Sentenced to Supervised Release* at 63 & n. 265. Furthermore, if an offender shows non-compliance during such a minimum term, the court may extend the term of supervision up to the statutory maximum. *See* 18 U.S.C. 3583(e)(2). The amendment also adds commentary at new Application Note 5 encouraging courts to exercise their authority to terminate supervised release at any time after the expiration of one year of supervised release in appropriate cases. *See* 18 U.S.C. 3583(e)(1).

Finally, the amendment adds commentary in §§ 5D1.1 and 5D1.2 that provides guidance on the factors a court should consider in deciding whether to order a term of supervised release (when not required by statute) and, if so, how long such a term should be. Such factors include the extent of an offender's criminal record, which research shows to be predictive of an offender's likelihood of complying with the conditions of supervision. *See Federal Offenders Sentenced to Supervised Release* at 66–67 (Figure 4) (noting that the rates of revocation for offenders increased steadily across the six Criminal History Categories (CHC), from 18.7% for offenders in CHC I to 59.8% in CHC VI).

9. *Amendment:* Section 5K2.0(e) is amended by striking "written judgment and commitment order" and inserting "statement of reasons form".

The Commentary to § 5K2.0 captioned "Application Notes" is amended in Note 3(C) in the second paragraph by striking "written judgment and commitment order" and inserting "statement of reasons form"; and in Note 5 by striking "written judgment and commitment order" and inserting "statement of reasons form".

Section 6B1.2(b)(2) is amended by striking "departs from" and inserting "is outside"; and by striking "specifically set forth" and all that follows through "order" and inserting "set forth with specificity in the statement of reasons form".

Section 6B1.2(c)(2) is amended by striking "departs from" and inserting "is outside"; and by striking "specifically set forth" and all that follows through "order" and inserting "set forth with specificity in the statement of reasons form".

The Commentary to § 6B1.2 is amended in the second paragraph by striking "departs from" and inserting "is outside"; by striking "(*i.e.,* that such departure" and all that follows through "order" and inserting "and those reasons are set forth with specificity in the statement of reasons form. *See* 18 U.S.C. § 3553(c)".

Appendix A (Statutory Index) is amended by inserting after the line referenced to 18 U.S.C. 2237(a)(2)(B) the following:

"18 U.S.C. 2237(b)(2)(B)(i) 2A1.3, 2A1.4

18 U.S.C. 2237(b)(2)(B)(ii)(I) 2A2.1, 2A2.2

18 U.S.C. 2237(b)(2)(B)(ii)(II) 2A4.1

18 U.S.C. 2237(b)(2)(B)(ii)(III) 2A3.1

18 U.S.C. § 2237(b)(3) 2A2.2

18 U.S.C. 2237(b)(4) 2A2.1, 2A2.2, 2G1.1, 2G1.3, 2G2.1, 2H4.1, 2L1.1";

and by inserting after the line referenced to 33 U.S.C. 1908 the following:

"33 U.S.C. 3851 2Q1.2".

Reason for Amendment: This two-part amendment addresses miscellaneous issues arising from recently enacted legislation and other guideline application issues.

Plea Agreements

First, the amendment updates the policy statement at § 6B1.2 (Standards for Acceptance of Plea Agreements) in light of *United States* v. *Booker,* 543 U.S. 220 (2005). Specifically, it amends § 6B1.2 to provide standards for acceptance of plea agreements when the sentence is outside the applicable guideline range, including when the sentence is a "variance" (*i.e.,* a sentence that is outside the guidelines framework). These changes to § 6B1.2 are consistent with the changes to § 1B1.1 (Application Instructions) that the Commission promulgated last year, *see* USSG App. C, Amendment 741 (effective November 1, 2010), and reflect *Booker* and subsequent case law.

The amendment also responds to the Federal Judiciary Administrative Improvements Act of 2010, Public Law 111B174 (enacted May 27, 2010), which amended 18 U.S.C. 3553(c)(2) to require that the reasons for a sentence be set forth in the statement of reasons form (rather than in the judgment and commitment order). The amendment makes appropriate clerical changes to § 6B1.2 and subsection (e) of § 5K2.0 (Grounds for Departure) to reflect this statutory change.

Coast Guard Authorization Act of 2010

Second, the amendment responds to the Coast Guard Authorization Act of 2010, Public Law 111B281 (enacted October 15, 2010), which provided statutory sentencing enhancements for certain offenses under 18 U.S.C. 2237 (Criminal sanctions for failure to heave to, obstruction of boarding, or providing false information) and created a new criminal offense at 33 U.S.C. 3851.

The amendment addresses the section 2237 offenses by expanding the range of guidelines to which certain section 2237 offenses are referenced. Section 2237 makes it unlawful for—

> The operator of a vessel to knowingly fail to obey a law enforcement order to heave to, *see* 18 U.S.C. ' 2237(a)(1);
>
> A person on board a vessel to forcibly interfere with a law enforcement boarding or other law enforcement action, or to resist arrest, *see* 18 U.S.C. § 2237(a)(2)(A); or
>
> A person on board a vessel to provide materially false information to a law enforcement officer during a boarding regarding the vessel's destination, origin, ownership, registration, nationality, cargo, or crew, *see* 18 U.S.C. § 2237(a)(2)(B).

All three of these offenses are punishable by not more than 5 years of imprisonment. The first two are referenced in Appendix A (Statutory Index) to § 2A2.4 (Obstructing or Impeding Officers); the third is referenced to § 2B1.1 (Theft, Property Destruction, and Fraud). However, the Coast Guard Authorization Act of 2010 provided statutory sentencing enhancements that apply to persons convicted under either of the first two offenses under section 2237 (*i.e.,* the failure-to-heave-to and forcible-interference offenses referenced to § 2A2.4; the statutory sentencing enhancements do not apply to the false-information offense referenced to § 2B1.1). The amendment addresses these new statutory sentencing enhancements by referencing them in Appendix A (Statutory Index) to Chapter Two offense guidelines most analogous to the conduct forming the basis for the statutory sentencing enhancements, as follows.

If the section 2237 offense results in death, the statutory maximum term of imprisonment is raised to any term of years or life. *See* 18 U.S.C. 2237(b)(2)(B)(i). The Commission referenced this statutory sentencing enhancement to §§ 2A1.3 (Voluntary Manslaughter) and 2A1.4 (Involuntary Manslaughter) because the statutory sentencing enhancement involves death without proof of malice aforethought.

If the section 2237 offense involves an attempt to kill, kidnapping or an attempt to kidnap, or an offense under

18 U.S.C. 2241 (aggravated sexual abuse), the statutory maximum term of imprisonment likewise is raised to any term of years or life. *See* 18 U.S.C. 2237(b)(2)(B)(ii). The Commission referenced this statutory sentencing enhancement to §§ 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) and 2A2.2 (Aggravated Assault) to account for when the section 2237 offense involves an attempt to kill, because those guidelines apply to attempted murder and attempted manslaughter, respectively; to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) to account for when the section 2237 offense involves an offense under 18 U.S.C. § 2241, because offenses under section 2241 are referenced to that guideline; and to § 2A4.1 (Kidnapping, Abduction, Unlawful Restraint) to account for when the section 2237 offense involves kidnapping or attempted kidnapping, because that guideline applies to kidnapping.

If the section 2237 offense results in serious bodily injury, the statutory maximum term of imprisonment is raised to 15 years. *See* 18 U.S.C. 2237(b)(3). The Commission referenced this statutory sentencing enhancement to § 2A2.2 because a section 2237 offense involving this statutory sentencing enhancement is similar to an assault that results in bodily injury, and that guideline applies to such an assault. *See* USSG § 2A2.2, comment. (n.1) (defining aggravated assault to include any assault that involved serious bodily injury).

If the section 2237 offense involves knowing transportation under inhumane conditions, and is committed in the course of a violation of 8 U.S.C. 1324; chapter 77 of title 18, United States Code; or section 113 or 117 of such title, the statutory maximum term of imprisonment is raised to 15 years. *See* 18 U.S.C. § 2237(b)(4). The Commission referenced this statutory sentencing enhancement to the following guidelines:

To §§ 2A2.1 (Assault with Intent to Commit Murder; Attempted Murder) and 2A2.2 to account for when the section 2237 offense involves a violation of section 113, because section 113 offenses are referenced to those guidelines;

To §§ 2G1.1 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with an Individual Other than a Minor), 2G1.3 (Promoting a Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Transportation of Minors to Engage in a Commercial Sex Act or Prohibited Sexual Conduct; Travel to Engage in Commercial Sex Act or Prohibited Sexual Conduct with a Minor; Sex Trafficking of Children; Use of Interstate Facilities to Transport Information about a Minor), and 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production) to account for when the section 2237 offense involves a violation of 18 U.S.C. § 1591 (which is within chapter 77), because offenses under section 1591 are referenced to those guidelines;

To § 2H4.1 (Peonage, Involuntary Servitude, Slave Trade, and Child Soldiers) to account for when the section 2237 offense involves a violation of any provision of chapter 77 other than 18 U.S.C. § 1591, because such violations generally are referenced to that guideline; and

to § 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) to account for when the section 2237 offense involves a violation of 8 U.S.C. § 1324, because section 1324 offenses are referenced to that guideline.

Finally, the amendment addresses the new criminal offense at 33 U.S.C. 3851, which makes it a felony, punishable by imprisonment for not more than six years, to sell or distribute an organotin or to sell, distribute, make, use, or apply an anti-fouling system (*e.g.,* paint) containing an organotin. The Commission referenced this offense to § 2Q1.2 (Mishandling of Hazardous or Toxic Substances or Pesticides; Recordkeeping, Tampering, and Falsification; Unlawfully Transporting Hazardous Materials in Commerce) because the offense involves pesticides known to be toxic.

10. *Amendment:* Chapter Two is amended in the introductory commentary by inserting "and Related Adjustments" after "(Obstruction".

The Commentary to § 2J1.2 captioned "Application Notes" is amended in Note 2(A) by inserting "and Related Adjustments" after "(Obstruction"; and in Note 3 by inserting "and Related Adjustments" after "(Obstruction".

The Commentary to § 2J1.3 captioned "Application Notes" is amended in Note 2 by inserting "and Related Adjustments" after "(Obstruction"; and in Note 3 by inserting "and Related Adjustments" after "(Obstruction".

The Commentary to § 2J1.6 captioned "Application Notes" is amended in Note 2 by inserting "and Related Adjustments" after "(Obstruction"; and in Note 4 by striking "Obstruction of Justice" and inserting "Obstructing or Impeding the Administration of Justice".

The Commentary to § 2J1.9 captioned "Application Notes" is amended in Note 1 by inserting "and Related Adjustments" after "(Obstruction"; and in Note 2 by inserting "and Related Adjustments" after "(Obstruction".

Section 2Q2.1(c)(1) is amended by inserting "or paleontological resource" after "heritage resource"; and by inserting "or Paleontological Resources" after "Heritage Resources" in both places.

Section 3C1.1 is amended by striking "(A)" and inserting "(1)"; by striking "(B)" and inserting "(2)"; by striking "(i)" and inserting "(A)"; and by striking "(ii)" and inserting "(B)".

Section 4A1.2(k)(2) is amended by striking "(i)" and inserting "(A)"; by striking "(ii)" and inserting "(B)"; and by striking "(iii)" and inserting "(C)".

Section 4B1.1(b) is amended by redesignating (A) through (G) as (1) through (7).

The Commentary to § 5E1.2 captioned "Application Notes" is amended in Note 6 by inserting "and Related Adjustments" after "(Obstruction".

The Commentary to § 8A1.2 captioned "Application Notes" is amended in Note 2 by inserting "and Related Adjustments" after "(Obstruction".

Section 8B2.1(a) is amended by striking "(c)" and inserting "(b)".

The Commentary to § 8C2.3 captioned "Application Notes" is amended in Note 2 by inserting "and Related Adjustments" after "(Obstruction".

Reason for Amendment: This amendment makes various technical and conforming changes to the guidelines.

First, the amendment makes certain technical and conforming changes in connection with the amendments that the Commission submitted to Congress on April 29, 2010. *See* 75 FR 27388 (May 14, 2010); USSG App. C, Amendments 738B746. Those changes are as follows:

(1) Amendment 744 made changes to the organizational guidelines in Chapter Eight, including a change that consolidated subsections (b) and (c) of § 8D1.4 (Recommended Conditions of Probation—Organizations) into a single subsection (b). To reflect this consolidation, subsection (a) of § 8B2.1 (Effective Compliance and Ethics Program) is changed so that it refers to the correct subsection of § 8D1.4.

(2) Amendment 745 expanded the scope of § 2B1.5 (Theft of, Damage to, or Destruction of, Cultural Heritage Resources; Unlawful Sale, Purchase, Exchange, Transportation, or Receipt of Cultural Heritage Resources) to cover not only cultural heritage resources but also paleontological resources. To reflect this expanded scope, a conforming change is made to subsection (c)(1) of § 2Q2.1 (Offenses Involving Fish, Wildlife, and Plants).

Second, the amendment makes technical changes to § 3C1.1 (Obstructing or Impeding the Administration of Justice), subsection (k)(2) of § 4A1.2 (Definitions and

Instructions for Computing Criminal History), and subsection (b) of § 4B1.1 (Career Offender) to promote stylistic consistency in how subdivisions are designated throughout the *Guidelines Manual.*

Finally, the amendment makes a series of changes throughout the *Guidelines Manual* to provide full and accurate references to the titles of Chapter Three, Part C (Obstruction and Related Adjustments) and § 3C1.1.

(2) Request for Comment on Amendment 2, Pertaining to Drug Offenses.

On April 28, 2011, the Commission submitted to the Congress amendments to the sentencing guidelines and official commentary, which become effective on November 1, 2011, unless Congress acts to the contrary. Such amendments and the reasons for amendment are set forth in this notice.

Amendment 2, pertaining to drug offenses, has the effect of lowering guideline ranges. *See* 28 U.S.C. 994(u) ("If the Commission reduces the term of imprisonment recommended in the guidelines applicable to a particular offense or category of offenses, it shall specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced."). The Commission seeks comment regarding whether, pursuant to 18 U.S.C. § 3582(c)(2) and 28 U.S.C. § 994(u), this amendment, or any part thereof, should be included in subsection (c) of § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range (Policy Statement)) as an amendment that may be applied retroactively to previously sentenced defendants.

The Commission also requests comment regarding whether, if it amends § 1B1.10(c) to include this amendment, it also should amend § 1B1.10 to provide guidance to the courts on the procedure to be used when applying an amendment retroactively under 18 U.S.C. 3582(c)(2).

Part-by-Part Consideration

Amendment 2, pertaining to drug offenses, contains three parts. The Commission seeks comment on whether it should list the entire amendment, or one or more parts of the amendment, in subsection (c) of § 1B1.10 as an amendment that may be applied retroactively to previously sentenced defendants.

Part A changes the Drug Quantity Table in § 2D1.1 for offenses involving crack cocaine. This has the effect of lowering guideline ranges for certain defendants for offenses involving crack cocaine.

Part B contains both mitigating and aggravating provisions for offenses involving drugs, regardless of drug type. The mitigating provisions have the effect of lowering guideline ranges for certain defendants in drug cases, and the aggravating provisions have the effect of raising guideline ranges for certain defendants in drug cases.

Part C deletes the cross reference in § 2D2.1(b)(1) under which an offender who possessed more than 5 grams of crack cocaine was sentenced under § 2D1.1. This has the effect of lowering guideline ranges for certain defendants for offenses involving simple possession of crack cocaine.

For each of these three parts, the Commission requests comment on whether that part should be listed in subsection (c) of § 1B1.10 as an amendment that may be applied retroactively. Note that if Part B were applied retroactively (in isolation, or in combination with Parts A and/or C), the court would determine not only whether any mitigating provisions in Part B applied, but also whether any aggravating provisions in Part B applied. To the extent any aggravating provisions applied, the aggravating effect of those provisions would act to offset the mitigating effect of changes made by Parts A, B, and C, to the extent they apply, but in no event could the net effect result in the defendant receiving a sentence higher than the sentence previously imposed. *See* 18 U.S.C. 3582(c)(2) (authorizing the court to "reduce", but not increase, the defendant's term of imprisonment).

For its consideration of Parts A and B, the Commission seeks comment on two options in particular. Option 1 would include Part A as an amendment that may be applied retroactively, but would not include Part B. Option 2 would include both Part A and Part B.

Other Guidance or Limitations

If the Commission does list the entire amendment, or one or more parts of the amendment, in subsection (c) of § 1B1.10 as an amendment that may be applied retroactively to previously sentenced defendants, should the Commission provide further guidance or limitations regarding the circumstances in which and the amount by which sentences may be reduced?

In particular, should the Commission limit retroactivity only to a particular category of defendants, such as (A) defendants in a particular criminal history category or categories (*e.g.,* defendants in Criminal History Category I) or (B) defendants who received an adjustment under the guidelines' "safety valve" provision (currently § 2D1.1(b)(16))?

Should the Commission exclude from retroactivity certain categories of defendants whose offense involved aggravating conduct such as, for example, (A) defendants who received an enhanced penalty under § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals; Attempt or Conspiracy), (B) defendants who received an adjustment under § 3B1.1 (Aggravating Role), (C) defendants who received an adjustment under § 3B1.4 (Using a Minor to Commit a Crime), (D) defendants who received an enhancement under § 2D1.1(b)(1) (*i.e.,* if "a dangerous weapon (including a firearm) was possessed"), (E) defendants who were sentenced to a mandatory minimum term of imprisonment because of a conviction for a firearms offense (*i.e.,* a conviction under 18 U.S.C. §§ 844(h), 924(c), or 929(a)), or (F) defendants who are career offenders under § 4B1.1 (Career Offender)?

In considering whether to limit retroactivity to a particular category or categories of defendants, how, if at all, should the Commission account for the fact that the jurisprudence that applies to sentencing has changed to expand the discretionary authority of a sentencing court to impose a sentence outside the guidelines framework? Should the Commission limit retroactivity only to, for example, (A) defendants who were sentenced within the guideline range, (B) defendants who were sentenced within the guideline range or who received a departure under Chapter Five, Part K, (C) defendants sentenced before *United States* v. *Booker,* 543 U.S. 220 (2005), (D) defendants sentenced before *Kimbrough* v. *United States,* 552 U.S. 85, 110 (2007) ("it would not be an abuse of discretion for a district court to conclude when sentencing a particular defendant that the crack/powder disparity yields a sentence 'greater than necessary' to achieve § 3553(a)'s purposes, even in a mine-run case"), or (E) defendants sentenced before *Spears* v. *United States,* 555 U.S. 261, 129 S.Ct. 840, 844 (2009) ("we now clarify that district courts are entitled to reject and vary categorically from the crack-cocaine Guidelines based on a policy disagreement with those Guidelines")? Section 1B1.10 addresses this factor as follows:

> If the original term of imprisonment imposed was less than the term of imprisonment provided by the guideline range applicable to the defendant at the time of sentencing, a reduction comparably less than the amended guideline range

determined under subdivision (1) of this subsection may be appropriate. However, if the original term of imprisonment constituted a non-guideline sentence determined pursuant to 18 U.S.C. § 3553(a) and *United States v. Booker,* 543 U.S. 220 (2005), a further reduction generally would not be appropriate.

Should the Commission amend § 1B1.10 to provide further guidance on how the sentencing court, in considering retroactivity, should account for this factor?

[FR Doc. 2011–10725 Filed 5–2–11; 8:45 am]

BILLING CODE 2211–01–P

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meeting Amendment

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the meetings for the following four panels of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board have been rescheduled and not as originally announced in the **Federal Register** on April 6, 2011.

Panel	Date(s)	Time	Location
Cellular and Molecular Medicine	June 5, 2011	6 p.m.–10 p.m.	Crowne Plaza DC/Silver Spring.
	June 6, 2011	8 a.m.–5 p.m.	Crowne Plaza DC/Silver Spring.
Mental Health and Behav Sci-B	June 7, 2011	8 a.m.–5 p.m.	L'Enfant Plaza Hotel.
Neurobiology-C	June 8, 2011	6 p.m.–10 p.m.	Crowne Plaza DC/Silver Spring.
	June 9–10, 2011	8 a.m.–5 p.m.	Crowne Plaza Hotel Silver Spring.
Mental Health and Behav Sci-A	June 9, 2011	8 a.m.–5 p.m.	L'Enfant Plaza Hotel.

The addresses of the hotels and VA Central Office are:

Crowne Plaza Washington DC/Silver Spring, 8777 Georgia Avenue, Silver Spring, MD

L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinical science research.

The panel meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each panel meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal research proposals.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research proposals. During this portion of each meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research proposals.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these panel meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the panel meetings and rosters of the members of the panels should contact LeRoy G. Frey, Ph.D., Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 443–5674.

Dated: April 27, 2011.

By Direction of the Secretary.

William F. Russo,

Director of Regulations Management, Office of General Counsel.

[FR Doc. 2011–10680 Filed 5–2–11; 8:45 am]

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FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Parts 60 and 63
National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[EPA–HQ–OAR–2009–0234; EPA–HQ–OAR–2011–0044, FRL–9286–1]

RIN 2060–AP52

National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States (U.S.) Environmental Protection Agency (EPA or Agency) is proposing national emission standards for hazardous air pollutants (NESHAP) from coal- and oil-fired electric utility steam generating units (EGUs) under Clean Air Act (CAA or the Act) section 112(d) and proposing revised new source performance standards (NSPS) for fossil fuel-fired EGUs under CAA section 111(b). The proposed NESHAP would protect air quality and promote public health by reducing emissions of the hazardous air pollutants (HAP) listed in CAA section 112(b). In addition, these proposed amendments to the NSPS are in response to a voluntary remand of a final rule. We also are proposing several minor amendments, technical clarifications, and corrections to existing NSPS provisions for fossil fuel-fired EGUs and large and small industrial-commercial-institutional steam generating units.

DATES: Comments must be received on or before July 5, 2011. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of having full effect if the Office of Management and Budget (OMB) receives a copy of your comments on or before June 2, 2011.

Public Hearing: EPA will hold three public hearings on this proposal. The dates, times, and locations of the public hearings will be announced separately. Oral testimony will be limited to 5 minutes per commenter. The EPA encourages commenters to provide written versions of their oral testimonies either electronically or in paper copy. Verbatim transcripts and written statements will be included in the rulemaking docket. If you would like to present oral testimony at one of the hearings, please notify Ms. Pamela Garrett, Sectors Policies and Programs Division (C504–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–7966; e-mail: *garrett.pamela@epa.gov*. Persons wishing to provide testimony should notify Ms. Garrett at least 2 days in advance of each scheduled public hearing. For updates and additional information on the public hearings, please check EPA's Web site for this rulemaking, *http://www.epa.gov/ttn/atw/utility/utilitypg.html.* The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rule. EPA officials may ask clarifying questions during the oral presentations, but will not respond to the presentations or comments at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings.

ADDRESSES: Submit your comments, identified by Docket ID. No. EPA–HQ–OAR–2011–0044 (NSPS action) or Docket ID No. EPA–HQ–OAR–2009–0234 (NESHAP action), by one of the following methods:

- *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *http://www.epa.gov/oar/docket.html*. Follow the instructions for submitting comments on the EPA Air and Radiation Docket Web site.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov,* Attention EPA–HQ–OAR–2011–0044 (NSPS action) or EPA–HQ–OAR–2009–0234 (NESHAP action).
- *Fax:* Fax your comments to: (202) 566–9744, Docket ID No. EPA–HQ–OAR–2011–0044 (NSPS action) or Docket ID No. EPA–HQ–OAR–2009–0234 (NESHAP action).
- *Mail:* Send your comments on the NESHAP action to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Docket ID No. EPA–HQ–OAR–2009–0234. Send your comments on the NSPS action to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Docket ID. EPA–HQ–OAR–2011–0044. 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, OMB, Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.
- *Hand Delivery or Courier:* Deliver your comments to: EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holiday), and special arrangements should be made for deliveries of boxed information.

Instructions: All submissions must include agency name and respective docket number or Regulatory Information Number (RIN) for this rulemaking. All comments will be posted without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

the EPA Docket Center, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For the NESHAP action: Mr. William Maxwell, Energy Strategies Group, Sector Policies and Programs Division, (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–5430; Fax number (919) 541–5450; E-mail address: *maxwell.bill@epa.gov*. For the NSPS action: Mr. Christian Fellner, Energy Strategies Group, Sector Policies and Programs Division, (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; Telephone number: (919) 541–4003; Fax number (919) 541–5450; E-mail address: *fellner.christian@epa.gov*.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

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I. General Information

A. Executive Summary

In December 2000, EPA appropriately concluded that it was appropriate and necessary to regulate hazardous air pollutants (HAP) from EGUs. Today, EPA confirms that finding and concludes that it remains appropriate and necessary to regulate these emissions from EGUs. Hazardous air pollutants from EGUs contribute to adverse health and environmental effects. EGUs are by far the largest U.S. anthropogenic sources of mercury (Hg) emissions into the air and emit a number of other HAP. Both the finding in 2000 and our conclusion that it remains appropriate and necessary to regulate HAP from EGUs are supported by the CAA and scientific and technical analyses.

Mercury is a highly toxic pollutant that occurs naturally in the environment and is released into the atmosphere in significant quantities as the result of the burning of fossil fuels. Mercury in the environment is transformed into a more toxic form, methylmercury (MeHg), and because it is also a persistent pollutant, it accumulates in the food chain, especially the tissue of fish. When people consume these fish they consume MeHg, the consumption of which may cause neurotoxic effects. Children, and, in particular, developing

fetuses, are especially susceptible to MeHg effects because their developing bodies are more highly sensitive to its effects. In the December 2000 Finding, we estimated that about 7 percent of women of child-bearing age are exposed to MeHg at a level capable of causing adverse effects in the developing fetus, and that about 1 percent were exposed to 3 to 4 times that level. 65 FR 79827. Moreover, in the 1997 Mercury Study Report to Congress (the "Mercury Study"),[1] we concluded that exposures among specific subpopulations including anglers, Asian-Americans, and members of some Native American Tribes may be more than two-times greater than those experienced by the average U.S. population (U.S. EPA 1997 Mercury Study Report to Congress, Volume IV, page 7–2).

In addition to Hg, EGUs are significant emitters of HAP metals such as arsenic (As), nickel (Ni), cadmium (Cd), and chromium (Cr), which can cause cancer; HAP metals with potentially serious noncancer health effect such as lead (Pb) and selenium (Se); and other toxic air pollutants such as the acid gases hydrogen chloride (HCl) and hydrogen fluoride (HF). Adverse noncancer health effects associated with non-Hg EGU HAP include chronic health disorders (*e.g.,* irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and damage to the kidneys), and acute health disorders (*e.g.,* lung irritation and congestion, alimentary effects such as nausea and vomiting, and effects on the kidney and central nervous system). Three of the key metal HAP emitted by EGUs (As, Cr, and Ni) have been classified as human carcinogens, while another (Cd) is classified as a probable human carcinogen. Current national emissions inventories indicate that EGUs are responsible for 62 percent of the national total emissions of As, 22 percent of the national total emissions of Cr, and 28 percent of the national total emissions of Ni to the atmosphere. Notably, EGUs are also responsible for 83 percent of the national total emissions of Se to the atmosphere.

Congress recognized the threats posed by emissions of HAP and was dissatisfied with the pace of EPA's progress in reducing them prior to 1990. As a result, it enacted significant changes to the CAA that required EPA to develop stringent standards for the control of these pollutants from both stationary and mobile sources. Congress included the requirements in the 1990 CAA amendments regarding acid rain that would reduce emissions of certain criteria pollutants from EGUs and result in the installation of controls that might achieve HAP emission reduction co-benefits. For that reason, it added the requirement for EPA to make a finding before it could regulate EGUs under section 112. Specifically, Congress required in the air toxics provisions that EPA conduct a study of the public health hazards anticipated to remain from EGU HAP emissions after imposition of these other provisions and regulate EGUs under section 112 if the Agency found, after considering the results of the study, that such regulation was appropriate and necessary. Congress also required EPA to conduct a study of Hg emissions from EGUs and other sources and consider the health and environmental effects of the emissions and the availability and cost of control technologies.

Responding to Congress, EPA published the required studies detailing the hazards posed by emissions of Hg and the risks posed by emissions of Hg and other HAP from fossil fuel-fired EGUs. Following the publication of the studies and after collecting additional relevant data, EPA concluded in December 2000 that the threats to public health and the environment from emissions of Hg and other HAP from EGUs made it both appropriate and necessary to adopt regulations under section 112 to reduce the emissions of Hg and other HAP from coal- and oil-fired EGUs. As a result of its findings, EPA added these sources to the list of stationary sources subject to regulations governing the emissions of HAP. However, in a rulemaking effort completed in 2005, EPA reversed its findings and instead adopted regulations under other provisions of the CAA. The DC Circuit Court vacated the resulting regulations, noting that EPA had sidestepped important legal requirements in the CAA that govern the delisting of source categories. Those requirements provide that EPA can delist a source category only if it can demonstrate that no source within the listed category poses a lifetime cancer risk above one in one million to the individual most exposed and that emissions from no source in the category exceed the level that is adequate to protect public health with an ample margin of safety and that no adverse environmental effects will result from the emissions of any source. CAA 112(c)(9)(B). The DC Circuit Court's action restored EPA's December 2000 determination that it was appropriate and necessary to regulate coal- and oil-fired EGUs under section 112, and EGUs remain a listed source category.

EPA reasonably concluded in December 2000, based on the information available to the Agency at that time, that it was appropriate and necessary to regulate EGUs under section 112. Now, more than 10 years have passed since EPA's determination that toxic emissions from coal- and oil-fired EGUs pose a threat to public health and the environment. Although not required, EPA conducted additional, extensive technical analyses based on more recent data, and those analyses confirm that it remains appropriate and necessary to regulate HAPs from coal- and oil-fired EGUs. Accordingly and without further delay, we are proposing a set of HAP emission standards for coal- and oil-fired EGUs that can be met with existing technology that has been available for a significant time.

EPA acknowledges that although EGUs contribute significantly to the total amount of U.S. anthropogenic Hg emissions, other sources both here and abroad also contribute significantly to the global atmospheric burden and U.S. deposition of Hg. It is estimated that the U.S. contributes 5 percent to global anthropogenic Hg and 2 percent the total global Hg pool.[2] However, as the U.S. Supreme Court has noted in decisions as recently as *Massachusetts* v. *EPA,* regarding the problem of climate change, it is not necessary to show that a problem will be entirely solved by the action being taken, nor that it is necessary to cure all ills before addressing those judged to be significant. *549 U.S. 497, 525 (2007).*

At the time it published the December 2000 Finding, EPA identified certain technologies capable of significantly reducing Hg and other HAP emissions. Since then, additional technologies and improvements to those previously identified have become available. These technologies are also often effective at reducing significantly the emissions of other conventional pollutants such as SO_2 and PM, thereby conferring even greater health co-benefits. As today's notice discusses further, the reductions expected from the adopted final rule will produce substantially greater co-benefits to health and the environment than they will cost to affected companies. We further believe that these reductions can be achieved without significantly affecting the availability and cost of electricity to

[1] U.S. EPA. 1997. Mercury Study Report to Congress. EPA–452/R–97–003 December 1997.

[2] Based on 2005 U.S. emissions of 105 tons, and global emissions of 2,100 tons from UNEP. Mercury emissions are discussed more fully in Section III.D.1 of this preamble.

consumers. In those instances in which such concerns do arise, the Federal government will work with companies to ensure a reliable and reasonably-priced supply of electricity. Moreover, in its assessment of the impacts of today's proposed rule on jobs and the economy, EPA finds that more jobs will be created in the air pollution control technology production field than may be lost as the result of compliance with these proposed rules.

A number of EGUs operating today were built in the 1950s and 1960s, using now-obsolete and inefficient technologies. Today, new units are far more efficient in their production of electricity, their use of fuel, and the relative quantities of pollution emitted. To the extent that some of the oldest, least efficient, least controlled units are retired by companies who elect not to invest in controlling them, assessments included in the docket to today's notice of proposed rulemaking indicate that there will be a sufficient supply of electricity from newer units. In fact, one consequence of today's proposed rule, if adopted as a final rule, will be that the market for electricity in the U.S. will be more level and no longer skewed in favor of the higher polluting units that were exempted from the CAA at its inception on Congress' assumption that their useful life was near an end. Thus, this proposed rule will require companies to make a decision—control HAP emissions from virtually uncontrolled sources or retire these sometimes 60 year old units and shift their emphasis to more efficient, cleaner modern methods of generation, including modern coal-fired generation.

For the reasons summarized above and discussed in detail in this document, the standards being proposed today will be effective at significantly reducing emissions of Hg and an array of other toxic pollutants from coal- and oil-fired EGUs. In addition, as a result of the HAP reductions and co-benefits of these rules, many premature deaths from exposure to air pollution will be avoided by the application of controls that are well-known, broadly applied, and available. To the extent that isolated issues remain concerning the availability of electricity in some more remote parts of the country, we believe that EPA has the ability to work with companies making good faith efforts to comply with the standards so that consumers in those areas are not adversely affected.

Consistent with the recently issued Executive Order (EO) 13563, "Improving Regulation and Regulatory Review," we have estimated the cost and benefits of the proposed rule. The estimated net benefits of our proposed rule at a 3 percent discount rate are $48 to 130 billion or $42 to $120 billion at a 7 percent discount rate.

SUMMARY OF THE MONETIZED BENEFITS, SOCIAL COSTS, AND NET BENEFITS FOR THE PROPOSED RULE IN 2016

[Millions of 2007$] [a]

	3% Discount rate	7% Discount rate
Total Monetized Benefits [b]	$59,000 to $140,000	$53,000 to $130,000.
Hg-related Benefits [c]	$4.1 to $5.9	$0.45 to $0.89.
CO_2-related Benefits	$570	$570.
$PM_{2.5}$-related Co-benefits [d]	$58,000 to $140,000	$53,000 to $120,000.
Total Social Costs [e]	$10,900	$10,900.
Net Benefits	$48,000 to $130,000	$42,000 to $130,000.
Non-monetized Benefits	Visibility in Class I areas. Cardiovascular effects of Hg exposure. Other health effects of Hg exposure. Ecosystem effects. Commercial and non-freshwater fish consumption.	

[a] All estimates are for 2016, and are rounded to two significant figures. The net present value of reduced CO_2 emissions are calculated differently than other benefits. The same discount rate used to discount the value of damages from future emissions (SCC at 5, 3, 2.5 percent) is used to calculate net present value of SCC for internal consistency. This table shows monetized CO_2 co-benefits at discount rates at 3 and 7 percent that were calculated using the global average SCC estimate at a 3 percent discount rate because the interagency workgroup on this topic deemed this marginal value to be the central value. In section 6.6 of the RIA we also report the monetized CO_2 co-benefits using discount rates of 5 percent (average), 2.5 percent (average), and 3 percent (95th percentile).

[b] The total monetized benefits reflect the human health benefits associated with reducing exposure to MeHg, $PM_{2.5}$, and ozone.

[c] Based on an analysis of health effects due to recreational freshwater fish consumption.

[d] The reduction in premature mortalities from account for over 90 percent of total monetized $PM_{2.5}$ benefits.

[e] Social costs are estimated using the MultiMarket model, in order to estimate economic impacts of the proposal to industries outside the electric power sector. Details on the social cost estimates can be found in Chapter 9 and Appendix E of the RIA.

For more information on how EPA is addressing EO 13563, see the executive order discussion, later in the preamble.

B. Does this action apply to me?

The regulated categories and entities potentially affected by the proposed standards are shown in Table 1 of this preamble.

TABLE 1—POTENTIALLY AFFECTED REGULATED CATEGORIES AND ENTITIES

Category	NAICS code [1]	Examples of potentially regulated entities
Industry	221112	Fossil fuel-fired electric utility steam generating units.
Federal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by the Federal government.
State/local/tribal government	[2] 221122	Fossil fuel-fired electric utility steam generating units owned by municipalities.
	921150	Fossil fuel-fired electric utility steam generating units in Indian country.

[1] North American Industry Classification System.

[2] Federal, State, or local government-owned and operated establishments are classified according to the activity in which they are engaged.

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, company, business, organization, etc., would be regulated by this action, you should examine the applicability criteria in 40 CFR 60.40, 60.40Da, or 60.40c or in 40 CFR 63.9982. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permitting authority for the entity or your EPA regional representative as listed in 40 CFR 60.4 or 40 CFR 63.13 (General Provisions).

C. What should I consider as I prepare my comments to EPA?

Do not submit information containing CBI to EPA through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI only to the following address: Roberto Morales, OAQPS Document Control Officer (C404–02), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Docket ID EPA–HQ–OAR–2011–0044 (NSPS action) or Docket ID EPA–HQ–OAR–2009–0234 (NESHAP action). Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

D. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

E. When would a public hearing occur?

EPA will hold three public hearings on this proposal. The dates, times, and locations of the public hearings will be announced separately. If you would like to present oral testimony at one of the hearings, please notify Ms. Pamela Garrett, Sectors Policies and Programs Division (C504–03), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–7966; e-mail: *garrett.pamela@epa.gov.* Persons wishing to provide testimony should notify Ms. Garrett at least 2 days in advance of the public hearings. For updates and additional information on the public hearings, please check EPA's Web site for this rulemaking, *http://www.epa.gov/ttn/atw/utility/utilitypg.html.*

II. Background Information on the NESHAP

In 1990, Congress substantially rewrote provisions of the CAA addressing emissions of HAP from large and small stationary sources in the U.S. Collectively, these sources emit into the air millions of pounds of HAP each year, chemicals that are known to cause or are suspected of causing cancer, birth defects, reproduction problems, and other serious health effects. Many of the sources that emit air toxics are located in urban areas, which generally include predominantly low income, minority or otherwise vulnerable communities, where dense populations mean that large numbers of people may be exposed.

Since 1990, EPA has promulgated regulations covering over 50 industrial sectors, requiring the use of available control technology and other practices to reduce emissions. These standards have reduced emissions of HAP from American industry by more than 60 percent. HAP emissions from smaller sources such as dry cleaners and auto body shops have declined by 30 percent, also due to CAA standards. Greater reductions are expected as greater numbers of smaller sources adopt pollution prevention, efficiency, or install control technologies to comply with EPA emission standards. Emissions from the mobile source sector have also been addressed. Controls for fuels and vehicles are expected to reduce selected HAP from vehicles by more than 75 percent by 2020.

EGUs are the most significant source of HAP in the country that remains unaddressed by Congress's air toxics program. EGUs emit multiple HAP of concern and are by far the largest remaining source of Hg, which is one of the more highly toxic chemicals on Congress's list of HAP and which, once released, stays in the environment permanently. Coal- and oil-fired EGUs also emit HAP such as As, other metals and acid gases in amounts significantly higher than almost any other industrial sector. They are located in nearly every state, and emissions from their stacks affect people nearby as well as hundreds of miles away.

Congress provided a specific path for EPA to regulate HAP emissions from EGUs. It gave explicit instructions about scientific studies EPA needed to develop and then consider in determining whether it was "appropriate and necessary" to regulate HAP emissions from EGUs. Congress anticipated that EPA would complete the studies by 1994. In 2000, EPA found that it was indeed "appropriate and necessary" to regulate HAP emissions from EGUs under section 112. In the decade that has passed since EPA made that finding, EGUs have continued to emit Hg and other HAP, and there are still no national limits on the amount of Hg and other HAP that EGUs can release into the air. And, although some plants have installed available and effective control technologies that reduce these emissions, there is no requirement for EGUs to control for Hg and other HAP.

As our new analyses demonstrate, it remains both appropriate and necessary to set standards for coal- and oil-fired EGUs to protect public health and the environment from the adverse effects of HAP emissions from EGUs. The Agency's appropriate and necessary finding was correct in 2000, and it remains correct today. EPA proposes to set standards for coal- and oil-fired EGUs that will reduce emissions of Hg, Ni and other metal HAP, acid gas HAP, and other harmful HAP. These standards are based on available control technologies and other practices already used by the better-controlled and lower-emitting EGUs. They are achievable, we believe they can be implemented without disruption to the reliable provision of electricity, and will deliver health protection across the U.S.

In this section, we provide an overview of the relevant statutory, regulatory, and litigation background.

A. Statutory Background

Congress enacted section 112 to address HAP emissions from stationary sources. Section 112 contains provisions specific to EGUs, which we will address in this preamble, but we begin with a summary of the overall structure and purpose of the section 112 program.

Prior to the 1990 Amendments, the CAA required EPA to regulate HAP solely on the basis of risk to human

health. Legislative History of the CAA Amendments of 1990 ("Legislative History"), at 3174–75, 3346 (Comm. Print 1993). Congress was dissatisfied with the slow pace of exclusively risk-based regulation of HAP prior to 1990, however, and, as a result, substantially amended the CAA in 1990, setting forth a two-stage approach for regulating HAP emissions. Under the first stage, Congress directed EPA to issue technology-based emission standards for listed source categories. CAA sections 112 (c)–(d). In the second stage, which occurs "within eight years" of the imposition of the technology-based standards, EPA must consider whether residual risks remain after imposition of the MACT standards that warrant more stringent standards to protect human health or to prevent an adverse environmental effect. CAA section 112(f)(2)(A).

In addition to adopting this two-phased approach to standard-setting, Congress included a series of rigorous deadlines for EPA, including deadlines for listing categories and issuing emission standards for such categories. *See, e.g.,* CAA section 112(e)(1). Thus, in substantially amending CAA section 112 in 1990, Congress sought prompt and permanent reductions of HAP emissions from stationary sources—first through technology-based standards, and then further, as necessary, through risk-based standards designed to protect human health and the environment.

The criteria for regulation differ in section 112 depending on whether the source is a major source or an area source. A "major source" is any stationary source [3] or group of stationary sources at a single location and under common control that emits or has the potential to emit 10 tons or more per year of any HAP or 25 tons or more per year of any combination of HAP. *See* CAA 112(a)(1). An "area source" is any stationary source of HAP that is not a "major source." *See* CAA 112(a)(2). For major sources, EPA must list a category under section 112(c)(1) if at least one stationary source in the category meets the definition of a major source.[4] For area sources, EPA must list if: (1) EPA determines that the category of area sources presents a threat of adverse effects to human health or the environment that warrants regulation under CAA section 112; or (2) the category of area sources falls within the purview of CAA section 112(k)(3)(B) (the Urban Area Source Strategy). *See* CAA section 112(c)(3).

Congress established a specific structure for determining whether to regulate EGUs under section 112.[5] Specifically, Congress enacted CAA section 112(n)(1).

In section 112(n)(1)(A), EPA is directed to conduct a study to evaluate the hazards to public health reasonably anticipated to occur as the result of HAP emissions from EGUs after imposition of the requirements of the CAA, and to report the results of such study to Congress by November 15, 1993 (Utility Study Report to Congress; [6] the "Utility Study"). We discuss this study further below in conjunction with the other studies Congress required be conducted with respect to EGUs under section 112(n)(1). The last sentence of section 112(n)(1)(A) provides that EPA shall regulate EGUs under CAA section 112 "if the Administrator finds such regulation is appropriate and necessary, after considering the results of the [Utility Study] * * *" Thus, section 112(n)(1)(A) governs how the Administrator decides whether to list EGUs for regulation under section 112. *See New Jersey,* 517 F.3d at 582 ("Section 112(n)(1) governs how the Administrator decides whether to list EGUs; it says nothing about delisting EGUs.").

Once a source category is listed pursuant to section 112(c), the next step is for EPA to establish technology-based emission standards under section 112(d). Under section 112(d), EPA must establish emission standards for major sources that "require the maximum degree of reduction in emissions of the HAP subject to this section" that EPA determines is achievable taking into account certain statutory factors. These are referred to as "maximum achievable control technology" or "MACT" standards. The MACT standards for existing sources must be at least as stringent as the average emissions limitation achieved by the best performing 12 percent of existing sources in the category (for which the Administrator has emissions information) or the best performing 5 sources for source categories with less than 30 sources. *See* CAA section 112(d)(3)(A) and (B). This level of minimum stringency is referred to as the MACT floor, and EPA cannot consider cost in setting the floor. For new sources, MACT standards must be at least as stringent as the control level achieved in practice by the best controlled similar source. *See* CAA section 112(d)(3). EPA also must consider more stringent "beyond-the-floor" control options. When considering beyond-the-floor options, EPA must consider not only the maximum degree of reduction in emissions of HAP, but must take into account costs, energy, and nonair quality health and environmental impacts when doing so. *See Cement Kiln Recycling Coal.* v. *EPA,* 255 F.3d 855, 857–58 (D.C. Cir. 2001).

CAA section 112(d)(4) authorizes EPA to set a health-based standard for a limited set of HAP for which a health threshold has been established, and that standard must provide for "an ample margin for safety." 42 U.S.C. 7412(d)(4). As these standards are potentially less stringent than MACT standards, the Agency must have detailed information on HAP emissions from the subject sources and sources located near the subject sources before exercising its discretion to set such standards.

For area sources, section 112(d)(5) authorizes EPA to issues standards or requirements that provide for the use of generally available control technologies (GACT) or management practices in lieu of promulgating standards pursuant to sections 112(d)(2) and (3).

As noted above, Congress required that various reports concerning EGUs be completed. The first report, the Utility Study, required EPA to evaluate the hazards to public health reasonably anticipated to occur as the result of HAP emissions from EGUs after imposition of the requirements of the CAA. This report was required by November 15, 1993. The second report, due on November 15, 1994, directed EPA to "conduct a study of mercury emissions from [EGUs], municipal waste combustion units, and other sources, including area sources." *See* CAA section 112(n)(1)(B). In conducting the Mercury study Congress directed EPA to "consider the rate and mass of emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions, and the costs of such technologies." *Id.* EPA completed both of these reports by 1998.

[3] A "stationary source" of HAP is any building, structure, facility or installation that emits or may emit any air pollutant. See CAA Section 112(a)(3).

[4] Congress required EPA to publish a list of categories and subcategories of major sources and area sources by November 15, 1991. See CAA 112(c)(1) & (c)(3). EPA published the initial list on July 16, 1992. See 57 FR 31576, July 16, 1992. EPA did not include EGUs on the initial section 112(c) list because Congress required EPA to conduct and consider the results of the study required by section 112(n)(1)(A) before regulating these units. At the time of the initial listing, EPA had not completed the study required by section 112(n)(1)(A).

[5] "Electric utility steam generating unit" is defined as any "fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale." See CAA 112(a)(8).

[6] US EPA. Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units —Final Report to Congress. EPA–453/R–98–004a. February 1998.

The last required report was to be completed by the National Institute of Environmental Health Sciences (NIEHS) and submitted to Congress by November 15, 1993. CAA section 112(n)(1)(C) directed NIEHS to conduct "a study to determine the threshold level of Hg exposure below which adverse human health effects are not expected to occur." In conducting this study, NIEHS was to determine "a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health." Id. NIEHS submitted this Report to Congress in August, 1995.

In addition, Congress, in conference report language associated with EPA's fiscal year 1999 appropriations, directed EPA to fund the National Academy of Sciences (NAS) to perform an independent evaluation of the available data related to the health impacts of MeHg ("Toxicological Effects of Methylmercury," hereinafter, NAS Study or MeHg Study).[7] H.R. Conf. Rep. No. 105–769, at 281–282 (1998). Specifically, NAS was tasked with advising EPA as to the appropriate reference dose (RfD) for MeHg, which is the amount of a chemical which, when ingested daily over a lifetime, is anticipated to be without adverse health effects to humans, including sensitive subpopulations. 65 FR 79826. In that same conference report, Congress indicated that EPA should not make the appropriate and necessary regulatory determination for Hg emissions until EPA had reviewed the results of the NAS Study. *See* H.R. Conf. Rep. No. 105–769, at 281–282 (1998).

The NAS Study evaluated the same issues as those required to be considered under section 112(n)(1)(C). The NAS Study was completed 5 years after the NIEHS Study, and, thus, considered additional information not available to NIEHS. Because Congress required that the same issues be addressed in both the NAS and NIEHS Studies and the NAS Study was issued after the NIEHS study, we discuss, for purposes of this document, the content of the NAS Study, as opposed to the NIEHS Study.

[7] National Research Council (NAS). 2000. Toxicological Effects of Methylmercury. Committee on the Toxicological Effects of Methylmercury, Board on Environmental Studies and Toxicology, National Research Council. Many of the peer-reviewed articles cited in this section are publications originally cited in the NAS report.

B. Regulatory and Litigation Background

EPA conducted the studies required by section 112(n)(1) concerning utility HAP emissions. Prior to issuance of the Mercury Study, EPA engaged in two extensive external peer reviews of the document. Although EPA missed the statutory deadline for completing the studies, the Mercury Study and the Utility Study were complete by 1998. The NIEHS study was completed in 1995, and the NAS Study was completed in 2000.

In December 2000, after considering public input, the studies required by section 112(n)(1) and other relevant information, including Hg emissions data from EGUs, EPA determined that it was appropriate and necessary to regulate EGUs under CAA section 112. Based on that determination, the Agency listed such units for regulation under section 112(c).

Pursuant to a settlement agreement, the deadline for issuing emission standards was March 15, 2005. However, instead of issuing emission standards pursuant to section 112(d), on March 15, 2005, EPA delisted EGUs, finding that it was neither appropriate nor necessary to regulate such units under section 112. That attempt to delist was subsequently invalidated by the DC Circuit Court.

1. Studies Related to HAP Emissions From EGUs

a. The Utility Study

EPA issued the Utility Study in February 1998, over 4 years after the statutory deadline. The Utility Study included numerous analyses. EPA first collected HAP emissions test data from 52 EGUs, including a range of coal-, oil-, and natural gas-fired units, and the test data along with facility specific information were used to estimate HAP emissions from all 684 utility facilities. EPA determined that 67 HAP were emitted from EGUs. In addition, the study evaluated HAP emissions based on two scenarios: (1) 1990 base year; and (2) 2010 projected emissions. The 2010 scenario was selected to meet the section 112(n)(1)(A) mandate to evaluate hazards "after imposition of the requirements of the Act." EPA also considered potential control strategies for the identified HAP consistent with section 112(n)(1)(A).

EPA evaluated exposures, hazards, and risks due to HAP emissions from coal-, oil-, and natural gas-fired EGUs. EPA conducted a screening level assessment of all 67 HAP to prioritize the HAP for further analysis. A total of 14 HAP were identified as priority HAP that would be further assessed. Twelve HAP (As, beryllium (Be), Cd, Cr, manganese (Mn), Ni, HCl, HF, acrolein, dioxins, formaldehyde, and radionuclides) were identified as a priority for further assessment based on inhalation exposure and risk. Six HAP (Hg, radionuclides, As, Cd, Pb, and dioxins) were considered a priority for multipathway assessment of exposure and risk.

Based on the inhalation estimates for the priority HAP, EPA determined that As and Cr emissions from coal-fired EGUs and Ni emissions from oil-fired EGUs contributed most to the potential cancer related inhalation risks, but those risks were not high. The non-cancer risk assessment due to inhalation exposure indicated exposures were well below the reference levels.

The Agency also conducted multipathway assessments for the six HAP identified above. Based on these analyses, EPA determined that Hg from coal-fired EGUs was the HAP of greatest potential concern. In addition, the screening multipathway assessments for dioxins and As suggested that these two HAP were of potential for multipathway risk.

In addition to the 1990 analysis, EPA also estimated emissions and inhalation risks for the year 2010. HAP emissions from coal-fired utilities were predicted to increase by 10 to 30 percent by the year 2010. Predicted changes included the installation of scrubbers for a small number of facilities, the closing of a few facilities, and an increase in fuel consumption of other facilities. For oil-fired plants, emissions and inhalation risks were estimated to decrease by 30 to 50 percent by the year 2010, primarily due to projected reductions in use of oil for electricity generation. Multipathway risks for 2010 were not assessed.

In estimating future emissions from EGUs, EPA primarily evaluated the effect of implementation of the Acid Rain Program (ARP) on HAP emissions from EGUs. The 2010 scenario also included estimated changes in emissions resulting from projected trends in fuel choices and power demands.

Table 2 of this preamble presents estimated emissions for a subset of priority HAP for 1990 and 2010.

TABLE 2—NATIONWIDE EMISSIONS FOR SIX PRIORITY HAP, TPY

HAP	Coal		Oil		Natural gas	
	1990	2010	1990	2010	1990	2010
Arsenic	61	71	5	3	0.15	0.25
Chromium	73	87	4.7	2.4	.....	.....
Mercury	46	60	0.25	0.13	0.0015	0.024
Nickel	58	69	390	200	2.2	3.5
Hydrogen chloride	143,000	155,000	2,900	1,500	NM	NM
Hydrogen fluoride	20,000	26,000	140	73	NM	NM

Numerous potential alternative control strategies for reducing HAP emissions from EGUs were identified. These included pre-combustion controls (*e.g.,* fuel switching, coal cleaning), post combustion controls (*e.g.,* PM controls, SO_2 controls), and improving efficiency in supply or demand. For example, coal cleaning tends to remove at least some of all the trace metals. EPA also concluded that PM controls tend to effectively remove the trace metals (excluding Hg). The Utility Study also found that flue gas desulfurization (FGD) units were less effective at removing trace metals and exhibited more variability in removal of those metals than PM control, but FGD were more effective at reducing acid gas HAP.

b. The Mercury Study

EPA issued the Mercury Study in December 1997, 3 years after the statutory deadline. The Mercury Study assessed the magnitude of U.S. Hg emissions by source, the health and environmental implications of those emissions, and the availability and cost of control technologies.

According to the Mercury Study, Hg cycles in the environment as a result of natural and human (anthropogenic) activities. Most of the Hg in the atmosphere is elemental Hg vapor, which circulates in the atmosphere for up to a year, and, hence, can be widely dispersed and transported thousands of miles from likely sources of emission. The Mercury Study also found that most of the Hg in water, soil, sediments, or plants and animals is in the form of inorganic Hg salts and organic forms of Hg (*e.g.,* MeHg). The inorganic form of Hg, when either bound to airborne particles or in a gaseous form, is readily removed from the atmosphere by precipitation and is also dry deposited. Wet deposition is the primary mechanism for transporting Hg from the atmosphere to surface waters and land. Even after it deposits, Hg commonly is emitted back to the atmosphere either as a gas or associated with particles, to be re-deposited elsewhere.

The Mercury Study estimated that in 1994–1995, anthropogenic U.S. Hg emissions were about 158 tons annually. Roughly 87 percent of those emissions were from combustion sources, including waste and fossil fuel combustion. According to the Mercury Study, current anthropogenic emissions were only one part of the Hg cycle. The Mercury Study noted that current releases from human activities were adding to the Hg reservoirs that already exist in land, water, and air, both naturally and as a result of prior human activities. The Mercury Study concluded that the flux of Hg from the atmosphere to land or water at any one location is comprised of contributions from the natural global cycle, including re-emissions from the oceans, international sources, regional sources, and local sources.

The Mercury Study further described a computer simulation of long-range transport of Hg, which suggested that about one-third (approximately 52 tons) of U.S. anthropogenic emissions are deposited, through wet and dry deposition, within the lower 48 states. The remaining two-thirds (approximately 107 tons) was estimated to be transported outside of U.S. borders where it would diffuse into the global reservoir. The computer simulation further suggested that another 35 tons of Hg from the global reservoir outside the U.S. was deposited annually in the U.S. for a total deposition in the U.S. of roughly 87 tons per year (tpy).

The Mercury Study also found that fish consumption dominates the pathway for human and wildlife exposure to MeHg and that there was a plausible link between anthropogenic releases of Hg from industrial and combustion sources in the U.S. and MeHg in fish. In the Mercury Study, EPA explained that, given the current scientific understanding of the environmental fate and transport of this element, it was not possible to quantify how much of the MeHg in fish consumed by the U.S. population results from U.S. anthropogenic emissions, as compared to other sources of Hg (such as natural sources and re-emissions from the global pool).

The Mercury Study noted that those who regularly and frequently consume large amounts of fish—either marine species that typically have much higher levels of MeHg than other species, or freshwater fish that have been affected by Hg pollution—are more highly exposed. Because the developing fetus may be the most sensitive to the effects from MeHg, women of child-bearing age were the population of greatest interest. EPA concluded in the Mercury Study that approximately 7 percent of women of child-bearing age (*i.e.,* between the ages of 15 and 44) were exposed to MeHg at levels exceeding the RfD.

Finally, the Mercury Study concluded that piscivorous (fish-eating) birds and mammals were more highly exposed to Hg than any other known component of aquatic ecosystems, and that adverse effects of Hg on fish, birds and mammals include death, reduced reproductive success, impaired growth and development, and behavioral abnormalities. The Mercury Study also evaluated Hg emissions control technologies and the costs of such technologies.

c. The NAS Methylmercury Study

In the appropriations report for EPA's fiscal 1999 funding, Congress directed EPA to fund the NAS to perform an independent study on the toxicological effects of MeHg and to prepare recommendations on the establishment of a scientifically appropriate MeHg exposure RfD. In response, EPA contracted with NAS, which conducted an 18-month study of the available data on the health effects of MeHg and reported its findings to EPA in July 2000.

The EPA included four charges to NAS: (1) Evaluate the body of evidence that led to EPA's current RfD for MeHg, and on the basis of available human epidemiological and animal toxicity data, determine whether the critical study, end point of toxicity, and uncertainty factors used by EPA in the derivation of the RfD for MeHg are scientifically appropriate, including

consideration of sensitive populations; (2) evaluate any new data not considered in the Mercury Study that could affect the adequacy of EPA's MeHg RfD for protecting human health; (3) consider exposures in the environment relevant to evaluation of likely human exposures (especially to sensitive subpopulations and especially from consumption of fish that contain MeHg), and include in the evaluation a focus on those elements of exposure relevant to the establishment of an appropriate RfD; and (4) identify data gaps and make recommendations for future research.

The NAS held both public and closed sessions wherein they evaluated data and presentations from government agencies, trade organizations, public interest groups, and concerned citizens. The NAS also evaluated new findings that had emerged since the development of EPA's 1995 RfD and met with the investigators of major ongoing epidemiological studies.

The NAS Study concluded that the value of EPA's 1995 RfD for MeHg, 0.1 micrograms per kilogram (μg/kg) per day, was a scientifically appropriate level for the protection of public health. The NAS Study further concluded that data from both human and animal studies indicated that the developing nervous system was a sensitive target organ for low-dose MeHg exposure. The NAS Study indicated that there was evidence that exposure to MeHg in humans and animals can have adverse effects on both the developing and adult cardiovascular system. Some of the studies observed adverse cardiovascular effects at or below MeHg exposure levels associated with neurodevelopmental effects. The weight of evidence for carcinogenicity of MeHg was inconclusive. There was also evidence from animal studies that the immune and reproductive systems are sensitive targets for MeHg toxicity.

According to the NAS Study, the estimates of MeHg exposures in the U.S. population indicated that the risk of adverse effects from then-current MeHg exposures in the majority of the population was low. However, the NAS Study concluded that individuals with high MeHg exposures from frequent fish consumption might have little or no margin of safety (*i.e.,* exposures of high-end consumers are close to those with observable adverse effects). The NAS Study also noted that the population at highest risk was the children of women who consumed large amounts of fish and seafood during pregnancy. The NAS Study further concluded that the impact on that population was likely to be sufficient to result in an increase in the number of children who struggle to keep up in school and might require remedial classes or special education.

2. EPA's December 2000 Appropriate and Necessary Finding

On December 20, 2000, EPA issued a finding pursuant to CAA section 112(n)(1)(A) that it was appropriate and necessary to regulate coal- and oil-fired EGUs under section 112 and added such units to the list of source categories subject to regulation under section 112(d). In making that finding, EPA considered the Utility Study, the Mercury Study, the NAS Study, and certain additional information, including information about Hg emissions from coal-fired EGUs that EPA obtained pursuant to an information collection request (ICR) under the authority of section 114 of the CAA. 65 FR 79826–27. EPA collected data on the Hg content of coal from all coal-fired EGUs for the calendar year 1999 and Hg emissions stack test data for certain coal-fired EGUs. 65 FR 79826. EPA also solicited data from the public through a February 29, 2000, notice (65 FR 10783). The public had an opportunity to provide their views on what the section 112(n)(1)(A) appropriate and necessary regulatory finding should be at a public meeting in Chicago, Illinois, on June 13, 2000 (65 FR 18,992). 65 FR 79826.

In the December 2000 notice, EPA explained that it evaluated EGUs based on the type of fossil fuel combusted (*i.e.,* coal, oil, and natural gas). The December 2000 Finding focused primarily on Hg emissions from coal-fired EGUs. Mercury was determined to be the HAP of greatest concern in the Utility Study. In evaluating Hg emissions from coal-fired EGUs, EPA stated that the quality of the Hg data available in 2000 was considerably better than the data available for the Utility Study because of the results of the 1999 ICR. The new data also corroborated the Hg emissions estimates in the study. 65 FR 79828. In the finding, EPA explained that Hg is highly toxic and persistent and that it bioaccumulates in the food chain; that Hg air emissions from all sources, including EGUs, deposit on the land where the Hg may transform into MeHg, which is the primary type of Hg that accumulates in fish tissue; and that eating Hg contaminated fish was the primary route of exposure for humans. 65 FR 79827. The potential hazard of most concern was determined to be consumption by subsistence fish-eating populations and women of childbearing age because of the adverse effects that Hg poses to the developing fetus. 65 FR 79827. Finally, EPA noted that approximately 7 percent of women of child bearing age were exposed to levels of MeHg that exceeded the RfD. 65 FR 79827.

EPA further estimated that about 60 percent of the total Hg deposited in the U.S. came from anthropogenic air emissions originating in the U.S. and that EGUs contributed approximately 30 percent of those anthropogenic air emissions. 65 FR 79827. Based on the record before the Agency at the time, EPA determined that there was a plausible link between Hg emissions from EGUs and MeHg in fish and that Hg emissions from EGUs were a threat to public health and the environment. 65 FR 79827.

In discussing the non-Hg HAP from coal- and oil-fired EGUs, EPA stated that HAP metals such as As, Cr, Ni, and Cd are of potential concern for carcinogenic effects. 65 FR 79827. EPA acknowledged that the risk assessments conducted for these HAP indicated that cancer risks were not high, but the Agency could not conclude the potential concern for public health was eliminated for those metals. 65 FR 79827. EPA further stated that dioxins, HCl, and HF were of potential concern and could be evaluated further during the regulatory development process. 65 FR 79827. EPA also concluded that the remaining HAP evaluated in the Utility Study did not appear to be a public health concern, but the Agency noted that there were limited data and uncertainties associated with this conclusion, and we stated that future data collection efforts could identify additional HAP of potential concern. 65 FR 79827.

EPA also explained that, consistent with Congress's direction in section 112(n)(1)(A), we considered the alternative control strategies available to control the HAP emissions that may warrant control. We noted that currently available controls for criteria pollutants would also be effective at controlling the HAP emissions from EGUs. 65 FR 79828.

EPA then made nine specific conclusions based on the information in the record, some of which are summarized above. 65 FR 79829–30. Based on those conclusions, EPA found that it was "appropriate" to regulate HAP emissions from coal- and oil-fired EGUs because EGUs "are the largest domestic source of Hg emissions, and Hg in the environment presents significant hazards to public health and the environment." 65 FR 79830. EPA noted that the NAS Study confirmed EPA's own research concluding that "mercury in the environment presents a significant hazard to public health." 65

FR 79830. EPA explained that it was appropriate to regulate HAP emissions from coal- and oil-fired units because it had identified certain control options that, it anticipated, would effectively reduce HAP from such units. 65 FR 79830. In discussing its findings, EPA also noted that uncertainties remained concerning the extent of the public health impact from HAP emissions from oil-fired units. 65 FR 79830.

Once EPA determined that it was "appropriate" to regulate coal- and oil-fired EGUs under CAA section 112, EPA next concluded that it was also "necessary" to regulate HAP emissions from such units under section 112 "because the implementation of other requirements under the CAA will not adequately address the serious public health and environmental hazards arising from such emissions identified in the Utility RTC and confirmed by the NAS Study, and which section 112 is intended to address." 65 FR 79830.

For natural gas-fired EGUs, EPA found that regulation of HAP emissions "is not appropriate or necessary because the impacts due to HAP emissions from such units are negligible based on the results of the study documented in the utility RTC." 65 FR 79831.

In light of the positive appropriate and necessary determination, EPA in December 2000 listed coal- and oil-fired EGUs on the section 112(c) source category list. 65 FR 79831.

3. The 2005 Action

On March 29, 2005, EPA issued the Section 112(n) Revision Rule ("2005 Action") that has since been vacated by the DC Circuit Court. In that rule, EPA reversed the December 2000 Finding and concluded that it was neither appropriate nor necessary to regulate coal- and oil-fired EGUs under section 112 and delisted such units from the section 112(c) source category list. 70 FR 15994. EPA took the position that the December 2000 Finding lacked foundation and that new information confirmed that it was not appropriate or necessary to regulate coal- and oil-fired EGUs under CAA section 112.

In the final rule, EPA provided a detailed interpretation of section 112(n)(1)(A), including the terms "appropriate" and "necessary," as those terms relate to the regulation of EGUs under section 112. In interpreting the statute, EPA recognized that section 112(n)(1)(A) provided no explicit guidance for determining whether regulation of EGUs is appropriate and necessary. As such, EPA concluded that Congress' direction on the Utility Study provided the only guidance about the substance of the appropriate and necessary finding. Accordingly, EPA extrapolated from Congress' description of the Utility Study when interpreting the terms appropriate and necessary.

Among other things, the Agency interpreted the focus on public health in the Utility Study as precluding EPA from considering environmental impacts. 70 FR 15998. EPA also looked at Congress' focus on EGU emissions in the Study and took the position that EPA could only consider hazards to public health that could be traced directly to HAP emissions from EGUs in assessing whether it was appropriate to regulate. EPA declined to consider the potential adverse public health impacts that may occur as the result of the combination of EGU HAP emissions and HAP emissions from other sources. 70 FR 15998.

In making the determination as to whether it was appropriate to regulate, EPA analyzed whether the level of HAP emissions from EGUs remaining after imposition of the requirements of the CAA would result in a hazard to public health. EPA concluded that if the HAP emissions remaining after imposition of the requirements of the CAA do not pose a hazard to public health, then regulation under section 112 is not appropriate. EPA also maintained that even if it identified a hazard to public health, regulation may still not be "appropriate" based on other relevant factors, such as the cost effectiveness of regulation under section 112. 70 FR 15600.

In the 2005 Action, EPA interpreted the term "necessary" to mean "that it is necessary to regulate EGUs under section 112 only if there are no other authorities available under the CAA that would, if implemented, effectively address the remaining HAP emissions from EGUs." 70 FR 16001.

Applying these interpretations, the Agency stated that it was neither appropriate nor necessary to regulate HAP emissions from EGUs. The Agency took the position that the December 2000 appropriate finding lacked foundation because the finding was overbroad to the extent that it relied on environmental effects. 70 FR 16002. The EPA next stated that the appropriate determination in the December 2000 Finding lacked foundation because EPA did not fully consider the Hg reductions that would result after imposition of the requirements of the CAA and that new information showed that the level of Hg emissions from EGUs remaining after imposition of the requirements of the CAA do not pose a hazard to public health. 70 FR 16003–4. Specifically, EPA pointed to the promulgation of the Clean Air Interstate Rule (CAIR), issued pursuant to CAA section 110(a)(2)(D), and the Clean Air Mercury Rule (CAMR),[8] issued pursuant to section 111, and, based on modeling, determined that CAIR, and independently CAMR, could be expected to reduce Hg emissions to levels that would not cause a hazard to public health. Therefore, EPA concluded that it was not appropriate to regulate EGUs under section 112. We note that CAMR was vacated by the D.C. Circuit Court in *New Jersey* v. *EPA,* and that CAIR was remanded to the Agency in *North Carolina* v. *EPA,* 531 F.3d 896, *modified on reh'g,* 550 F.3d 1176 (DC Cir. 2008).

As to the necessary finding, EPA took the position that the December 2000 Finding was in error because EPA did not, at the time, examine whether there were any CAA provisions other than section 112 that, if implemented, would address any identified hazards to public health from HAP emissions from EGUs. 70 FR 16004. Specifically, EPA stated that the error existed because EPA did not consider CAA sections 110(a)(2)(D) and 111 and that, considering actions under these sections, hazard to public health from EGUs would be reduced. 70 FR 16005.

EPA also determined that it was not appropriate and necessary to regulate coal-fired EGUs on the basis of non-Hg HAP emission or oil-fired EGUs on the basis of Ni and non-Ni HAP. 70 FR 16007.

4. Litigation History

Shortly after issuance of the December 2000 Finding, an industry group challenged that finding in the DC Circuit Court. *UARG* v. *EPA,* 2001 WL 936363, No. 01–1074 (DC Cir. July 26, 2001). The DC Circuit Court dismissed the lawsuit holding that it did not have jurisdiction because section 112(e)(4) provides, in pertinent part, that "no action of the Administrator * * * listing a source category or subcategory under subsection (c) of this section *shall be a final agency action subject to judicial review,* except that any such action may be reviewed under section 7607 of (the CAA) when the Administrator issues emission standards for such pollutant or category." (*emphasis added*)

Environmental groups, States, and tribes challenged the 2005 Action and CAMR. Among other things, the environmental and state petitioners argued that EPA could not remove EGUs

[8] On May 18, 2005, EPA issued the Clean Air Mercury Rule (CAMR). 70 FR 28606. That rule established standards of performance for emissions of mercury from new and existing coal-fired EGUs pursuant to CAA section 111.

from the section 112(c) source category list without following the requirements of section 112(c)(9).

On February 8, 2008, the DC Circuit Court vacated both the 2005 Action and CAMR. The DC Circuit Court held that EPA failed to comply with the requirements of section 112(c)(9) for delisting source categories. Specifically, the DC Circuit Court held that section 112(c)(9) applies to the removal of "any source category" from the section 112(c) list, including EGUs. The DC Circuit Court rejected the argument that EPA has the inherent authority to correct its mistakes, finding that, by enacting section 112(c)(9), Congress limited EPA's discretion to reverse itself and remove source categories from the section 112(c) list. The DC Circuit Court found that EPA's contrary position would "nullify § 112(c)(9) altogether." *New Jersey*, 517 F.3d at 583. The DC Circuit Court did not reach the merits of petitioners' arguments on CAMR, but vacated CAMR for existing sources because coal-fired EGUs were listed sources under section 112. The DC Circuit Court reasoned that even under EPA's own interpretation of the CAA, regulation of existing sources' Hg emissions under section 111 was prohibited if those sources were a listed source category under section 112.[9] The DC Circuit Court vacated and remanded CAMR for new sources because it concluded that the assumptions EPA made when issuing CAMR for new sources were no longer accurate (*i.e.,* that there would be no section 112 regulation of EGUs and that the section 111 standards would be accompanied by standards for existing sources). *Id.* at 583–84. Thus, CAMR and the 2005 appropriate and necessary finding became null and void.

On December 18, 2008, several environmental and public health organizations ("Plaintiffs") [10] filed a complaint in the DC District Court (Civ. No. 1:08-cv-02198 (RMC)) alleging that the Agency had failed to perform a nondiscretionary duty under CAA section 304(a)(2), by failing to promulgate final section 112(d) standards for HAP from coal- and oil-fired EGUs by the statutorily mandated deadline, December 20, 2002, 2 years after such sources were listed under section 112(c). EPA settled that litigation. The consent decree resolving the case requires EPA to sign a notice of proposed rulemaking setting forth EPA's proposed section 112(d) emission standards for coal- and oil-fired EGUs by March 16, 2011, and a notice of final rulemaking by November 16, 2011.

[9] In CAMR and the 2005 Action, EPA interpreted section 111(d) of the Act as prohibiting the Agency from establishing an existing source standard of performance under section 111(d) for any HAP emitted from a particular source category, if the source category is regulated under section 112.

[10] American Nurses Association, Chesapeake Bay Foundation, Inc., Conservation Law Foundation, Environment America, Environmental Defense Fund, Izaak Walton League of America, Natural Resources Council of Maine, Natural Resources Defense Council, Physicians for Social Responsibility, Sierra Club, The Ohio Environmental Council, and Waterkeeper Alliance, Inc.

III. Appropriate and Necessary Finding

As required by the CAA, we determined in December 2000, and confirm that finding here, that it is appropriate to regulate emissions of Hg and other HAP from EGUs because manmade emissions of those pollutants pose hazards to public health and the environment, and EGUs are the largest or among the largest contributors of many of those HAP. It is necessary to do so for a variety of reasons, including that hazards to public health and the environment from EGUs remain after imposition of the requirements of the CAA.

In this section, we address the Agency's determination that it is appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112. We first provide our interpretation of the critical terms in CAA section 112(n)(1). As shown below, these interpretations are wholly consistent with the CAA and the December 2000 Finding. We then demonstrate that the December 2000 Finding was valid at the time it was made based on the information available to the Agency at that time. Finally, we explain that, although not required, we recently conducted additional technical analyses given that several years have passed since the December 2000 Finding was issued. Those analyses include both a quantitative and qualitative assessment of the hazards to public health and a qualitative analysis of hazards to the environment associated with Hg and non-Hg HAP from EGUs. The analyses confirm that it remains appropriate and necessary today to regulate EGUs under CAA section 112. We also explain why these analyses and the other information currently before the Agency confirm that regulation of EGUs under section 112 is appropriate and necessary. Accordingly, such units are properly listed pursuant to section 112(c).

A. Regulating EGUs Under CAA Section 112

CAA section 112(n)(1)(A) requires the Agency to regulate EGUs under section 112 "if the Administrator finds such regulation is *appropriate* and *necessary* after considering the results of the [Utility Study]." (*emphasis added*). Congress did not define the phrase "appropriate and necessary" in section 112(n)(1)(A). Rather, Congress expressly delegated to the Agency the authority to interpret and apply those terms. *See Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843–44 (1984) (the Agency's interpretation of statutory terms is entitled to considerable deference as long as it is a reasonable reading of the statute).

Courts have interpreted the terms "appropriate" and "necessary" in other provisions of the CAA and other statutes, and concluded that those terms convey upon the Agency a wide degree of discretion. *See, e.g., National Association of Clean Air Act Agencies* v. *EPA,* 489 F.3d 1221, 1229 (DC Cir. 2007) (finding "both explicit and extraordinarily broad" the Administrator's authority under CAA section 231(a)(3) to "issue regulations with such modifications *as he deems appropriate*.") (*emphasis in original*); *see* also *Cellular Telecommunications & Internet Association, et al.* v. *FCC,* 330 F.3d 502, 510 (DC Cir. 2003), (finding that "[c]ourts have frequently interpreted the word 'necessary' to mean less than absolutely essential, and have explicitly found that a measure may be 'necessary' even though acceptable alternatives have not been exhausted." (quoting *Natural Res. Def. Council* v. *Thomas,* 838 F.2d 1224, 1236 (DC Cir. 1998) (internal quotation marks omitted)).

We evaluate the terms "appropriate" and "necessary" within the statutory context in which they appear to determine the meaning of the words. *See Cellular Telecommunications,* 330 F.3d at 510 (finding that "it is crucial to understand the context in which the word [necessary] is used in order to comprehend its meaning.") (citations omitted). In this case, we look for guidance in section 112 generally, and focus specifically on section 112(n)(1), which addresses EGUs.

1. Statutory Framework for Evaluating EGUs

As explained above, Congress, concerned by the slow pace of EPA's regulation of HAP, "altered section 112 by eliminating much of EPA's discretion in the process." *New Jersey,* 517 F.3d at 578 (citations omitted). We describe above the two-phased approach to standard setting. Also, relevant, however, is that Congress set very strict deadlines for listing source categories and issuing emission standards for such

categories. *See e.g.,* Section 112(c)(6), 112(e)(1); *New Jersey,* 517 F.3d at 578 (noting that "EPA was required to list and to regulate, on a prioritized schedule" all categories and subcategories of major and area sources). Thus, in substantially amending section 112 of the CAA in 1990, Congress sought prompt and permanent reductions of HAP emissions from stationary sources—first through technology-based standards, and then further, as necessary, through risk-based standards designed to protect human health and the environment.

Congress' focus on protecting public health and the environment from EGU HAP emissions is reflected in section 112(n)(1), titled "[e]lectric utility steam generating units." That section directs EPA to evaluate HAP emissions from EGUs. In addition to directing EPA to regulate EGUs under section 112 if it determines that it is appropriate and necessary to do so, section 112(n)(1) requires the completion of three studies related to HAP emissions from EGUs. Those studies include: (1) The Utility Study pursuant to section (n)(1)(A); (2) the Mercury Study pursuant to section (n)(1)(B); and (3) the NIEHS Study (NAS Study) pursuant to section 112(n)(1)(C).[11]

These studies are described above, in detail. In summary, for the Utility Study, Congress required EPA to evaluate the hazards to public health that are reasonably anticipated to occur as the result of EGU emissions following imposition of the requirements of the CAA. Congress also directed EPA to identify alternative control strategies for those HAP that may warrant regulation under section 112.

The Mercury Study required by section 112(n)(1)(B) is both broader and narrower in scope, as compared to the Utility Study. For example, the Mercury Study is narrower in scope, in that it focuses solely on the impacts from Hg emissions, as opposed to all HAP. The Mercury Study is broader in scope, however, in two important respects. First, Congress required EPA to consider environmental effects in addition to health effects. Second, Congress required the Agency to consider the cumulative effects of Hg from all sources, including EGUs. In considering the cumulative effects of Hg, the Agency was not required to apportion the cause of any adverse effects among the various sources of Hg. Both the Utility and Mercury Studies considered the control technologies available to control Hg emissions, but only the Mercury Study called for the evaluation of the costs of such controls. Section 112(n)(1)(B).

EPA believes that Congress directed the Agency to conduct the Utility Study so that the Agency would understand the hazards to public health posed by HAP emissions from EGUs alone, and consider whether any hazards that were identified would be addressed through imposition of the requirements of the CAA applicable to EGUs at that time. Congress provided EPA an additional year to examine the impacts of EGU emissions of Hg on health and the environment in combination with other sources of Hg emissions.

The NAS Study required by section 112(n)(1)(C), which was due at the same time as the Utility Study, was to focus on Hg only and the adverse human health effects associated with Hg. The statute directed the determination of the threshold level of Hg below which adverse effects to human health are not expected to occur. The statute further directed the determination of the threshold for Hg concentrations in the tissue of fish which may be consumed, including by sensitive populations, without adverse effects to public health. Here, unlike the Utility Study and the Mercury Study, the statute specifically requires an evaluation of the adverse human health effects of Hg on sensitive populations.

The remaining critical element of section 112(n)(1) is the direction to EPA to determine whether it is appropriate and necessary to regulate EGUs under section 112, considering the results of the Utility Study. Although the Utility Study is a condition precedent to making the appropriate and necessary determination, nothing in section 112(n)(1)(A) precludes the Agency from considering other information in making that determination.

Taken together, we believe these provisions provide a framework for the Agency's determination of whether to regulate HAP emissions from EGUs under section 112. Through these provisions, Congress sought a prompt review and evaluation of the hazards to public health and the environment associated with Utility HAP emissions. This prompt consideration of health and environmental impacts is consistent with the strict deadlines Congress imposed in section 112 on all other source categories. *See infra.*

Section 112(n)(1)(B) is direct evidence that Congress was concerned with environmental effects and cumulative impacts of HAP emissions from EGUs and other sources, particularly with regard to the bio-accumulative HAP Hg. Section 112(n)(1)(C) provides further evidence that Congress was concerned with limiting HAP emissions from EGUs to a level that protects sensitive populations. We believe the scope of the Utility Study was limited to HAP emissions from EGUs and hazards to public health, not because Congress was unconcerned with adverse environmental effects or the cumulative impact of HAP emissions, but because the Utility Study, as required, was a significant undertaking in itself and Congress wanted the Agency to complete the study within 3 years. Thus, section 112(n)(1) reveals, among other things, Congress' concern for the health and environmental effects of HAP emissions from EGUs, both alone and in conjunction with other sources, the impact of Hg emissions from EGUs, and the availability of controls to address HAP emissions from EGUs.

Finally, significantly, nowhere in section 112(n)(1) does Congress require the consideration of costs in assessing health and environmental impacts. The only reference to costs is in section 112(n)(1)(B) and that reference required the Agency to consider the costs of emission reduction controls for Hg.

2. Interpretation of Key Terms

Section 112(n)(1)(A) itself provides no clear standard to govern EPA's analysis and determination of whether it is "appropriate and necessary" to regulate utilities under section 112. The statute simply requires EPA to regulate EGUs under section 112 if it determines that such regulation is appropriate and necessary, after considering the results of the Utility Study. As noted above, courts have interpreted the terms appropriate and necessary as conveying considerable discretion to the Agency in determining what is appropriate and necessary in a given context.

As explained more fully below, in this context, we interpret the statute to require the Agency to find it *appropriate* to regulate EGUs under CAA section 112 if the Agency determines that the emissions of one or more HAP emitted from EGUs pose an identified or potential hazard to public health or the environment at the time the finding is made. If the Agency finds that it is *appropriate* to regulate, it must find it *necessary* to regulate EGUs under section 112 if the identified or potential hazards to public health or the environment will not be adequately addressed by the imposition of the requirements of the CAA. Moreover, it

[11] As explained above, the NAS Study studied the same issues Congress wanted addressed pursuant to section 112(n)(1)(C) and, because it was conducted five years after the NIEHS study, it was a more comprehensive study accounting for new information not available to NIEHS. Congress directed both studies and wanted EPA to consider the NAS Study before issuing the appropriate and necessary finding so we are reasonably focusing our discussion on the content of the later study.

may be *necessary* to regulate utilities under section 112 for a number of other reasons, including, for example, that section 112 standards will assure permanent reductions in EGU HAP emissions, which cannot be assured based on other requirements of the CAA.

The following subsections describe in detail our interpretation of the key statutory terms. We also explain below how the interpretations set forth in this notice are wholly consistent with the December 2000 Finding. Further, to the extent our interpretation differs from that set forth in the 2005 Action, we explain the basis for that difference and why the interpretation, as set forth in this preamble, is reasonable. *See National Cable & Telecommunications Ass'n, et al.* v. *Brand X Internet Services, et al.,* 545 U.S. 967, 981 (2005) (Discussing the deference provided to an Agency when changing interpretations the Court stated "change is not invalidating, since the whole point of *Chevron* deference is to leave the discretion provided by ambiguities of a statute with the implementing agency.") (Internal citations and quotations omitted); *see* also *Department of Treasury* v. *FLRA,* 494 U.S. 922, 933 (1990) (Finding that EPA's judgment should only be overturned if it is deemed unreasonable, not merely because other, reasonable alternatives exist).

a. "Appropriate" To Regulate EGUs

We interpret section 112(n)(1)(A) to require the Agency to find regulation of EGUs under section 112 appropriate if we determine that HAP emissions from EGUs pose a hazard to public health or the environment at the time the finding is made. The hazard to public health or the environment may be the result of HAP emissions from EGUs alone or the result of HAP emissions from EGUs in conjunction with HAP emissions from other sources. In addition, EPA must find that it is appropriate to regulate EGUs if it determines that any single HAP emitted by utilities poses a hazard to public health or the environment. We further interpret the term "appropriate" to not allow for the consideration of costs in assessing whether HAP emissions from EGUs pose a hazard to public health or the environment. Finally, we may conclude that it is appropriate, in part, to regulate EGUs if we determine that there are controls available to address HAP emissions from EGUs.

i. Basis for Interpretation

As stated above, the appropriate finding may be based on hazards to public health or the environment. Although we believe that Congress' primary concern, as expressed in section 112(n)(1)(A) and 112(n)(1)(C), related to hazards to public health, the inclusion of environmental effects in section 112(n)(1)(B) indicates Congress' interest in protecting the environment from HAP emissions from EGUs as well.

Moreover, the term "appropriate" is extremely broad and nothing in the statute suggests that the Agency should ignore adverse environmental effects in determining whether to regulate EGUs under section 112. Further, had Congress intended to prohibit EPA from considering adverse environmental effects in the "appropriate" finding, it would have stated so expressly. Absent clear direction to the contrary, and considering the purpose of the CAA (*see e.g.,* CAA section 101, 112(c)(9)(B)(ii)), it is reasonable to consider environmental effects in evaluating the hazards posed by HAP emitted from EGUs when assessing whether regulation of EGUs under section 112 is appropriate. Accordingly, we interpret the statute to authorize the Agency to base the appropriate finding on either hazards to public health or the environment.

We also maintain that the Agency should base its "appropriate" evaluation on the hazards to public health or the environment that exist at the time the determination is made, not after considering the imposition of the other requirements of the CAA. The Agency evaluates whether imposition of the requirements of the CAA will adequately address any identified hazards only in the context of the necessary finding. Thus, in assessing whether regulation of EGUs is appropriate under section 112, we evaluate the current hazards posed by such units, as opposed to projecting what such hazards may look like after imposition of the requirements of the CAA.

We further interpret the CAA as allowing the Agency to base the appropriate finding on hazards to public health or the environment that result from HAP emissions from EGUs alone or hazards to public health and the environment that result from HAP emissions from EGUs in conjunction with HAP emissions from other sources. Section 112(n)(1) does not focus exclusively on EGU-only HAP emissions.

As explained above, section 112(n)(1)(B) and (C) require either expressly or implicitly the consideration of Hg emissions from all sources, not just EGUs. Section 112(n)(1)(B) is of note because that provision does not require the Agency to determine the hazard posed by Hg from EGUs alone. Rather, Congress required EPA to evaluate the health and environmental effects of Hg emissions from "electric utility steam generating units, municipal waste combustion units, and other sources, including area sources." Section 112(n)(1)(C) is also relevant because it requires a human health-based assessment of the hazards posed by Hg without regard to the origin of the Hg. Congress could have directed an evaluation of the human health risk attributable to EGUs alone, but it did not. Congress also did not require such an assessment be conducted in the NAS Study.

In addition, Congress directed the Agency in section 112(n)(1)(A) to regulate EGUs under section 112 if the results of the Utility Study caused the Agency to conclude that regulation was appropriate and necessary. Section 112(n)(1)(A) is not written in a manner to preclude consideration of other information when determining whether it is appropriate and necessary to regulate EGUs under section 112, and that includes consideration of all hazards, both health and environmental, posed by HAP emitted by EGUs. *See United States* v. *United Technologies Corp.,* 985 F.2d 1148, 1158 (2d Cir. 1993) ("based upon" does not mean "solely").

Finally, focusing on HAP emissions from EGUs alone when making the appropriate finding ignores the manner in which public health and the environment are affected by air pollution. An individual that suffers adverse health effects as the result of the combined HAP emissions from EGUs and other sources is harmed, irrespective of whether HAP emissions from EGUs alone would cause that harm. For this reason, we believe we may consider the hazards to public health and the environment posed by HAP emissions from EGUs alone or in conjunction with HAP emissions from other sources.

Furthermore, the appropriate finding may be based on a finding that any single HAP emitted from EGUs poses a hazard to public health or the environment. Nothing in section 112(n)(1)(A) suggests that EPA must determine that every HAP emitted by EGUs poses a hazard to public health or the environment before EPA can find it appropriate to regulate EGUs under section 112. Interpreting the statute in this manner would preclude the Agency from addressing under section 112 identified or potential hazards to public health or the environment associated with HAP emissions from EGUs unless

we found a hazard existed with respect to each and every HAP emitted.

Indeed, Congress' focus in section 112(n)(1)(B) and (C) on Hg indicates Congress' awareness that Hg was a problem and supports the position that EPA could find it appropriate to regulate EGUs based on the adverse health and environmental effects of a single HAP. Furthermore, the statute does not directly or expressly authorize the Agency to regulate only those HAP for which a hazard finding has been made. In fact, the statute requires the Agency to regulate EGUs under section 112 if the Agency finds regulation under section 112 is appropriate and necessary, and regulation under section 112 for major sources requires MACT standards for *all HAP* emitted from the source category. *See, e.g., National Lime Ass'n* v. *EPA,* 233 F.3d 625, 633 (DC Cir. 2000). For these reasons, we conclude we must find it appropriate to regulate EGUs under section 112 if we determine that the emissions of any single HAP from such units pose a hazard to public health or the environment.

We also maintain that the better reading of the term "appropriate" is that it does not allow for the consideration of costs in assessing whether hazards to public health or the environment are reasonably anticipated to occur based on EGU emissions. Had Congress intended to require the Agency to consider costs in assessing hazards to public health or the environment associated with EGU HAP emissions, it would have so stated.

This interpretation is consistent with the overall structure of the CAA. Congress did not authorize the consideration of costs in listing any source categories for regulation under section 112. In addition, Congress did not permit the consideration of costs in evaluating whether a source category could be delisted pursuant to the provisions of section 112(c)(9).

Under section 112(n)(1)(A), EPA is evaluating whether to regulate HAP emissions from EGUs at all. It is reasonable to conclude that costs may not be considered in determining whether to regulate EGUs under section 112 when hazards to public health and the environment are at issue.

Finally, consistent with sections 112(n)(1)(A) and 112(n)(1)(B), we conclude that we may base the appropriate finding on the availability of controls to address HAP emissions from EGUs.

ii. The December 2000 Finding

The Agency's interpretation of the term "appropriate," as set forth above, is wholly consistent with the Agency's appropriate finding in December 2000. As noted above, in 2000, we concluded that it was appropriate to regulate EGUs under section 112 because Hg in the environment posed a hazard to public health and the environment. The Agency also concluded it was appropriate because of uncertainties associated with the hazards posed by other HAP emitted from EGUs. 65 FR 79827. Finally, the EPA concluded that it was appropriate because of the availability of controls to reduce HAP emissions from EGUs. In making the finding as it related to Hg, the Agency considered the hazards posed by Hg in the environment and the contribution of EGUs to that hazard. In addition, EPA did not consider costs when making the appropriate determination. Further, the appropriate finding evaluated the hazards at the time, as opposed to the hazards remaining after imposition of the requirements of the CAA. EPA evaluated whether the other requirements of the CAA would adequately address the hazards in the necessary prong only.[12]

iii. The 2005 Action

As noted above, in 2005, EPA revised its December 2000 Finding and stated that the appropriate finding: (1) Could not be based on adverse environmental effects; (2) must be made considering only HAP emissions from EGUs; (3) must be made after consideration of the imposition of the requirements of the CAA; and (4) must consider other factors (*e.g.,* costs) even if we determine that HAP emissions from EGUs pose a hazard to public health. This proposal differs from the 2005 Action, and we address each of these differences below.

First, we change the position taken in 2005 that the appropriate finding could not be based on environmental effects alone. In 2005, we did not properly consider all of the provisions of section 112(n)(1). The Agency should not interpret the CAA to limit the Agency's discretion to protect the environment absent clear direction to that effect. In essence, the Agency's interpretation in 2005 would have required the Agency to ignore a catastrophic environmental harm (*e.g.,* the extinction of a species) if the Agency could not also identify a hazard to public health. EPA took this position regarding environmental effects in 2005 even though in that same rule it correctly interpreted section 112(n)(1)(A) to allow the Agency to consider information beyond the Utility Study in making the appropriate and necessary determination. 70 FR 15,997–99. The 2005 interpretation that EPA cannot consider environmental effects in evaluating whether it is appropriate to regulate EGUs under section 112 was neither reasonable nor consistent with the goals of the CAA, and, therefore, we are rejecting that interpretation and returning to the approach taken in 2000 that allowed consideration of environmental effects.

Second, for all of the reasons stated above, we are revisiting the 2005 interpretation that required the Agency to consider HAP emissions from EGUs without considering the cumulative impacts of all sources of HAP emissions. Nothing in section 112(n)(1)(A) prohibits consideration of HAP emissions from EGUs in conjunction with HAP emissions from other sources of HAP. We believe it is more reasonable to interpret the statute to authorize the Agency to consider the cumulative effects of HAP that are emitted from EGUs and other sources. This interpretation allows the Agency to evaluate more fully whether HAP emissions from EGUs pose a hazard to public health or the environment consistent with the manner in which the public and the environment are exposed to HAP emissions.

Third, we are revising the 2005 interpretation that required the Agency to evaluate the hazards to public health after imposition of the requirements of the CAA. We conclude today that in 2005 the Agency improperly conflated the appropriate finding and the necessary finding by requiring consideration of the ameliorative effects of other CAA requirements in both prongs of the appropriate and necessary finding. We believe the Agency must find it appropriate to regulate EGUs under section 112 if we determine that HAP emitted by EGUs pose a hazard to public health or the environment at the time the finding is made. The issue of how and whether those hazards are reduced after imposition of the requirements of the CAA is an issue for the necessary prong of the finding.

Finally, we are rejecting the 2005 interpretation that authorizes the Agency to consider other factors (*e.g.,* cost), even if the Agency determines that HAP emitted by EGUs pose a hazard to public health (or the environment). We reject the consideration of costs for all the reasons set forth above. Furthermore, the better reading of section 112(n)(1)(A) is that the Agency should find it appropriate to regulate EGUs under section 112 if a hazard to public health or the environment is identified. We think it

[12] As explained below, EPA reasonably concluded in December 2000 that it was appropriate and necessary to regulate EGUs under section 112 based on the record before the Agency at that time.

unreasonable to decline to make the appropriate finding based on any factor, cost or otherwise, if we determine that EGUs pose a hazard to public health or the environment.

b. "Necessary" To Regulate EGUs

Once the Agency has determined that it is appropriate to regulate EGUs under section 112, the Agency must then determine whether it is necessary to regulate EGUs under section 112. As stated above, we have considerable discretion to determine whether regulation of EGUs under section 112 is necessary. The DC Circuit Court has stated that "there are many situations in which the use of the word 'necessary,' in context, means something that is done, regardless of whether it is indispensible, to achieve a particular end." *Cellular Telecommunication,* 330 F.3d at 510.

If the Agency concludes that it is appropriate to regulate EGUs, we believe it is necessary to regulate HAP emissions from EGUs if we determine that the imposition of the requirements of the CAA will not sufficiently address the identified hazards to public health or the environment posed by HAP that are emitted from EGUs. We maintain that we must find it necessary based on such a finding even if regulation under section 112 will not fully resolve the identified hazard to public health or the environment.

We may also determine it is necessary to regulate under section 112 if we are uncertain whether the imposition of the other requirements of the CAA will sufficiently address the identified hazards. We may find it necessary to regulate EGUs under section 112 even if we were to conclude, based on reasonable estimations of emissions reductions, that the imposition of the other requirements of the CAA would, or might, significantly reduce the identified hazard, because the only way to guarantee that such reductions will occur at all EGUs and be maintained is through a section 112(d) standard that directly regulates HAP emissions from utilities. Finally, we may also find it necessary to regulate EGUs under section 112 to further the policy goal of supporting international efforts to reduce HAP emissions, including Hg.

i. Necessary After Imposition of the Requirements of the CAA

In the Utility Study, Congress directed the Agency to evaluate the hazards to public health posed by HAP emissions from EGUs remaining after imposition of the requirements of the CAA, and it gave EPA 3 years to complete that Study. We interpret the necessary requirement first in the context of the phrase "after imposition of the requirements of [the CAA]." Section 112(n)(1)(A).

Congress did not define the phrase "after imposition of the requirements of the Act." The plain meaning of the term "requirement" is something that is necessary, or obligatory. *See, e.g.,* Random House Webster's Unabridged Dictionary, Deluxe Edition, 2001. Given that Congress intended the Utility Study to be completed by 1993, it is reasonable to interpret the phrase "after imposition of the requirements of the Act", as requiring the Agency to consider only those requirements that Congress directly imposed on EGUs through the CAA as amended in 1990 and for which EPA could reasonably predict HAP emission reductions at the time of the Utility Study. The most substantial requirement in this regard was the newly enacted ARP.

The purpose of the ARP was to reduce the adverse effects of acid deposition (more commonly known as "acid rain"), by limiting the allowable emissions of SO_2 and NO_X primarily from EGUs. In enacting the Acid Rain provisions of the Act, Congress explained that the problem of acid deposition was one of "national and international significance," that technologies to reduce the precursors to acid deposition were "economically feasible," and that "control measures to reduce precursor emissions from steam-electric generating units should be initiated without delay." CAA section 401(a). The ARP also includes a series of very specific emission reduction requirements. For example, the goals of the program include a reduction of annual SO_2 emissions by 10 million tons below 1980 levels and a reduction of NO_X emissions by two million tons from 1980 levels.

Moreover, the ARP achieved the required reductions by allocating allowances to emit SO_2 at reduced levels to each affected EGU. Sources were prohibited from emitting more SO_2 than the number of allowances held. To comply with these requirements, source owners or operators could elect to install controls, such as scrubbers, switch to lower sulfur fuels at their facilities, or purchase allowances from other EGUs that had reduced their emissions beyond what they were required by the ARP to achieve. It was known at the time of enactment of the 1990 Amendments that the controls used to reduce emissions of SO_2, primarily scrubbers, had the co-benefit of controlling HAP emissions, including Hg emissions. The ARP also included requirements for limiting NO_X emissions from EGUs. Considering the Acid Rain requirements under section 112(n)(1) is reasonable because the Act contained very specific emission reduction requirements for EGUs, and a tight compliance time-frame. In fact, all of the regulations implementing the SO_2 allowance trading portion of the ARP were completed by the mid-1990's.

The other significant requirement that Congress imposed in the 1990 Amendments was to revise the NSPS for NO_X emissions from EGUs by 1994. CAA 407(c). However, unlike the SO_2 allowance requirements of the ARP, Congress did not specify the amount of required reductions, but instead directed EPA to consider the improvements in methods for reducing NO_X when establishing standards for new sources. Thus, in the 1990 Amendments, Congress sought NO_X reductions from EGUs both through the ARP and a revision of the NSPS applicable to new sources. The Agency issued these NSPS in 1997.

There are other requirements of Title I of the Act that could affect EGUs, and they include the National Ambient Air Quality Standards (NAAQS). Congress did not impose these provisions directly on EGUs, however. Instead, EPA is responsible for developing the NAAQS, and states are primarily responsible for assuring attainment and maintenance of the NAAQS. For example, EPA stated in the Utility Study that implementation of the 1997 NAAQS for ozone and PM may lead to reductions in Hg emissions, but those potential reductions could not be sufficiently quantified because states have the ultimate responsibility for implementing the NAAQS. See Utility Study, pages ES–25, 1–3, 2–32, 3–14, and 6–15. States use a broad combination of measures (mobile and stationary) to obtain the reductions needed to meet the NAAQS. These decisions are unique to each state, as each state must identify and assess the sources contributing to nonattainment and determine how best to meet the NAAQS. EPA cannot predict with any certainty precisely how states will ensure that the reductions needed to meet the NAAQS will be realized. Moreover, there are additional uncertainties even were a state to impose requirements on EGUs through a State Implementation Plan (SIP), because each EGU may choose to meet the required reductions in a different manner, which could result in more or less HAP emission reductions. Accordingly, we do not believe it would have been appropriate to include such potential emissions reductions in determining whether it is necessary to

regulate HAP emissions from EGUs under section 112.

Further, it is reasonable to interpret the phrase "after imposition of the requirements of the Act", as only requiring consideration of those requirements that Congress directly imposed on EGUs through the CAA as amended in 1990 and for which EPA could reasonably predict emission reductions at the time of the Utility Study. To interpret the phrase otherwise would require the Agency to look ahead two to three decades to forecast what possible requirements might be developed and applied to EGUs under some requirement of the CAA at some point in the future.

Indeed, such an interpretation would be inconsistent with the structure and purpose of section 112. As noted above, Congress gave EPA until 1993 to issue the Utility Study and expected the appropriate and necessary finding would follow shortly thereafter. Congress also required EPA to address HAP emissions rapidly from all source categories. See CAA 112(e), supra. It is reasonable to presume that Congress intended EPA to evaluate the need for EGU HAP controls in light of the requirements imposed upon the industry via the new 1990 requirements. Obviously the central requirement that was new and applied to EGUs was the ARP which would be implemented rapidly following passage of the 1990 amendments to the Act.

Although the above represents a reasonable interpretation of what Congress contemplated the Utility Study would examine with regard to "imposition of the requirements of the Act," we recognize that we have discretion to look beyond the Utility Study in determining whether it is necessary to regulate EGUs under section 112. Given that several years have passed since the December 2000 Finding, we conducted additional analysis. Although not required, we conducted this analysis to demonstrate that even considering a broad array of diverse requirements, it remains appropriate and necessary to regulate EGUs under section 112.

Specifically, we examined a host of requirements, which in our view, far surpass anything Congress could have contemplated in 1990 we would consider as part of our "necessary" determination. For example, our analysis includes certain state rules regulating criteria pollutants, Federal consent decrees, and settlement agreements for criteria pollutants resolving state-initiated and citizen-initiated enforcement actions.[13] We did not include in our analysis any state-only HAP requirements or voluntary actions to reduce HAP emissions, as those are not requirements of the CAA, and are not required by Federal law to remain applicable.[14]

ii. Necessary Interpretation

If we determine that the imposition of the requirements of the CAA will not address the identified hazards, EPA must find it necessary to regulate EGUs under section 112. Section 112 is the authority Congress provided to address hazards to public health and the environment posed by HAP emissions and section 112(n)(1)(A) requires the Agency to regulate under section 112 if we find regulation is "appropriate and necessary." If we conclude that HAP emissions from EGUs pose a hazard today, such that it is appropriate, and we further conclude based on our scientific and technical expertise that the identified hazards will not be resolved through imposition of the requirements of the CAA, we believe there is no justification in the statute to conclude that it is not necessary to regulate EGUs under section 112.

Furthermore, we believe it is necessary to regulate if we have identified a hazard to public health or the environment that will not be addressed by imposition of the requirements of the CAA even if regulation of EGUs under section 112 will not fully resolve the identified hazard. We conclude that this is particularly true for bio-accumulative HAP such as Hg because EPA can only address such emissions from domestic sources and mitigation of identified risks associated with such HAP is a reasonable goal. *See* section 112(c)(6). EPA cannot decline to find it "necessary" to regulate EGUs under section 112 when it has identified a hazard to public health or the environment, simply because that regulation will not wholly resolve the identified hazards. The statute does not require the Agency to conclude that identified hazards will be fully resolved before it may find regulation under section 112 necessary. *See Massachusetts* v. *EPA,* 549 U.S. 497, 525 (2007).

In addition, we may determine it is necessary to regulate under section 112 even if we are uncertain whether the imposition of the requirements of the CAA will address the identified hazards. Congress left it to EPA to determine whether regulation of EGUs under section 112 is necessary. We believe it is reasonable to err on the side of regulation of such highly toxic pollutants in the face of uncertainty. Further, if we are unsure whether the other requirements of the CAA will address an identified hazard, it is reasonable to exercise our discretion in a manner that assures adequate protection of public health and the environment. Moreover, we must be particularly mindful of CAA regulations we include in our modeled estimates of future emissions if they are not final or are still subject to judicial review (*i.e.,* the Transport Rule [15]). If such rules are either not finalized or upheld by the Courts, the level of risk would potentially increase.

We also may find it necessary to regulate EGUs under section 112 even if we conclude, based on reasonable estimations of emissions reductions, that the imposition of the other requirements of the CAA will significantly reduce the identified hazard. We maintain this is reasonable because the only way to guarantee that the necessary reductions in HAP emissions will occur at all EGUs and be maintained is through a section 112(d) standard that directly regulates HAP emissions from EGUs. This is true because sources could discontinue use of controls for criteria pollutants that achieve HAP reductions as a co-benefit if new control technologies or practices are identified that reduce the relevant criteria pollutants but do not also reduce HAP. For example, scrubbers are often used to reduce SO_2 emissions and those scrubbers also reduce emissions of several HAP. However, if an EGU with a scrubber started complying with its SO_2 standard by switching to low sulfur coal or purchasing allowances, the HAP

[13] In our analysis, we included state requirements and citizen and state settlements associated with criteria pollutants because those requirements may have a basis under the CAA. We did not, however, conduct an analysis to determine whether that was the case in each instance. As such, we believe there may be instances where we should not have considered certain state rules or state and citizen suit settlements in our analysis, because those requirements are based solely in state law and are not required by Federal law.

[14] Although, as explained below, our technical analysis examined impacts projected out to 2016, this is a very conservative approach. Given that two decades have passed since the enactment of the 1990 CAA Amendments, we believe we can find it appropriate and necessary to regulate EGUs under section 112, if we determine EGU HAP emissions pose a hazard to public health and the environment today without considering future HAP emission reductions. Congress could not have contemplated in 1990 that EPA would have failed in 2011 to have regulated HAP emissions from EGUs where hazards to public health and the environment remain.

[15] Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone. Proposed Rule. August 2, 2010. 75 FR 45,210.

emission reduction co-benefits associated with the scrubber would no longer be realized. In addition, at the time Congress passed the 1990 CAA amendments, there were many older EGUs that had few or no controls in place. Over 20 years later, there remain a significant number of older EGUs that are only minimally controlled. The Agency may find it necessary to regulate EGUs under section 112 to ensure that these minimally controlled EGUs and those units that switch to other criteria pollutant compliance options, thereby no longer achieving the same HAP reductions, are subject to HAP regulation, such that the estimated reductions in the identified hazards are realized.

iii. December 2000 Finding

Our interpretation of the necessary finding is reasonable and consistent with the December 2000 Finding. In that finding, EPA determined that the imposition of the requirements of the CAA would not address the serious public health and environmental hazards resulting from EGU HAP emissions. We also stated that section 112 is the authority to address hazards from HAP emissions. Because we determined that the imposition of the requirements of the CAA would not address the identified hazards, we correctly concluded it was necessary to regulate under section 112. Although the Agency did not expressly interpret the term necessary in the December 2000 Finding, under the interpretation set forth above, the Agency must find it necessary if we conclude that the imposition of the other requirements of the CAA will not address the identified hazards. Because EPA reached that conclusion, the Agency correctly determined that it was necessary to regulate EGU HAP emissions and did not need to base the 2000 necessary finding on any of the other bases set forth above.

iv. The 2005 Action

We stated in 2005 that "it is necessary to regulate EGUs under section 112 only if there are no other authorities under the CAA that, if implemented, would effectively address the remaining HAP emissions from EGUs." 70 FR 16,001.[16] In essence, we stated in 2005 that section 112(n)(1)(A) requires the Agency to scour the CAA to determine whether there is a direct or indirect manner in which EPA could regulate HAP emissions from EGUs, notwithstanding the fact that Congress expressly provided section 112 for the purpose of regulating HAP emissions from stationary sources. This interpretation is not reasonable.

Congress enacted section 112 for the express purpose of regulating HAP emissions. It is not reasonable to interpret section 112(n)(1)(A) to require the Agency to find another provision of the CAA to address identified hazards to public health or the environment. This is particularly the case where the Agency would not have certainty that such alternative legal theory would withstand judicial scrutiny because section 112 is the authority expressly provided to regulate HAP emissions and no other provision provides express authority to regulate HAP emissions from existing stationary sources.[17] Although anyone can challenge the substance of a section 112 standard, no one can challenge that regulation of HAP emissions under section 112 is proper for validly listed source categories.

Furthermore, section 112(n)(1)(A) states explicitly that the Agency shall regulate EGUs "under this section" if the Agency determines it is "appropriate and necessary after considering the results of the (Utility Study)." We reiterate that the only precondition to regulating EGUs is consideration of the results of the Utility Study. We believe it is unreasonable to argue that Congress directed the Agency as part of the Utility Study to scour the CAA for alternative legal authorities for regulating HAP emissions, either directly or indirectly. Indeed, the Agency did not interpret the requirement in section 112(n)(1)(A) to conduct the study in that manner, as evidenced by the Utility Study itself. Absent that interpretation, we think it is unreasonable to conclude that the Agency must undertake such an effort to make the necessary finding because Congress authorized the Agency to base the "appropriate and necessary" finding on the Utility Study alone.

For all the reasons above, we believe it is appropriate to regulate EGUs under section 112 if the Agency determines that HAP emissions from such units pose a hazard to public health or the environment at the time of the finding, and it is necessary to regulate EGUs under section 112 if the imposition of the other requirements of the CAA will not adequately address the identified hazards to public health or the environment, or there are other compelling reasons making it necessary to regulate HAP emissions from EGUs under section 112.

c. Hazards to Public Health or the Environment

Section 112(n)(1)(A) neither defines the phrase "hazards to public health," nor sets forth parameters for EPA to use in determining whether HAP emissions from EGUs pose a hazard to public health. The phrase is also not defined elsewhere in the CAA. EPA, therefore, has broad discretion, using its technical and scientific expertise, to determine whether HAP emissions from EGUs pose a hazard to public health.

In evaluating hazards to the environment, however, Congress did provide some direction. Specifically, it defined the term "adverse environmental effects" in section 112(a)(7), and as explained further below, we evaluate hazards to the environment consistent with that definition.

Because Congress did not define "hazard to public health" the Agency must use its scientific and technical expertise to determine what constitutes a hazard to public health in the context of EGU HAP emissions. The Agency considers various factors in evaluating hazards to public health, including, but not limited to, the nature and severity of the health effects associated with exposure to HAP emissions; the degree of confidence in our knowledge of those health effects; the size and characteristics of the populations affected by exposures to HAP emissions; the magnitude and breadth of the exposures and risks posed by HAP emissions from a particular source category, including how those exposures contribute to risk in populations with additional exposures to HAP from other sources; and the proportion of the population exposed above benchmark levels of concern (*e.g.,* cancer risks greater than 1 in a million or non-cancer effects with a hazard quotient (HQ) greater than 1). See Section III(D) below for a discussion of the Agency's technical conclusions as to whether a hazard to public health or the environment exists based on the facts at issue here.

Although Congress provided no definition of hazard to public health, section 112(c)(9)(B) is instructive. In that section, Congress set forth a test for removing source categories from the section 112(c) source category list. That

[16] In the rule reconsidering the 2005 Action, we further clarified that in evaluating the effectiveness of other CAA authorities we considered whether those other authorities could be implemented in a cost-effective and administratively effective manner. 71 FR 33,391. We need not address this in detail because we conclude that the threshold conclusion that the Agency must look for alternative CAA authorities that could be used to regulate HAP emissions from EGUs before finding it necessary is invalid.

[17] In theory, an NSPS is legally permissible for new stationary sources of HAP.

test is relevant because it reflects Congress' view as to the level of health effects associated with HAP emissions that Congress thought warranted continued regulation under section 112. The Agency finds section 112(c)(9)(B)(i) particularly instructive because it provides a numerical threshold for HAP that may cause cancer. Specifically, that provision provides that EPA may delete a source category from the section 112(c) list if no source in the category emits such HAP in quantities which may cause a lifetime risk of cancer *greater than one in one million* to the individual in the population who is most exposed to such HAP emissions. Thus, the Agency reads section 112(c)(9)(B)(i) to reflect Congress' view of the acceptable hazard to public health for HAP that may cause cancer.

Congress defined the phrase "adverse environmental effect" in section 112(a)(7) to mean "any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."

Section 112(n)(1)(B) required EPA to examine the environmental effects of Hg emissions. Because Congress defined the term "adverse environmental effect" in section 112(a)(7), we believe that such definition should guide our assessment of whether hazards to the environment posed by Utility HAP emissions exist. As with hazards to public health, however, the Agency must use its discretion to determine whether the adverse environmental effects identified warrant a finding that it is appropriate to regulate HAP emissions from EGUs based on those effects. In evaluating the environmental effects, we have stated that we may consider various aspects of pollutant exposure, including: "[t]oxicity effects from acute and chronic exposures" expected from the source category (as measured or modeled); "persistence in the environment;" "local and long-range transport;" and "tendency for bio-magnification with toxic effects manifest at higher trophic levels." 67 FR 44,718 (July 3, 2002).

In interpreting the term itself, we believe the broad language in section 112(a)(7) referring to "any" enumerated effect "which may be reasonably anticipated" evinces Congressional intent to not restrict the scope of that term to only certain specific impacts. 62 FR 36440 (July 7, 1997); 63 FR 14094 (March 24, 1998). Further, the section 112(a)(7) reference to "any" enumerated effect in the singular clearly contemplates impacts of limited geographic scope, suggesting that the "widespread" criterion does not present a particularly difficult threshold to cross. *Id.* This is further supported by the fact that section 112(a)(7) provides as an example of adverse environmental effects, adverse impacts on populations of endangered or threatened species, which as reflective of their imperiled status are especially likely to exist in limited geographic areas. EPA believes that the "widespread" criterion would not exclude impacts that might occur in only one region of the country. *Id.*

d. Regulating EGUs "Under This Section"

The statute directs the Agency to regulate EGUs under section 112 if the Agency finds such regulation is appropriate and necessary. Once the appropriate and necessary finding is made, EGUs are subject to section 112 in the same manner as other sources of HAP emissions. Section 112(n)(1)(A) provision provides, in part, that:

> [t]he Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed *under subsection (b) of this section* after imposition of the requirements of this chapter * * * The Administrator shall regulate electric utility steam generating units *under this section,* if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required *by this subparagraph.*
>
> *Emphasis added.*

In the first sentence, Congress described the study and directed the Agency to evaluate the hazards to public health posed by HAP emissions listed *under subsection* (b) (*i.e.,* section 112(b)). The last sentence requires the Agency to regulate under this section (*i.e.,* section 112) if the Agency finds such regulation is appropriate and necessary after considering the results of the study required by *this subparagraph* (*i.e.,* section 112(n)(1)(A)). The use of the terms section, subsection, and subparagraph demonstrates that Congress was consciously distinguishing the various provisions of section 112 in directing the conduct of the study and the manner in which the Agency must regulate EGUs if the Agency finds it appropriate and necessary to do so. Congress directed the Agency to regulate utilities "under this section," and accordingly EGUs should be regulated in the same manner as other categories for which the statute requires regulation.

Furthermore, the DC Circuit Court has already held that section 112(n)(1) "governs how the Administrator decides whether to list EGUs" and that once listed, EGUs are subject to the requirements of section 112. *New Jersey,* 517 F.3d at 583. Indeed, the DC Circuit Court expressly noted that "where Congress wished to exempt EGUs from specific requirements of section 112, it said so explicitly," noting that "section 112(c)(6) expressly exempts EGUs from the strict deadlines imposed on other sources of certain pollutants." *Id.* Congress did not exempt EGUs from the other requirements of section 112, and once listed, EPA is required to establish emission standards for EGUs consistent with the requirements set forth in section 112(d), as described above.

EPA requests comment on section III.A.

B. The December 2000 Appropriate and Necessary Finding was Reasonable

EPA reasonably determined in December 2000 that it was appropriate and necessary to regulate HAP emissions from EGUs under CAA section 112. In making that finding, EPA considered all of the information that Congress had identified as most salient, including the Utility Study, the Mercury Study, and the information in the NAS Study.[18] EPA even conducted an ICR soliciting emissions information on Hg, which was the HAP of most concern to Congress, as evidenced by section 112(n)(1). EPA collaborated further with a number of other entities and Federal Agencies, including the U.S. Department of Energy (DOE). EPA carefully evaluated all of this information, much of which had been the subject of extensive peer review, and reasonably determined, on the record before the Agency at the time, that it was appropriate and necessary to regulate EGUs under section 112.

1. EPA Appropriately Based the Finding on the Information Required by Section 112(n)(1) and Reasonably Made the Finding Once It Had Completed the Required Studies

In making the appropriate and necessary finding in 2000, EPA considered all of the relevant information in the three Studies required by section 112(n)(1) and the NAS Study. 65 FR 79826–27. The Utility, Mercury, and NAS Studies together consisted of thousands of pages of information and technical analyses. All of these studies were peer reviewed prior to issuance. In fact, the Mercury Study was reviewed by over 65

[18] As explained above, we discuss the NAS Study here because it addressed the same issues as the NIEHS study, and it is the more recent study.

independent scientists.[19] The NAS Study contains a thorough technical discussion summarizing the state of the science at the time regarding the human health effects of MeHg.

In addition to conducting the studies that Congress required, EPA collected relevant information on Hg emissions and available control technologies. Specifically, pursuant to a CAA section 114 ICR, EPA collected data on the Hg content in coal from all coal-fired EGUs for calendar year 1999. Through the 1999 ICR, EPA also obtained stack test data for certain coal-fired EGUs to verify Hg emissions estimates for the EGU source category. 65 FR 79826. EPA further solicited data from the public through a February 29, 2000, notice (65 FR 10,783), and provided the public an opportunity to provide its views on what the regulatory finding should be at a public meeting. 65 FR 79826 (citing 65 FR 18992). Finally, EPA undertook an evaluation of the Hg control performance of various emission control technologies that were either currently in use on EGUs or that could be applied to such units for Hg control. EPA conducted this evaluation with other parties, including the DOE. 65 FR 79826. EPA also evaluated other emission control approaches that would reduce EGU HAP emissions. *Id.* at 79827–29.

Although Congress did not provide a deadline by which EPA must issue the appropriate and necessary finding, the deadlines Congress provided for completion of the required studies signal that Congress wanted EPA to make the appropriate and necessary finding shortly after completion of the studies. Congress required that the Utility Study and NIEHS Study be submitted by November 15, 1993, and the Mercury Study by November 15, 1994. We reasonably conclude based on the timing of the studies that Congress wanted the Agency to evaluate the hazards to public health and the environment associated with HAP emissions from EGUs as quickly as possible and take steps to regulate such units under section 112 if hazards were identified.

Congress later provided a direct signal as to the timing of the appropriate and necessary finding in the committee report associated with EPA's fiscal year 1999 appropriations bill, which directed the Agency to fund the NAS Study. In that report, Congress indicated that it did not want the Agency to make the appropriate and necessary finding for Hg until the NAS study was completed. *See* H.R. Conf. Rep. No 105–769, at 281–282 (1998).[20]

After considering all of the information that Congress considered most relevant, including the NAS Study that was issued in June 2000, EPA determined that it was appropriate and necessary to regulate EGUs under section 112 and listed such units for regulation on December 20, 2000. As explained below, the Agency acted reasonably in issuing the finding at that time because of the identified and potential hazards to public health and the environment associated with HAP emissions from utilities, which the Agency concluded would not be addressed through imposition of the requirements of the CAA. It would not have been reasonable to delay the finding to collect additional information given the considerable delay in completion of the required studies and the hazards to public health and the environment identified as of December 2000.

2. EPA Reasonably Concluded in December 2000 That It Was Appropriate To Regulate EGUs Under Section 112

The December 2000 Finding that it was appropriate to regulate EGUs under section 112 focused largely on hazards to public health and the environment associated with Hg emissions. EPA reasonably focused on this pollutant given that Hg is a persistent, bioaccumulative pollutant that causes serious neurotoxic effects. Indeed, Congress specifically identified this pollutant as one of concern and required two separate studies to be conducted regarding Hg emissions. *See* Section 112(n)(1)(B) and (C). The information before the Agency in 2000 concerning Hg was both well-documented and scientifically supported. Based on all of the information before it, the Agency concluded that Hg emissions from EGUs posed a hazard to public health. It was also reasonable for the Agency to find regulation of EGUs appropriate given the uncertainties regarding the extent of public health impacts posed by non-Hg HAP. Finally, it was reasonable to base the appropriate finding on the availability of controls for HAP emissions from EGUs.

a. The Agency Reasonably Concluded It Was Appropriate To Regulate EGUs Based on Hg Emissions

By 2000, the Agency had amassed "a truly vast amount of data" on Hg. *See* October 10, 1997, letter (page 2) submitting Science Advisory Board (SAB) peer review recommendations on draft Mercury Study.[21] Those data confirmed the hazards to public health and the environment associated with Hg. The data also helped EPA identify the populations of most concern with regard to MeHg exposure. *See* CAA 112(n)(1)(C). Finally, the data showed that EGUs were the largest unregulated source of Hg emissions in the U.S., and that EGUs were projected to increase their Hg emissions to approximately 60 tons in 2010.

We discuss below the central pieces of data and information concerning Hg that formed the basis of our conclusion that Hg posed a threat to public health and the environment.[22] These conclusions were largely drawn from the Mercury Study, which, as noted above, was reviewed by over 65 peer reviewers. Upon reviewing the draft report, the SAB noted that the "major findings of the draft report are well supported by the scientific evidence." In direct response to the SAB review, the Agency conducted additional, comprehensive analyses addressing SAB's recommendations. Thus, in 2000, the Agency had before it a comprehensive record concerning Hg emissions, including the best available science on Hg at the time.

i. Key Facts: Impacts of Hg on Health and the Environment

EPA first concluded that Hg from EGUs was the HAP of greatest concern. *Id.* at 79827. The Agency explained that "mercury is highly toxic, persistent, and bioaccumulates in food chains;" that Hg deposited on land and water can then be metabolized by microorganisms into MeHg; that MeHg is "a highly toxic, more bioavailable, form that biomagnifies in the aquatic food chain (*e.g.,* fish);" and that nearly all of the Hg in fish is MeHg. 65 FR 79827. The Agency further noted that fish consumption is the primary route of exposure for humans and wildlife, and, by July 2000, 40 states and America Samoa had issued fish advisories for Hg,

[19] Mercury Study Report to Congress, Vol. I, Pg. 6, December 1997.

[20] This direction is consistent with section 112(n)(1). As noted above, the Utility Study was the only condition precedent to making the appropriate and necessary finding. The NIEHS study called for by 112(n)(1)(C) was to have been completed at the same time as the Utility Study. As such, Congress had originally contemplated that both the Utility and NIEHS studies would be available at the time the Agency made the appropriate and necessary finding. The NAS study considered the same information required in the NIEHS study so the Congressional direction in the fiscal year 1999 appropriation is consistent with the original drafting of section 112(n)(1).

[21] *http://yosemite.epa.gov/sab/SABPRODUCT.nsf/FF2962529C7B158A852571AE00648B72/$File/ehc9801.pdf.*

[22] The central conclusions underlying the 2000 finding are described in detail in the 2000 notice, at 65 FR 79829–30.

with 13 of those states issuing advisories for all the water bodies in their state. 65 FR 79827. Finally, the Agency explained that neurotoxicity is the health effect of greatest concern with MeHg exposure, and that exposures to MeHg can have serious toxicological effects on wildlife as well as humans.

EPA recognized that increased Hg deposition would lead to increased levels of MeHg in fish and such "increased levels in fish [would] * * * lead to toxicity in fish-eating birds and mammals, including humans." 65 FR 79830. EPA agreed with the NAS that "the long term goal needs to be the reduction in the concentrations of methylmercury in fish" and concluded that reducing Hg emissions from EGUs was "an important step toward achieving that goal." 65 FR 79830.

The Agency then identified the most affected populations. Specifically, the Agency concluded that women of childbearing age are the population of greatest concern because the developing fetus is the most sensitive to the effects of MeHg. 65 FR 79827. EPA estimated that at that time, 7 percent of women of childbearing age (or about 4,000,000 women) in the continental U.S. were exposed to MeHg at levels that exceeded the RfD and that about 1 percent of women of childbearing age (or about 580,000 women) had MeHg exposures 3 to 4 times the RfD. 65 FR 79827.

The NAS Study affirmed EPA's assessment of the toxicity of MeHg and that the RfD EPA had developed for MeHg was valid. 65 FR 79827. The Agency acknowledged that there was uncertainty with risk at exposure above the RfD, but indicated that risk increased with increased exposure. 65 FR 79827. In addition to focusing on women of childbearing age and developing fetuses, EPA stated a particular concern for subsistence fish-eating populations due to their regular and frequent consumption of relatively large quantities of fish. 65 FR 79830.

As for environmental effects, the Agency observed adverse effects to avian species and wildlife in laboratory studies at levels corresponding to fish tissue MeHg concentrations that are exceeded by a significant percentage of fish sampled in lake surveys. 65 FR 79830. The Agency explained that wildlife consume fish from a more localized geographic area than humans, which can result in elevated levels of Hg in certain fish eating species. Those species include, for example, the kingfisher and some endangered species, such as the Florida panther. 65 FR 79830.

In summary, in the December 2000 Finding, EPA identified Hg in the environment as a hazard to public health and the environment, determined that a significant segment of the most sensitive members of the population were exposed to MeHg at levels exceeding the RfD, and confirmed that the RfD was valid.

ii. EGU Emissions of Hg

In the 2000 finding, the Agency estimated that about 60 percent of the total Hg deposited in the U.S. came from U.S. anthropogenic air emission sources. 65 FR 79827. The Agency stated that the remainder of the Hg deposited in the U.S. was from natural emission sources, reemissions of historic global anthropogenic Hg releases, and non-domestic anthropogenic sources of Hg. 65 FR 79827. EPA identified coal combustion and waste incineration as the source categories likely to bear the greatest responsibility for direct anthropogenic Hg deposition in the continental U.S. 65 FR 79827. EPA further explained that EGUs are the largest unregulated domestic source of Hg emissions, accounting for approximately 30 percent of the current anthropogenic air emissions from domestic sources. 65 FR 79827. These numbers, taken together, reveal that EGUs accounted for approximately 18 percent of the total Hg deposition in the U.S on an annual basis, considering all U.S. anthropogenic sources, natural emission sources, reemissions of historic global anthropogenic Hg releases, and non-domestic anthropogenic sources of Hg.[23]

In 2000, the Agency also found a plausible link between domestic anthropogenic Hg emissions and MeHg in fish. 65 FR 79829. The Agency explained that although that link could not be estimated quantitatively at the time, the facts before the Agency were sufficient for it to conclude that EGU Hg emissions posed a hazard to public health. *Id.* at 79830. Those facts included, for example, the link between coal consumption and Hg emissions, EGUs being the largest domestic source of Hg, and certain segments of the population being at risk for adverse health effects due to consumption of contaminated fish. *Id.*

iii. EPA's Conclusions Regarding Hg

Based on the foregoing and all of the information set forth in the December 20, 2000, notice, the Agency found that Hg emissions from EGUs posed a hazard to public health and the environment. In making this finding, the Agency focused on the significant adverse health effects associated with MeHg and the persons most adversely impacted by Hg. The populations most affected were women of childbearing years and their developing fetuses and subsistence fishers. The Agency viewed the adverse health effects and environmental effects described above in conjunction with the then current Hg emissions information provided by EGUs in response to the 1999 ICR. Based on that information, EPA concluded that EGUs accounted for approximately 30 percent of the U.S. anthropogenic emissions of Hg, which translated into about 18 percent of the total Hg deposition in the U.S. at that time. EPA also knew that Hg from EGUs comprised an undetermined amount of the reemissions of Hg. *See* Mercury Study, Volume 3, page 2–3.

At the time of the December 2000 Finding, the Agency had issued section 112 or 129 standards for several of the other source categories that were significant Hg emitters, and the Agency was required by the CAA to establish section 112 or 129 standards for the other significant Hg emitters. *See* Standards for Large Municipal Waste Combustors, 40 CFR part 60, subpart Ea (NSPS), 56 FR 5507 (February 11, 1991), as amended, and 40 CFR part 60, subpart Eb (Emissions Guidelines), 60 FR 65419 (December 19, 1995), as amended; Standards for Medical Waste Incinerators, 40 CFR part 60, subpart Ec (NSPS), 62 FR 48382 (September 15, 1997), as amended, and 40 CFR part 60, subpart Ce (Emission Guidelines), 62 FR 48379 (September 15, 1997); Standards for Hazardous Waste Combustors, 40 CFR part 63, subpart EEE, 64 FR 53038 (September 30, 1999); Standards for Small Municipal Waste Combustors, 40 CFR part 60, subpart AAAA (NSPS), 65 FR 76355 (December 6, 2000), and 40 CFR part 60, subpart BBBB (Emissions Guidelines), 65 FR 76384 (December 6, 2000); and standard for Portland cement manufacturers (40 CFR part 63, subpart LLL, 64 FR 31925 (June 14, 1999)).[24] Most of these categories emitted far less Hg than EGUs at the time of the finding. Thus, at the time EPA made the December 2000 Finding, the record

[23] EPA estimated that U.S. anthropogenic air emissions of mercury accounted for 60 percent of total deposition in the U.S. and U.S. EGUs accounted for 30 percent of that deposited mercury. Thirty percent of the 60 percent contribution is equal to approximately 18 percent of the total deposition. See Utility Study, page 7–28.

[24] The NESHAP for Portland cement did not include a standard for Hg when initially promulgated. In *National Lime Ass'n* v. *EPA*, the DC Circuit Court held that section 112(d) contains a clear statutory directive to regulate all HAP emitted from a listed source category. 233 F.3d 624, 634 (DC Cir. 2000). EPA recently issued final section 112 standards for Portland cement manufacturers, including a standard for Hg emissions from such sources.

reflected that Hg posed hazards to public health and the environment, that EGUs were the single largest unregulated domestic source of Hg emissions, and that HAP emissions from EGUs would remain unregulated absent listing under section 112. EPA reasonably found at the time that reducing Hg emissions from EGUs would further the goal of mitigating the hazards to public health and the environment posed by Hg.

EPA also reasonably predicted that incremental reductions in Hg emissions, including from EGUs, would lead to incremental reductions in the MeHg concentration in fish tissue, and that such reductions would, in turn, reduce the risk to public health and the environment. 65 FR 79830. The Mercury Study recognized that Hg is a metal that remains in the environment permanently and can circulate continuously through various environmental media. Although EPA was aware that reductions of Hg from anthropogenic sources may not lead to immediate reductions in fish tissue levels, such reductions would nonetheless serve the long-term goal of reducing the mobilization of Hg to the atmosphere and thus reduce MeHg concentrations in fish.

EPA, therefore, reasonably determined based on the facts that existed at the time that regulation of EGUs was appropriate in order to reduce the hazards to public health and the environment associated with the Hg emissions from EGUs. EPA expressly acknowledged that there were uncertainties concerning the extent of the risk due to Hg emissions from EGUs, because the Agency had not quantified the amount of MeHg in fish that was directly attributable to EGUs compared to other sources of MeHg. 65 FR 79827. That EPA did not quantify in 2000 the amount of MeHg in fish due to EGUs did not preclude EPA from making an "appropriate" finding. Nowhere in section 112(n)(1) or in its direction concerning the NAS Study did Congress require EPA to quantify the amount of MeHg in fish tissue that was directly attributable to EGUs.[25] Moreover, EPA did not have sufficient confidence in its modeling tools at the time to draw conclusions about the contribution of specific source types to fish MeHg concentrations in specific geographic areas or nationally. These uncertainties are well described in the Utility, Mercury, and NAS Studies.

In any event, in light of the breadth of the scientific evidence before the Agency and the conclusions the Agency reached, it would not have been reasonable to delay the finding to develop an analytical tool to apportion the Hg in fish. The Hg problem at the time was well documented, and the fact that EGUs represented such a significant portion of the Hg deposition in the U.S. was ample evidence that it was appropriate to regulate emissions from EGUs—the single largest unregulated domestic source of Hg emissions. 65 FR 79827.

Finally, the Agency had already delayed in completing the section 112(n)(1) studies. Additional delay would have been unreasonable because of the persistence of Hg in the environment and its tendency to bioaccumulate up the food chain, both aspects of Hg in the environment that make it critical to limit additional releases to the environment as quickly as possible. In addition, delay would have been unreasonable because EPA estimated at that time that about 7 percent of women of child-bearing age, one of the most at-risk populations, was exposed to Hg at levels exceeding the RfD, and EPA knew that as the level of exposure above the RfD increased, the level of risk and the extent and severity of adverse effects increased. Thus, EPA reasonably made the appropriate and necessary determination in 2000 to ensure that the largest unregulated domestic source of Hg would be required to install controls, thereby achieving an incremental reduction in the risk associated with a persistent, bioaccumulative HAP.

b. The Appropriate Finding for Non-Hg HAP Was Reasonable

The December 2000 Finding was also reasonable as it pertained to the non-Hg HAP emitted from EGUs. The Agency found it was appropriate to regulate EGUs based on the potential human health concerns from non-Hg HAP, particularly Ni from oil-fired EGUs, and the uncertainties regarding the public health impact of emissions of such HAP. 65 FR 79830. Based on the information in the Utility Study, EPA could not conclude based on the available information that the non-Hg HAP posed no hazards to public health.

Specifically, the Agency noted that several non-Hg HAP metals, including As, Cr, Ni, and Cd, were of potential concern for carcinogenic effects. 65 FR 79827. EPA acknowledged that the risks did not appear high, but it stated that the risks were not sufficiently low to disregard the metals as a potential concern for public health. 65 FR 79827; *see* Utility Study, Table 5–4, page 5–9 (finding cancer risks from oil-fired EGUs alone for Ni exceeded 1 in a million). The Agency also indicated that dioxins, HCl, and HF were of potential concern and might be evaluated further. 65 FR 79827.

EPA did not view the risks associated with non-Hg HAP in a vacuum. Rather, EPA considered the threat to public health, including uncertainties, associated with both Hg and non-Hg HAP emissions from EGUs in determining whether it was appropriate to regulate such units under section 112.

Finally, even looking solely at non-Hg HAP, EPA's conclusions support regulation of EGUs under section 112. Although Congress provided no metric for the hazard to public health determination, section 112(c)(9) is instructive. Specifically, in that section, Congress set forth a test for removing source categories from the section 112(c) source category list. That test is relevant because it reflects Congress' view as to the level of health effects associated with HAP emissions that Congress thought warranted regulation under section 112. If a source category failed to meet that test, it would remain subject to the requirements of CAA section 112. Thus, CAA section 112(c)(9) can be read to reflect Congress' view of what adverse public health effects from HAP emissions are acceptable and thus do not warrant regulation under CAA section 112.

For carcinogens, which are at issue here, section 112(c)(9)(B)(i) provides that EPA may delete a source category from the section 112(c) list if no source in the category (or group of sources in the case of area sources) emits such HAP in quantities that may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources). Thus, section 112(c)(9)(B)(i) prohibits the Agency from delisting a major source category from the section 112(c) list if any single source within that category emits cancer causing HAP at levels that may cause a

[25] Consistent with section 112(n)(1), none of the studies addressed the amount of MeHg in fish attributable solely to EGUs. Instead, in the Utility and Mercury Studies, EPA discussed the significant contribution EGUs made to Hg deposition and that Hg deposition was problematic from a health and environmental standpoint. EPA submitted both the Utility Study and the Mercury Study to Congress by 1998. Aware of these studies, Congress, when directing the additional NAS Study, still did not require EPA to determine the amount of MeHg in fish due solely to EGUs. In light of this fact and the broad discretion Congress gave EPA to determine whether it was appropriate or necessary to regulate EGUs under section 112, EPA acted reasonably in 2000 by not delaying its finding several years to conduct an analysis of the portion of MeHg in fish due solely to EGUs.

lifetime cancer risk greater than one in one million to the most exposed individual. The Utility Study demonstrated that there were EGUs whose emissions resulted in a cancer risk greater than one in one million. Accordingly, it was reasonable to conclude at the time that non-Hg HAP emissions were of sufficient concern from a health perspective to warrant regulation.

3. EPA Reasonably Based the Appropriate Determination in Part on the Availability of Controls for HAP Emissions From EGUs

In addition to determining that it was appropriate to regulate because of the known and potential hazards to public health and the environment, EPA also concluded that it was appropriate to regulate HAP emissions from EGUs because EPA had identified a number of control options that would effectively reduce HAP emissions from EGUs. 65 FR 79828–30. EPA discussed the various controls available to reduce HAP emissions from EGUs in the December 2000 Finding. The approach of section 112, as amended in 1990, is based on the premise that, to the extent there are controls available to reduce HAP emissions, sources should be required to use them. Thus, it was reasonable to base the appropriate finding in part on the conclusion that controls currently available were expected to reduce HAP emissions from EGUs.

4. EPA Reasonably Concluded It Was Necessary To Regulate EGUs

In 2000, EPA found it was necessary to regulate HAP emissions from EGUs under section 112 because the imposition of the other requirements of the CAA would not address the serious public health and environmental hazards arising from such emissions. 65 FR 79830. EPA also noted that Congress enacted section 112 specifically to address HAP emissions from stationary sources, and it was thus reasonable to regulate HAP emissions from EGUs under that section given the hazards to public health and the environment posed by such emissions. *Id.*

In Table 1 of the December 20, 2000 notice, EPA set forth its projections of HAP emissions for 2010. In assessing those projections in 2000, EPA considered the data that it had obtained as the result of the 1999 ICR. 65 FR 79828. It also considered projected changes in the population of units, fuel consumption, and control device configuration. *Id.* EPA considered control device configurations in making the 2010 projections, in an effort to account for the reductions attributable to the imposition of other requirements of the CAA.

Specifically, in estimating the projected 2010 HAP emissions from EGUs, EPA accounted for the HAP reductions that would occur as the result of the controls required to comply with the ARP. Congress added the ARP in CAA Title IV, as part of the 1990 amendments, and that program is primarily directed at EGUs. EPA, therefore, considered the HAP reductions projected to occur as the result of control configurations needed to meet the Acid Rain requirements of the CAA. *See, e.g.,* Utility Study, ES–2.

As shown in Table 1 of the December 20, 2000 notice, EPA estimated that the level of all HAP emitted by coal-fired EGUs would increase by 2010. 65 FR 79828 (Table 1). For Hg, EPA estimated that EGUs emitted 46 tons of Hg in 1990 and 43 tons of Hg in 1999, and it projected that EGUs would emit approximately 60 tons of Hg in 2010. 65 FR 79827–828. EPA also estimated an overall increase in non-Hg HAP emissions from coal-fired EGUs. Given these estimates and projections, which were based on the best information available at the time, EPA reasonably concluded that the identified and potential hazards associated with HAP from coal-fired EGUs would not be addressed through imposition of the other requirements of the CAA.

For oil-fired EGUs, EPA projected a decline in overall HAP emissions. The decline was primarily due to projected retirements and fuel switching from oil to natural gas. EPA could not conclude based on the information available at the time that the facilities posing the cancer risks, due primarily to Ni emissions, would retire or change fuels. As a result of these uncertainties and the uncertainties as to the extent of the public health impact from oil-fired units, EPA found that it was necessary to regulate such units under section 112.

5. The 2005 Action: EPA Erred in the 2005 Action by Concluding That the December 2000 Finding Lacked Foundation

In 2005, the Agency asserted that the December 2000 Finding lacked foundation for two reasons. First, the Agency stated that the 2000 appropriate finding was overbroad to the extent it relied on adverse environmental effects. Second, the Agency stated that the 2000 appropriate finding lacked foundation because EPA did not fully consider the Hg emissions remaining after imposition of the requirements of the CAA. For the reasons provided below, we reject these assertions as unfounded. As demonstrated above, EPA's 2000 appropriate and necessary finding was sound and fully supported by the record before the Agency in 2000.

a. Consideration of Environmental Effects in the Appropriate Finding

EPA reasonably examined the adverse environmental impacts associated with Hg in making the December 2000 Finding. In 2005, EPA changed its interpretation of the broad term "appropriate" to restrict the consideration of environmental effects only to situations where the Agency had determined that a hazard to public health exists as a result of EGU HAP emissions. As such, EPA stated in 2005 that the December 2000 Finding lacked foundation to the extent it was based on environmental effects.

As explained above in Section III.A, EPA's 2005 change in how it interpreted the term "appropriate" lacks merit. Congress gave EPA broad discretion to determine whether it was appropriate to regulate EGUs under section 112. On the one hand, EPA recognized that broad discretion in 2005, but on the other hand, it sought to limit that discretion by only allowing environmental impacts to be considered if a hazard to public health was found. The 2005 interpretation was based on the flawed notion that the Agency should only consider health effects because the Utility Study only required consideration of hazards to public health. But, as noted above, Congress specifically directed EPA in section 112(n)(1)(B) to consider the environmental effects associated with Hg emissions from EGUs. It was entirely reasonable, therefore, for EPA to consider such effects in making its appropriate finding in 2000.

Furthermore, even under the Agency's flawed 2005 interpretation, which allowed consideration of environmental effects only where a hazard to public health exists, EPA properly considered environmental effects in 2000 because we, in fact, found a hazard to public health based on the record at that time.

b. Scope of "Appropriate" Finding

EPA interprets the "appropriate" finding to require an evaluation of the hazards to public health and the environment at the time of the finding. This interpretation is consistent with the approach taken in 2000. By contrast, in the 2005 "appropriate" analysis, EPA considered the hazards to public health that were reasonably anticipated to occur "after imposition of the requirements of the Act." In short, EPA infused the "after imposition of the requirements of the Act" inquiry into

both the appropriate and necessary prongs.

As explained in Section III.A, this interpretation improperly conflates the "appropriate" and "necessary" analysis. Accordingly, any assertion that EPA's 2000 appropriate finding is flawed because the Agency failed to consider the other requirements of the CAA should be rejected.

Even considering the Agency's flawed 2005 interpretation of the term "appropriate," there is nothing in the record to suggest that the Agency erred in 2000 with regard to assessing Hg emissions. As explained above, in 2000, EPA reasonably considered those requirements of the CAA that directly pertained to EGUs (*i.e.,* the ARP in Title IV of the Act).

In addition, in 2000, EPA recognized that EGUs may be subject to requirements pursuant to SIP developed in response to NAAQS. In fact, EPA had projected a potential 11 tpy reduction in EGU Hg emissions as the result of the ozone and PM NAAQS. Utility Study, p. 1–3. EPA explained in the Utility Study, however, why it did not account for such reductions in its 2010 emission projections.

First, EPA explained that some of the Hg reductions associated with the PM and ozone NAAQS would be realized through the implementation of the ARP, and, thus, had already been accounted for in its 2010 projections. *See* Utility Study, page 1–3. Thus, to consider the projected reductions from the NAAQS would have potentially led to double counting of the estimated HAP reductions. Second, the states, not EPA, are primarily responsible for implementation of the NAAQS. EPA could not have reasonably assumed that the estimated Hg reductions from EGUs would occur because it could not forecast the prospective regulatory actions of the states and the impact that those actions would have on HAP emissions. In short, there was no guarantee that states would regulate EGUs to achieve the reductions necessary to meet the NAAQS in such a way that would achieve Hg reductions, and EPA reasonably did not consider such possible reductions in its 2000 analysis.

Furthermore, at the time of the Utility Study, no areas had been designated as nonattainment with the 1997 revised PM NAAQS. *See* Utility Study, page 2–32. Even had all areas been designated at the time of the Utility Study, we still would not have known how the states would have elected to obtain the required reductions to meet the NAAQS. We also would not have had information as to how the sources would actually implement the requirements in any SIP, and as noted above, the degree of HAP co-benefit reductions varies depending on the control approach used. Even had we considered the potential 11 tpy of Hg reductions estimated to occur as a result of implementing the 1997 NAAQS, the projected level of Hg emissions from EGUs in 2010 would have been 49 tpy (60 − 11 = 49), which is still 6 tpy greater than the 43 tpy that the Agency concluded in 2000 caused a hazard to public health and the environment. Thus, even if the NAAQS had been included in the 2010 projections, the Agency would still have found that the identified hazards would not be resolved through imposition of the requirements of the CAA and would have concluded it was necessary to regulate EGUs under section 112.

EPA also asserted in 2005 that it failed to account for Hg reductions associated with the 1997 Utility NSPS in assessing whether it was appropriate to regulate in 2000. In the Utility Study, EPA noted that EGUs would be implementing the same controls for NO_X and SO_2 to meet the requirements of both Title I and Title IV. EPA accounted for the ARP in its 2010 projections. In addition, in the Utility Study, EPA determined that HAP emissions from EGUs would increase in 2010 based on estimated increases in coal use, which was primarily projected to occur at new units. Utility Study, pages 2–26 to 2–31. Because EPA was unable to determine the size and location of the new units at the time of the Utility Study, the Agency reasonably allocated the increased fuel consumption to existing units (excluding the coal-fired units that were projected to retire between 1990 and 2010). All or a substantial majority of existing units already had some type of PM control and many units had scrubbers. To the extent this approach of assigning increased fuel consumption to existing controlled units led to an overestimation of remaining HAP emissions, we do not believe the overestimation was significant. EPA's approach to projecting emissions in 2010 was entirely reasonable given the data and information available to the Agency at the time. *See* Utility Study, page 6–15.

Finally, EPA asserted in 2005 that it failed to account for the Hg reductions associated with the NO_X SIP call. Like the NAAQS, states are primarily responsible for developing regulations to meet the NO_X SIP call. EPA could not have reasonably assumed that the estimated Hg reductions from EGUs would occur because it could not forecast the prospective regulatory actions of the states. In addition, in 2005, EPA neither identified the reductions that would occur as the result of the NO_X SIP call, nor explained how those reductions would have changed EPA's 2000 appropriate finding.

EPA solicits comment on section III.B.

C. EPA Must Regulate EGUs Under Section 112 Because EGUs Were Properly Listed Under CAA Section 112(c)(1) and may not be Delisted Because They do not Meet the Delisting Criteria in CAA Section 112(c)(9)

As shown above, in 2000, EPA reasonably determined, based on the record before it at the time, that it was appropriate and necessary to regulate EGUs under CAA section 112. Once that finding was made, EPA properly listed EGUs pursuant to section 112(c), and EGUs remain a listed source category. *See New Jersey,* 517 F.3d at 583.

As the DC Circuit Court held in *New Jersey,* EPA cannot ignore the delisting criteria in section 112(c)(9). CAA section 112(c)(9)(B) authorizes the Agency to delist any source category if the Agency determines that: (1) For HAP that may cause cancer in humans, no source in the category emits such HAP in quantities that "may cause a lifetime risk of cancer greater than one in one million" to the most exposed individual; section 112(c)(9)(B)(i); and (2) for HAP that may result human health effects other than cancer or adverse environmental effects, "emissions from no source in the category or subcategory concerned * * * exceeds a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source." Section 112(c)(9)(B)(ii).

Here, we have a validly listed source category. EPA could not have met the delisting criteria in 2000 or 2005, and it still cannot meet those criteria today.

The information in the Utility Study shows that HAP emissions from a number of EGUs caused a lifetime cancer risk greater than one in one million. Nothing in the 2005 record suggested anything to the contrary, and as such, the Agency did not delist EGUs in 2005 pursuant to section 112(c)(9). Finally, EPA has conducted 16 case studies based on the data collected in support of this proposed rule and determined that 4 of those facilities evaluated (25 percent) presented a lifetime cancer risk greater than 1 in 1 million. Thus, based on current data and analysis, EGUs fail the first requirement for delisting set forth in section 112(c)(9)(B)(i). Because EGUs do

not meet the first delisting requirement, the Agency need not determine whether the second delisting requirement is satisfied; however, the Agency believes that EGUs would similarly fail the second delisting requirement for the reasons described below in section III.D.

D. New Analyses Confirm That it Remains Appropriate and Necessary to Regulate U.S. EGU HAP Under Section 112

As explained above, the December 2000 appropriate and necessary determination is wholly supported by the record that was before the Agency at the time it made its decision. Although not required, we conducted additional technical analyses because several years have passed since the December 2000 Finding. These extensive analyses confirm that it remains appropriate and necessary today to regulate EGUs under section 112. We discuss below the new analyses that we conducted. We also explain why these analyses and the other information currently before the Agency confirm that regulation of EGUs under section 112 is appropriate and necessary. We solicit comment on the new analyses.

Utilities are by far the largest remaining source of Hg in the U.S.[26] In addition, EGUs are the largest source of HCl, HF, and Se emissions, and a major source of metallic HAP emissions including As, Cr, Ni, and others.[27] The discrepancy is even greater now that almost all other major source categories have been required to control Hg and other HAP under section 112.

These significant HAP emissions pose a known or potential hazard to public health and the environment and, thus, it remains appropriate to regulate EGUs under section 112.

In this section, we describe briefly the health and environmental effects associated with the HAP emitted by EGUs and summarize the new analyses that the Agency conducted to assess the hazards to public health and the environment associated with EGU emissions, including the hazards remaining after imposition of the requirements of the CAA. We then discuss our conclusion that it remains appropriate and necessary to regulate EGUs under section 112.

Specifically, we conclude today that it remains appropriate to regulate EGUs under section 112 because Hg is a persistent, bioaccumulative pollutant, and emissions of Hg from EGUs continue to pose a hazard to public health and to the environment. Because of the persistent nature of Hg in the environment, Hg emitted today can lead to re-emissions of Hg in the future, and as a result continue to contribute to Hg deposition and associated health and environmental hazards in the future.

In addition, we conclude today that it is appropriate to regulate non-Hg HAP because emissions of these HAP from some EGUs pose a cancer risk greater than one in one million to the most exposed individual.[28] EGUs remain the largest contributors of several HAP (*e.g.,* HF, Se, HCl), and are among the largest contributor for other HAP (*e.g.,* As, Cr, Ni, hydrogen cyanide (HCN)).[29] EPA recognizes that there are additional health and environmental effects for which we have insufficient information to quantify risks, or which have a higher degree of uncertainty regarding the weight of evidence for causality. While not quantified in our analysis, the potential for additional hazards to public health and the environment beyond what we have analyzed provides additional support for regulation under section 112 that will assure reductions of all HAP and the risks, quantified or unquantified, that they pose.

Finally, we find that it remains appropriate to regulate EGUs under section 112 because we have identified a number of currently available control technologies that will adequately address HAP emissions from EGUs. Several of these findings provide an independent basis for our determination consistent with our interpretation of the appropriate finding set forth above, and the combined weight of these findings provides a strong overall basis for our determination that it is and remains appropriate to regulate EGUs under CAA section 112.

We conclude that it remains necessary to regulate HAP emissions from EGUs because the imposition of the requirements of the CAA will not sufficiently address the hazards to public health and the environment posed by Hg emissions or the cancer risk and potential hazards to the environment posed by non-Hg HAP emissions from EGUs. Although the identified hazards will not be fully addressed through regulation under section 112, there will be a significant reduction in domestic Hg and non-Hg HAP emissions as the result of a section 112 regulation. EGUs remain the largest source of HCl and HF emissions in the U.S., and it is essential that those emissions be reduced to the maximum extent achievable, as Congress envisioned pursuant to section 112. Furthermore, it is necessary to regulate EGUs under section 112 because standards under that section assure that reductions in HAP emissions from EGUs will be permanently realized, thereby assuring that recent decreases in HAP emissions from U.S. EGUs will not be reversed in the future. Each of these conclusions independently supports our determination that it remains necessary to regulate EGUs under section 112.

Below we present an overview of EPA's current view of the scientific and technical information relevant to evaluating U.S. EGU Hg emissions and the public health hazards associated with such emissions. We provide general background information on the health hazards and environmental impacts of Hg and its transformation product MeHg; the emissions of those pollutants; the U.S. EGU contribution to these emissions; the predominant exposure pathway by which humans are affected by MeHg, which is by ingestion of fish containing MeHg; EPA's methodology for determining the impacts of U.S. EGU Hg emissions on potential exposures to MeHg in fish; the estimated potential risks associated with recent and future anticipated emissions of Hg from U.S. EGUs; and a qualitative analysis of the environmental hazards associated with Hg deposition. In addition to these analyses of hazards to public health and the environment associated with emissions of Hg from U.S. EGUs, this section also includes analyses of the hazards to public health and the environment from U.S. EGU emissions of non-Hg HAP. We then explain why the hazards to public health and the environment from Hg and non-Hg HAP emissions are reasonably anticipated to remain from U.S. EGUs after imposition of the requirements of the CAA. Finally, we discuss our evaluation of the new data and our finding that it remains appropriate and necessary to regulate EGUs under section 112.

1. Background Information on Hg Emissions, Deposition, and Effects on Human Health and the Environment

a. Overview of Hg and Associated Health and Environmental Hazards

Mercury is a persistent, bioaccumulative toxic metal that is emitted from EGUs in three forms:

[26] Strum, M., Houyoux, M., U.S. Environmental Protection Agency. Emissions Overview: Hazardous Air Pollutants in Support of the Proposed Toxics Rule. Memorandum to Docket EPA–HQ–OAR–2009–0234. March 15, 2011.

[27] Ibid. Tables 3 and 4.

[28] Strum, M., Thurman, J., and Morris, M., U.S. Environmental Protection Agency. Non-Hg Case Study Chronic Inhalation Risk Assessment for the Utility MACT "Appropriate and Necessary" Analysis. Memorandum to Docket EPA–HQ–OAR–2009–0234. March 1, 2011.

[29] Strum, M., Houyoux, H., op. cit., Tables 3 and 4.

Gaseous elemental Hg (Hg^0), oxidized Hg compounds (Hg^{+2}), and particle-bound Hg (Hg_P). Elemental Hg does not quickly deposit or chemically react in the atmosphere, resulting in residence times that are long enough to contribute to global scale deposition. Oxidized Hg and Hg_P deposit quickly from the atmosphere impacting local and regional areas in proximity to sources. Methylmercury is formed by microbial action in the top layers of sediment and soils, after Hg has precipitated from the air and deposited into waterbodies or land. Once formed, MeHg is taken up by aquatic organisms and bioaccumulates up the aquatic food web. Larger predatory fish may have MeHg concentrations many times, typically on the order of one million times, that of the concentrations in the freshwater body in which they live. Although Hg is toxic to humans when it is inhaled or ingested, we focus in this rulemaking on exposure to MeHg through ingestion of fish, as it is the primary route for human exposures in the U.S., and potential health risks do not likely result from Hg inhalation exposures associated with Hg emissions from utilities.

In 2000, the National Research Council (NRC) of the NAS issued the NAS Study, which provides a thorough review of the effects of MeHg on human health. There are numerous studies that have been published more recently that report effects on neurologic and other endpoints.

i. Reference and Benchmark Doses

As discussed earlier in Sections II.A.1 and III.B.3.a.i of this preamble, EPA has set and evaluated the RfD for Hg several times, and has received input from the NRC on the appropriateness of the RfD. In 1995, EPA set a health-based ingestion rate for chronic oral exposure to MeHg termed an oral RfD, at 0.0001 milligrams per kilogram per day (mg/kg-day).[30] The RfD was based on effects reported for children exposed *in utero* during the Iraqi Hg poisoning episode, in which children were exposed to high levels of Hg when their mothers consumed contaminated grain.[31] Subsequent research from large epidemiological studies in the Seychelles,[32] Faroe Islands,[33] and New Zealand [34] added substantially to the body of knowledge on neurological effects from MeHg exposure. In 2001 EPA established a revised RfD based on the advice of the NAS and an independent review panel convened as part of the Integrated Risk Information System (IRIS) process. In their analysis, the NAS examined in detail the epidemiological data from the Seychelles, the Faroe Islands, and New Zealand, as well as other toxicological data on MeHg. The NAS recommended that neurobehavioral deficits as measured in several different tests among these studies be used as the basis for the RfD.

The NAS proposed that the Faroe Islands cohort was the most appropriate study for defining an RfD, and specifically selected children's performance on the Boston Naming Test (a neurobehavioral test) as the key endpoint. Results from all three studies were considered in defining the RfD, as published in the "2001 Water Quality for the Protection of Human Health: Methylmercury," and in the IRIS summary for MeHg: "Rather than choose a single measure for the RfD critical endpoint, EPA based this RfD for this assessment on several scores from the Faroes' measures, with supporting analyses from the New Zealand study, and the integrative analysis of all three studies." [35]

EPA defined the updated RfD of 0.0001 mg/kg-day in 2001. Although derived from a more complete data set and with a somewhat different methodology, the current RfD is numerically the same as the previous (1995) RfD (0.0001 mg/kg-day, or 0.1 µg/kg-day).

This RfD, consistent with the standard definition, is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime (EPA, 2002). In general EPA believes that exposures at or below the RfD are unlikely to be associated with appreciable risk of deleterious effects. However, no RfD defines an exposure level corresponding to zero risk; moreover the RfD does not represent a bright line, above which individuals are at risk of adverse effects. EPA's interpretation for this assessment is that any exposures to MeHg above the RfD are of concern given the nature of the data available for Hg that is not necessarily available for many other chemicals. The scientific basis for the Hg RfD includes extensive human data and extensive data on sensitive subpopulations, including pregnant mothers; therefore, the RfD does not include extrapolations from animals to humans, and from the general population to sensitive subpopulations. In addition, there was no evidence of a threshold for MeHg-related neurotoxicity within the range of exposures in the Faroe Islands study which served as the primary basis for the RfD. This additional confidence in the basis for the RfD suggests that all exposures above the RfD can be interpreted with more confidence as causing a potential hazard to public health. Studies published since the current MeHg RfD was released include new analyses of children's neuropsychological effects from the existing Seychelles and Faroe Islands cohorts, including formation of a new cohort in the Faroe Islands study. There are also a number of new studies that were conducted in population-based cohorts in the U.S and other countries. A comprehensive assessment of the new literature has not been completed by EPA. However, data published since 2001 are generally consistent with those of the earlier studies that were the basis of the RfD, demonstrating persistent effects in the Faroe Island cohort, and in some cases associations of effects with lower MeHg exposure concentrations than in the Faroes. These new studies provide additional confidence that exposures above the RfD are contributing to risk of adverse effects, and that reductions in exposures above the RfD can lead to incremental reductions in risk.

ii. Neurologic Effects

In its review of the literature, the NAS found neurodevelopmental effects to be the most sensitive and best documented endpoints and appropriate for establishing an RfD;[36] in particular NAS

[30] MeHg exposure is measured as milligrams of MeHg per kilogram of bodyweight per day, thus normalizing for the size of fish meals and the differences in bodyweight among exposed individuals.

[31] Marsh DO, Clarkson TW, Cox C, Myers GJ, Amin-Zaki L, Al-Tikriti S 1987. Fetal methylmercury poisoning. Relationship between concentration in single strands of maternal hair and child effects. Arch Neurol 44(10):1017–1022.

[32] Davidson, P.W., G. Myers, C.C. Cox, C.F. Shamlaye, D.O.Marsh, M.A.Tanner, M. Berlin, J. Sloane-Reeves, E. Chernichiari,, O. Choisy, A. Choi and T.W. Clarkson. 1995. Longitudinal neurodevelopment study of Seychellois children following *in utero* exposure to methylemrcury from maternal fish ingestion: outcomes at 19 and 29 months. NeuroToxicology 16:677–688.

[33] Grandjean, P., Weihe, P., White, R.F., Debes, F., Araki, S., Murata, K., Sørensen, N., Dahl, D., Yokoyama, K., Jørgensen, P.J., 1997. Cognitive deficit in 7-year-old children with prenatal exposure to methylmercury. Neurotoxicol. Teratol. 19, 417–428.

[34] Kjellstrom T, Kennedy P, Wallis S, Stewart A, Friberg L, Lind B, *et al.* (1989). Physical and mental development of children with prenatal exposure to mercury from fish. Stage 2: Interviews and psychological tests at age 6. Solna, Sweden: National Swedish Environmental Protection Board. Report No.: Report 3642.

[35] EPA, 2001.

[36] NAS, 2000.

supported the use of results from neurobehavioral or neuropsychological tests. The NAS report [37] noted that studies in animals reported sensory effects as well as effects on brain development and memory functions and support the conclusions based on epidemiology studies. The NAS noted that their recommended endpoints for an RfD are associated with the ability of children to learn and to succeed in school. They concluded the following: "The population at highest risk is the children of women who consumed large amounts of fish and seafood during pregnancy. The committee concludes that the risk to that population is likely to be sufficient to result in an increase in the number of children who have to struggle to keep up in school."

iii. Cardiovascular Impacts

The NAS summarized data on cardiovascular effects available up to 2000 (IRIS 2001). Based on these and other studies, the NRC (2000) concluded that "Although the data base is not as extensive for cardiovascular effects as it is for other end points (*i.e.,* neurologic effects) the cardiovascular system appears to be a target for MeHg toxicity in humans and animals." The NRC also stated that "additional studies are needed to better characterize the effect of methylmercury exposure on blood pressure and cardiovascular function at various stages of life."

Additional cardiovascular studies have been published since 2000. EPA did not to develop a quantitative dose-response assessment for cardiovascular effects associated with MeHg exposures, as there is no consensus among scientists on the dose-response functions for these effects. In addition, there is inconsistency among available studies as to the association between MeHg exposure and various cardiovascular system effects. The pharmacokinetics of some of the exposure measures (such as toenail Hg levels) are not well understood. The studies have not yet received the review and scrutiny of the more well-established neurotoxicity data base.

iv. Genotoxic Effects

The Mercury Study noted that MeHg is not a potent mutagen but is capable of causing chromosomal damage in a number of experimental systems. The NAS concluded that evidence that human exposure to MeHg caused genetic damage is inconclusive; they note that some earlier studies showing chromosomal damage in lymphocytes may not have controlled sufficiently for potential confounders. One study of adults living in the Tapajós River region in Brazil [38] reported a direct relationship between MeHg concentration in hair and DNA damage in lymphocytes; as well as effects on chromosomes. Long-term MeHg exposures in this population were believed to occur through consumption of fish, suggesting that genotoxic effects (largely chromosomal aberrations) may result from dietary, chronic MeHg exposures similar to and above those seen in the Faroes and Seychelles populations.

v. Immunotoxic Effects

Although exposure to some forms of Hg can result in a decrease in immune activity or an autoimmune response,[39] evidence for immunotoxic effects of MeHg is limited.[40]

vi. Other Human Toxicity Data

Based on limited human and animal data, MeHg is classified as a "possible" human carcinogen by the International Agency for Research on Cancer (IARC) [41] and in IRIS.[42] The existing evidence supporting the possibility of carcinogenic effects in humans from low-dose chronic exposures is tenuous. Multiple human epidemiological studies have found no significant association between Hg exposure and overall cancer incidence, although a few studies have shown an association between Hg exposure and specific types of cancer incidence (*e.g.,* acute leukemia and liver cancer [43]).

There is also some evidence of reproductive and renal toxicity in humans from MeHg exposure. However, overall, human data regarding reproductive, renal, and hematological toxicity from MeHg are very limited and are based on either studies of the two high-dose poisoning episodes in Iraq and Japan or animal data, rather than epidemiological studies of chronic exposures at the levels of interest in this analysis.

b. Mercury Emissions

Mercury is an element. There is a fixed amount of it in the world. As long as it is bound up, for example in coal, it cannot affect people or the environment. Once it is released, for example via the combustion process, it enters the environment and becomes available for chemical conversion. Once emitted, Hg remains in the environment, and can bioaccumulate in organisms or be remitted through natural processes. Mercury is emitted through natural and anthropogenic processes; in addition, previously deposited Hg from either process may be re-emitted. Mercury deposition in the U.S. is not directly proportional to total Hg emissions, due to the differing rates at which the three species of Hg (Hg^0, Hg^{+2}, Hg_p) deposit. In general, the greater the fraction of total Hg accounted for by Hg^{+2} and Hg_P, the higher the correlation between total Hg emissions and total Hg deposition in the U.S. In the following discussion, we will be describing emissions of Hg, while we discuss deposition later in this section.

The categories for anthropogenic Hg emissions include the combustion of fossil-fuels, cement production, waste incineration, metals production, and other industrial processes. Anthropogenic Hg emissions consist of Hg^0, Hg^{+2}, and Hg_P.

Mercury re-emissions include previously deposited Hg originating from both natural and anthropogenic sources. At this time, it is not possible to determine the original source of previously deposited Hg, whether its source is natural emissions or re-emissions from previously deposited anthropogenic Hg.[44] [45] [46] It is believed that half of re-emitted Hg originates from anthropogenic sources.[47] [48]

Current estimates of total global Hg emissions based on a 2005 inventory

[37] NAS, 2000.

[38] Amorim, M.I., Mergler, D., Bahia, M.O., Dubeau, H., Miranda, D., Lebel, J., Burbano, R.R., Lucotte, M., 2000. Cytogenetic damage related to low levels of methyl mercury contamination in the Brazilian Amazon. An. Acad. Bras. Cienc. 72, 487–507.

[39] Agency for Toxic Substances and Disease Registry (ATSDR). 1999. Toxicological profile for Mercury. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. *http://www.atsdr.cdc.gov/toxprofiles/tp.asp?id=115&tid=24.*

[40] National Academy of Sciences. Toxicologic effects of methylmercury. Washington, DC: National Research Council, 2000. Available online at *http://www.nap.edu/openbook.php?isbn=0309071402.*

[41] IARC, 1994.

[42] EPA, 2002.

[43] NAS, 2000.

[44] Lindberg, S., Bullock, R., Ebinghaus, R., Engstrom, D., Feng, X., Fitzgerald, W., *et al.* (2007). A Synthesis of Progress and Uncertainties in Attributing the Sources of Mercury in Deposition. *Ambio, 36*(1), 19–33.

[45] Lohman, K., Seigneur, C., Gustin, M., & Lindberg, S. (2008). Sensitivity of the global atmospheric cycle of mercury to emissions. *Applied Geochemistry,* 23(3), 454–466.

[46] Seigneur, C., Vijayaraghavan, K., Lohman, K., Karamchandani, P., & Scott, C. (2004). Global Source Attribution for Mercury Speciation in the United States. *Environmental Science and Technology*(38), 555–569.

[47] Mason, R., Pirrone, N., & Mason, R. P. (2009). Mercury emissions from natural processes and their importance in the global mercury cycle. In *Mercury Fate and Transport in the Global Atmosphere* (pp. 173–191): Springer U.S.

[48] Selin, N. E., Jacob, D. J., Park, R. J., Yantosca, R. M., Strode, S., Jaeglé, L., et al. (2007). Chemical cycling and deposition of atmospheric mercury: Global constraints from observations. *J. Geophys. Res,* 112, 1071–1077.

range from 7,300 to 8,300 tpy.[49] [50] The United Nations Environment Programme (UNEP) estimates of 2005 global Hg emissions are somewhat lower, at 5,600 metric tpy.[51] Global anthropogenic Hg emissions, excluding biomass burning, have been estimated by many researchers. UNEP's 2005 estimate is approximately 2,100 tpy (with a range of 1,300 tpy to 3,300 tpy) [52] and Pirrone, *et al.'s* 2005 estimate is approximately 2,600 tpy. Global fossil-fuel fired EGUs total approximately 500 to 900 tpy, a large fraction (25 to 35 percent) of the total global anthropogenic emissions.[53] [54] The U.S. contribution to global anthropogenic emissions has declined from 10 percent in 1990 to 5 percent in 2005, due to reductions in U.S. emissions and increases in emissions from other countries.[55]

Although total U.S. anthropogenic Hg has decreased, the EGU sector remains the largest contributor to the total. In 1990, U.S. EGU Hg emissions for coal-fired units above 25 MW were 46 tons out of total U.S. Hg emissions of 264 tons.[56] By 1999 U.S. EGU Hg emissions for coal-fired units above 25 MW were 43 out of 115 tons.[57] In 2005, estimated emissions for coal- and oil-fired units above 25 MW were 53 tons out of a total of 105 tons. However, the 2005 estimate is based on control configurations as of 2002; therefore, it does not reflect reductions due to control installations that took place between 2002 and 2005. A current estimate of Hg emissions for both coal- and oil-fired units above 25 MW, using data from the EPA's 2010 ICR database, which used testing data for over 300 units, is 29 tons of Hg. We believe our estimate of the current level of Hg emissions based on the 2010 ICR database may underestimate total EGU Hg emissions due to the fact that emission factors used to develop the estimates may not accurately account for larger emissions from units with more poorly performing emission controls. EPA tested only 50 randomly selected units that were not selected for testing as best performing units (the bottom 85 percent of units), and we used that small sample to attempt to characterize the lower performing units. Because the 50 units were randomly selected, we do not believe we have sufficiently characterized the units that have poorly performing controls. In addition, the 2010 estimate also reflects the installation of Hg controls to comply with state Hg-specific rules, voluntary reductions from EGUs, and the co-benefits of Hg reductions associated with control devices installed for the reduction of SO_2 and PM as a result of state and Federal actions, such as New Source Review (NSR) enforcement actions and implementation of CAIR. Table 3 shows U.S. EGU Hg emissions along with emissions from other major non-EGU Hg sources. Table 3 also shows EPA's projection that U.S. EGU emissions will continue to comprise a dominant portion of the total U.S. anthropogenic inventory in 2016. In 2016, U.S. EGU Hg emission for the subset of coal-fired units above 25 MW is projected to be 29 tons out of a total of 64 tons.[58]

TABLE 3—ANTHROPOGENIC HG EMISSIONS AND PROJECTIONS IN THE U.S.*

Category	2005 Mercury (tons)	2016 Mercury (tons)
Electric Generating Units	53	29
Portland Cement Manufacturing	7.5	1.1
Stainless and Nonstainless Steel Manufacturing: Electric Arc Furnaces	7.0	4.6
Industrial, Commercial, Institutional Boilers & Process Heaters	6.4	4.6
Chemical Manufacturing	3.3	3.3
Hazardous Waste Incineration	3.2	2.1
Mercury Cell Chlor-Alkali Plants	3.1	0.3
Gold Mining	2.5	0.7
Municipal Waste Combustors	2.3	2.3
Sum of other source categories (each of which emits less than 2 tons)	17	16
Total	105	64

* Emissions estimates are presented at a maximum of two significant figures.

c. Atmospheric Processing and Deposition of Hg

Mercury is known to exist in the atmosphere in three forms: Hg^0, Hg^{+2}, and Hg_P. The dominant form of Hg in the atmosphere is Hg^0.[59] Elemental Hg dominates total Hg composition in the atmosphere (greater than 95 percent) and has a much greater residence time than Hg^{+2} or Hg_P. Elemental Hg has a long atmospheric residence time due to its near insolubility in water and high vapor pressure which minimize removal through wet and dry deposition processes.[60] Oxidized Hg (which is

[49] Lindberg, S., Bullock, R., Ebinghaus, R., Engstrom, D., Feng, X., Fitzgerald, W., *et al.* (2007). A Synthesis of Progress and Uncertainties in Attributing the Sources of Mercury in Deposition. *Ambio, 36*(1), 19–33.

[50] Pirrone, N., Cinnirella, S., Feng, X., Finkelman, R. B., Friedli, H. R., Leaner, J., *et al.* (2010). Global mercury emissions to the atmosphere from anthropogenic and natural sources. *Atmospheric Chemistry and Physics Discussions, 10*(2), 4719–4752.

[51] UNEP (United Nations Environment Programme), Chemicals Branch, 2008. The Global Atmospheric Mercury Assessment: Sources, Emissions and Transport, UNEP Chemicals, Geneva.

[52] Study on Mercury Sources and Emissions and Analysis of the Cost and Effectiveness of Control Measures "UNEP Paragraph 29 study", UNEP (DTIE)/Hg/INC.2/4. November, 2010.

[53] Pirrone, N., Cinnirella, S., Feng, X., Finkelman, R. B., Friedli, H. R., Leaner, J., et al. (2010). Global mercury emissions to the atmosphere from anthropogenic and natural sources. *Atmospheric Chemistry and Physics Discussions, 10*(2), 4719–4752.

[54] Study on Mercury Sources and Emissions and Analysis of the Cost and Effectiveness of Control Measures "UNEP Paragraph 29 study", UNEP (DTIE)/Hg/INC.2/4. November, 2010.

[55] The estimate of 5 percent is based upon 105 tons in 2005 divided by 2,100 tons from UNEP.

[56] The 46 ton estimate is based on the Utility Study. Since that time, EPA has updated its estimate of U.S. EGU Hg emissions in 1990. The updated estimate is 59 tons.

[57] Since the December 2000 Finding, the NEI process has led to an updated emissions estimate of 49 tons.

[58] As explained further in the emissions modeling TSD, this projection does not include reductions from a number of state-only Hg regulations and voluntary Hg reductions programs that are not Federally enforceable, and are not relevant to our assessment of whether it is appropriate and necessary to regulate U.S. EGU sources under section 112.

[59] Schroeder, W. H. and J. Munthe (1998). "Atmospheric mercury—An overview." *Atmospheric Environment* 32(5): 809–822.

[60] Schroeder, W. H. and J. Munthe (1998). "Atmospheric mercury—An overview." *Atmospheric Environment* 32(5): 809–822.

soluble) and Hg_P are more readily scavenged by precipitation and have higher dry deposition velocities than Hg^0 resulting in much shorter residence times. Although natural sources such as land, ocean and volcanic Hg are emitted as elemental, most anthropogenic sources are emitted in all three forms. EGU Hg ranges from 20 to 40 percent Hg^{+2} and from 2 to 5 percent Hg_p. This results in greater deposition of Hg^{+2} and Hg_P within the U.S. due to U.S. EGU emissions of these two Hg species, relative to emissions of Hg^0. As a result, control of emissions of Hg^{+2} and Hg_P are more relevant for decreasing U.S. EGU-attributable exposures to MeHg for recreational and subsistence-level fish consumers than control of emissions of Hg^0. Control of emissions of Hg^0 will still have value in reducing overall global levels of Hg deposition, and will, all else equal, eventually result in lower global fish MeHg concentrations which can benefit both U.S. and global populations.

2. Background Information on Non-Hg HAP Emissions and Effects on Human Health and the Environment

a. Overview of Non-Hg HAP and Associated Health and Environmental Hazards

Emissions data collected through the 2010 ICR during development of this proposed rule show that HCl emissions represent the predominant HAP emitted by U.S. EGUs. Coal- and oil-fired EGUs emit lesser amounts of HF, chlorine (Cl_2), metals (As, Cd, Cr, Hg, Mn, Ni, and Pb), and organic HAP emissions. Although numerous organic HAP may be emitted from coal- and oil-fired EGUs, only a few account for essentially all the mass of organic HAP emissions. These organic HAP are formaldehyde, benzene, and acetaldehyde.

Exposure to high levels of the various non-Hg HAP emitted by EGUs is associated with a variety of adverse health effects. These adverse health effects include chronic (long-term) health disorders (*e.g.,* effects on the central nervous system, damage to the kidneys, and irritation of the lung, skin, and mucus membranes); and acute health disorders (*e.g.,* effects on the kidney and central nervous system, alimentary effects such as nausea and vomiting, and lung irritation and congestion). EPA has classified three of the HAP emitted by EGUs as human carcinogens and five as probable human carcinogens. The following sections briefly discuss the main health effects information we have regarding the key HAP emitted by EGUs in alphabetical order by HAP name.

i. Acetaldehyde

Acetaldehyde is classified in EPA's IRIS database as a probable human carcinogen, based on nasal tumors in rats, and is considered toxic by the inhalation, oral, and intravenous routes.[61] Acetaldehyde is reasonably anticipated to be a human carcinogen by the U.S. Department of Health and Human Services (DHHS) in the 11th Report on Carcinogens and is classified as possibly carcinogenic to humans (Group 2B) by the IARC.[62] [63] The primary noncancer effects of exposure to acetaldehyde vapors include irritation of the eyes, skin, and respiratory tract.[64]

ii. Arsenic

Arsenic, a naturally occurring element, is found throughout the environment and is considered toxic through the oral, inhalation and dermal routes. Acute (short-term) high-level inhalation exposure to As dust or fumes has resulted in gastrointestinal effects (nausea, diarrhea, abdominal pain, and gastrointestinal hemorrhage); central and peripheral nervous system disorders have occurred in workers acutely exposed to inorganic As. Chronic (long-term) inhalation exposure to inorganic As in humans is associated with irritation of the skin and mucous membranes. Chronic inhalation can also lead to conjunctivitis, irritation of the throat and respiratory tract and perforation of the nasal septum.[65] Chronic oral exposure has resulted in gastrointestinal effects, anemia, peripheral neuropathy, skin lesions, hyperpigmentation, and liver or kidney damage in humans. Inorganic As exposure in humans, by the inhalation route, has been shown to be strongly associated with lung cancer, while ingestion of inorganic As in humans has been linked to a form of skin cancer and also to bladder, liver, and lung cancer. EPA has classified inorganic As as a Group A, human carcinogen.[66]

iii. Benzene

The EPA's IRIS database lists benzene as a known human carcinogen (causing leukemia) by all routes of exposure, and concludes that exposure is associated with additional health effects, including genetic changes in both humans and animals and increased proliferation of bone marrow cells in mice.[67] [68] [69] EPA states in its IRIS database that data indicate a causal relationship between benzene exposure and acute lymphocytic leukemia and suggest a relationship between benzene exposure and chronic non-lymphocytic leukemia and chronic lymphocytic leukemia. The IARC has determined that benzene is a human carcinogen and the DHHS has characterized benzene as a known human carcinogen.[70] [71]

A number of adverse noncancer health effects including blood disorders, such as preleukemia and aplastic anemia, have also been associated with long-term exposure to benzene.[72] [73]

Marsik, F. J., G. J. Keeler, *et al.* (2007). "The dry-deposition of speciated mercury to the Florida Everglades: Measurements and modeling." *Atmospheric Environment* 41(1): 136–149.

[61] U.S. Environmental Protection Agency (U.S. EPA). 1991. Integrated Risk Information System File of Acetaldehyde. Research and Development, National Center for Environmental Assessment, Washington, DC. This material is available electronically at *http://www.epa.gov/iris/subst/0290.htm.*

[62] U.S. Department of Health and Human Services National Toxicology Program 11th Report on Carcinogens available at: *http://ntp.niehs.nih.gov/go/16183.*

[63] International Agency for Research on Cancer (IARC). 1999. Re-evaluation of some organic chemicals, hydrazine, and hydrogen peroxide. IARC Monographs on the Evaluation of Carcinogenic Risk of Chemical to Humans, Vol 71. Lyon, France.

[64] U.S. Environmental Protection Agency (U.S. EPA). 1991. Integrated Risk Information System File of Acetaldehyde. Research and Development, National Center for Environmental Assessment, Washington, DC. This material is available electronically at *http://www.epa.gov/iris/subst/0290.htm.*

[65] Agency for Toxic Substances and Disease Registry (ATSDR). Medical Management Guidelines for Arsenic. Atlanta, GA: U.S. Department of Health and Human Services. Available on the Internet at *http://www.atsdr.cdc.gov/mhmi/mmg168.html#bookmark02.*

[66] U.S. Environmental Protection Agency (U.S. EPA). 1998. Integrated Risk Information System File for Arsenic. Research and Development, National Center for Environmental Assessment, Washington, DC. This material is available electronically at: *http://www.epa.gov/iris/subst/0278.htm.*

[67] U.S. Environmental Protection Agency (U.S. EPA). 2000. Integrated Risk Information System File for Benzene. Research and Development, National Center for Environmental Assessment, Washington, DC. This material is available electronically at: *http://www.epa.gov/iris/subst/0276.htm.*

[68] International Agency for Research on Cancer, IARC monographs on the evaluation of carcinogenic risk of chemicals to humans, Volume 29, Some industrial chemicals and dyestuffs, International Agency for Research on Cancer, World Health Organization, Lyon, France, p. 345–389, 1982.

[69] Irons, R.D.; Stillman, W.S.; Colagiovanni, D.B.; Henry, V.A. (1992) Synergistic action of the benzene metabolite hydroquinone on myelopoietic stimulating activity of granulocyte/macrophage colony-stimulating factor in vitro, Proc. Natl. Acad. Sci. 89:3691–3695.

[70] International Agency for Research on Cancer (IARC). 1987. Monographs on the evaluation of carcinogenic risk of chemicals to humans, Volume 29, Supplement 7, Some industrial chemicals and dyestuffs, World Health Organization, Lyon, France.

[71] U.S. Department of Health and Human Services National Toxicology Program 11th Report on Carcinogens available at: *http://ntp.niehs.nih.gov/go/16183.*

[72] Aksoy, M. (1989). Hematotoxicity and carcinogenicity of benzene. Environ. Health Perspect. 82: 193–197.

Continued

iv. Cadmium

Breathing air with lower levels of Cd over long periods of time (for years) results in a build-up of Cd in the kidney, and if sufficiently high, may result in kidney disease. Lung cancer has been found in some studies of workers exposed to Cd in the air and studies of rats that inhaled Cd. DHHS has determined that Cd and Cd compounds are known human carcinogens. IARC has determined that Cd is carcinogenic to humans. EPA has determined that Cd is a probable human carcinogen.[74]

v. Chlorine

The acute (short term) toxic effects of Cl_2 are primarily due to its corrosive properties. Chlorine is a strong oxidant that upon contact with water moist tissue (*e.g.,* eyes, skin, and upper respiratory tract) can produce major tissue damage.[75] Chronic inhalation exposure to low concentrations of Cl_2 (1 to 10 parts per million, ppm) may cause eye and nasal irritation, sore throat, and coughing. Chronic exposure to Cl_2, usually in the workplace, has been reported to cause corrosion of the teeth. Inhalation of higher concentrations of Cl_2 gas (greater than 15 ppm) can rapidly lead to respiratory distress with airway constriction and accumulation of fluid in the lungs (pulmonary edema). Exposed individuals may have immediate onset of rapid breathing, blue discoloration of the skin, wheezing, rales or hemoptysis (coughing up blood or blood-stain sputum). Intoxication with high concentrations of Cl_2 may induce lung collapse. Exposure to Cl_2 can lead to reactive airways dysfunction syndrome (RADS), a chemical irritant-induced type of asthma. Dermal exposure to Cl_2 may cause irritation, burns, inflammation and blisters. EPA has not classified Cl_2 with respect to carcinogenicity.

vi. Chromium

Chromium may be emitted in two forms, trivalent Cr (Cr^{+3}) or hexavalent Cr (Cr^{+6}). The respiratory tract is the major target organ for Cr^{+6} toxicity, for acute and chronic inhalation exposures. Shortness of breath, coughing, and wheezing have been reported from acute exposure to Cr^{+6}, while perforations and ulcerations of the septum, bronchitis, decreased pulmonary function, pneumonia, and other respiratory effects have been noted from chronic exposures. Limited human studies suggest that Cr^{+6} inhalation exposure may be associated with complications during pregnancy and childbirth, but there are no supporting data from animal studies reporting reproductive effects from inhalation exposure to Cr^{+6}. Human and animal studies have clearly established the carcinogenic potential of Cr^{+6} by the inhalation route, resulting in an increased risk of lung cancer. EPA has classified Cr^{+6} as a Group A, human carcinogen. Trivalent Cr is less toxic than Cr^{+6}. The respiratory tract is also the major target organ for Cr^{+3} toxicity, similar to Cr^{+6}. EPA has not classified Cr^{+3} with respect to carcinogenicity.

vii. Formaldehyde

Since 1987, EPA has classified formaldehyde as a probable human carcinogen based on evidence in humans and in rats, mice, hamsters, and monkeys.[76] EPA is currently reviewing recently published epidemiological data. After reviewing the currently available epidemiological evidence, the IARC (2006) characterized the human evidence for formaldehyde carcinogenicity as "sufficient," based upon the data on nasopharyngeal cancers; the epidemiologic evidence on leukemia was characterized as "strong."[77] EPA is reviewing the recent work cited above from the National Cancer Institute (NCI) and National Institute for Occupational Safety and Health (NIOSH), as well as the analysis by the CIIT Centers for Health Research and other studies, as part of a reassessment of the human hazard and dose-response associated with formaldehyde.

Formaldehyde exposure also causes a range of noncancer health effects, including irritation of the eyes (burning and watering of the eyes), nose and throat. Effects from repeated exposure in humans include respiratory tract irritation, chronic bronchitis and nasal epithelial lesions such as metaplasia and loss of cilia. Animal studies suggest that formaldehyde may also cause airway inflammation—including eosinophil infiltration into the airways. There are several studies that suggest that formaldehyde may increase the risk of asthma—particularly in the young.[78] [79]

viii. Hydrogen Chloride

Hydrogen chloride is a corrosive gas that can cause irritation of the mucous membranes of the nose, throat, and respiratory tract. Brief exposure to 35 ppm causes throat irritation, and levels of 50 to 100 ppm are barely tolerable for 1 hour.[80] The greatest impact is on the upper respiratory tract; exposure to high concentrations can rapidly lead to swelling and spasm of the throat and suffocation. Most seriously exposed persons have immediate onset of rapid breathing, blue coloring of the skin, and narrowing of the bronchioles. Exposure to HCl can lead to RADS, a chemically- or irritant-induced type of asthma. Children may be more vulnerable to corrosive agents than adults because of the relatively smaller diameter of their airways. Children may also be more vulnerable to gas exposure because of increased minute ventilation per kg and failure to evacuate an area promptly when exposed. Hydrogen chloride has not been classified for carcinogenic effects.[81]

ix. Hydrogen Fluoride

Acute (short-term) inhalation exposure to gaseous HF can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. Chronic (long-term) oral exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental fluorosis. One study reported

[73] Goldstein, B.D. (1988). Benzene toxicity. Occupational medicine. State of the Art Reviews. 3: 541–554.

[74] Agency for Toxic Substances and Disease Registry (ATSDR). 2008. Public Health Statement for Cadmium. CAS# 1306–19–0. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. Available on the Internet at *http://www.atsdr.cdc.gov/PHS/PHS.asp?id=46&tid=15.*

[75] Agency for Toxic Substances and Disease Registry (ATSDR). Medical Management Guidelines for Chlorine. Atlanta, GA: U.S. Department of Health and Human Services. *http://www.atsdr.cdc.gov/mmg/mmg.asp?id=198&tid=36.*

[76] U.S. EPA. 1987. Assessment of Health Risks to Garment Workers and Certain Home Residents from Exposure to Formaldehyde, Office of Pesticides and Toxic Substances, April 1987.

[77] International Agency for Research on Cancer (2006) Formaldehyde, 2–Butoxyethanol and 1-tert-Butoxypropan-2-ol. Monographs Volume 88. World Health Organization, Lyon, France.

[78] Agency for Toxic Substances and Disease Registry (ATSDR). 1999. Toxicological profile for Formaldehyde. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. *http://www.atsdr.cdc.gov/toxprofiles/tp111.html*

[79] WHO (2002) Concise International Chemical Assessment Document 40: Formaldehyde. Published under the joint sponsorship of the United Nations Environment Programme, the International Labour Organization, and the World Health Organization, and produced within the framework of the Inter-Organization Programme for the Sound Management of Chemicals. Geneva.

[80] Agency for Toxic Substances and Disease Registry (ATSDR). Medical Management Guidelines for Hydrogen Chloride. Atlanta, GA: U.S. Department of Health and Human Services. Available online at *http://www.atsdr.cdc.gov/mmg/mmg.asp?id=758&tid=147#bookmark02.*

[81] U.S. Environmental Protection Agency (U.S. EPA). 1995. Integrated Risk Information System File of Hydrogen Chloride. Research and Development, National Center for Environmental Assessment, Washington, DC. This material is available electronically at *http://www.epa.gov/iris/subst/0396.htm.*

menstrual irregularities in women occupationally exposed to fluoride via inhalation. The EPA has not classified HF for carcinogenicity.[82]

x. Lead

The main target for Pb toxicity is the nervous system, both in adults and children. Long-term exposure of adults to Pb at work has resulted in decreased performance in some tests that measure functions of the nervous system. Lead exposure may also cause weakness in fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people. Lead exposure may also cause anemia.

Children are more sensitive to the health effects of Pb than adults. No safe blood Pb level in children has been determined. At lower levels of exposure, Pb can affect a child's mental and physical growth. Fetuses exposed to Pb in the womb may be born prematurely and have lower weights at birth. Exposure in the womb, in infancy, or in early childhood also may slow mental development and cause lower intelligence later in childhood. There is evidence that these effects may persist beyond childhood.[83]

There are insufficient data from epidemiologic studies alone to conclude that Pb causes cancer (is carcinogenic) in humans. DHHS has determined that Pb and Pb compounds are reasonably anticipated to be human carcinogens based on limited evidence from studies in humans and sufficient evidence from animal studies, and EPA has determined that Pb is a probable human carcinogen.

xi. Manganese

Health effects in humans have been associated with both deficiencies and excess intakes of Mn. Chronic exposure to high levels of Mn by inhalation in humans results primarily in central nervous system effects. Visual reaction time, hand steadiness, and eye-hand coordination were affected in chronically-exposed workers. Manganism, characterized by feelings of weakness and lethargy, tremors, a masklike face, and psychological disturbances, may result from chronic exposure to higher levels. Impotence and loss of libido have been noted in male workers afflicted with manganism attributed to inhalation exposures. The EPA has classified Mn in Group D, not classifiable as to carcinogenicity in humans.[84]

xii. Nickel

Respiratory effects have been reported in humans from inhalation exposure to Ni. No information is available regarding the reproductive or developmental effects of Ni in humans, but animal studies have reported such effects. Human and animal studies have reported an increased risk of lung and nasal cancers from exposure to Ni refinery dusts and nickel subsulfide. The EPA has classified nickel subsulfide as a human carcinogen and nickel carbonyl as a probable human carcinogen.[85] [86] The IARC has classified Ni compounds as carcinogenic to humans.[87]

xiii. Selenium

Acute exposure to elemental Se, hydrogen selenide, and selenium dioxide (SeO_2) by inhalation results primarily in respiratory effects, such as irritation of the mucous membranes, pulmonary edema, severe bronchitis, and bronchial pneumonia. One Se compound, selenium sulfide, is carcinogenic in animals exposed orally. EPA has classified elemental Se as a Group D, not classifiable as to human carcinogenicity, and selenium sulfide as a Group B2, probable human carcinogen.

b. Non-Hg HAP Emissions

Fossil-fuel fired boilers emit a variety of metal HAP, organic HAP and HAP that are acid gases. Acid gas and metal HAP emissions are discussed below.

i. Acid Gases

Based on the 2010 ICR and the National Air Toxics Assessment (NATA) inventory estimates of acid gas emissions, U.S. EGUs emit the majority of HCl and HF nationally, supporting EPA's view that it remains appropriate to regulate HAP from U.S. EGUs. Acid gas emissions from EGUs include HCl, HF, Cl_2, and HCN. These pollutants are emitted as a result of fluorine, chlorine, and nitrogen components of the fuels. Table 4 of this preamble shows emissions of certain acid gases from EGUs, based on the 2005 NATA inventory. 2010 estimates of emissions for acid HAP from U.S. EGU are 7,900 tpy for HCN, 106,000 tons for HCl, and 36,000 tons for HF.[88]

TABLE 4—SUMMARY OF ACID GAS EMISSIONS FROM EGU SOURCES

	2005 Acid HAP emissions from the National Air Toxics Assessment (NATA) (tpy)		Percent of total U.S. anthropogenic emissions in 2005
	U.S. EGU emissions	U.S. Non-EGU emissions	Non-EGU emissions
Hydrogen Cyanide[1]	1,200	14,000	8
Hydrogen Chloride	350,000	78,000	82
Hydrogen Fluoride	47,000	28,000	62

[1] Using cyanide emissions for HCN.

[82] U.S. Environmental Protection Agency. Health Issue Assessment: Summary Review of Health Effects Associated with Hydrogen Fluoride and Related Compounds. EPA/600/8–89/002F. Environmental Criteria and Assessment Office, Office of Health and Environmental Assessment, Office of Research and Development, Cincinnati, OH. 1989.

[83] Agency for Toxic Substances and Disease Registry (ATSDR). 2007. Public Health Statement for Lead. CAS#: 7439–92–1. Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service. Available on the Internet at *http://www.atsdr.cdc.gov/ToxProfiles/phs13.html.*

[84] U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS) on Manganese. National Center for Environmental Assessment, Office of Research and Development, Washington, DC. 1999.

[85] U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS) on Nickel Subsulfide. National Center for Environmental Assessment, Office of Research and Development, Washington, DC. 1999.

[86] U.S. Environmental Protection Agency. Integrated Risk Information System (IRIS) on Nickel Carbonyl. National Center for Environmental Assessment, Office of Research and Development, Washington, DC. 1999.

[87] Nickel (IARC Summary & Evaluation, Volume 49, 1990), *http://www.inchem.org/documents/iarc/vol49/nickel.html.*

[88] We believe our estimate of the current level of acid HAP emissions based on the 2010 ICR database may underestimate total EGU acid HAP emissions due to targeting of the 2010 ICR on the best performing EGUs.

ii. Metal HAP

U.S. EGUs are the predominant source of emissions nationally for many metal HAP, including Sb, As, Cr, Co, and Se.

Metals are emitted primarily because they are present in fuels. Table 5 of this preamble shows selected metals emitted by EGUs and emission estimates based on data from the 2005 NATA inventory. 2010 estimates of metal HAP emissions are 25 tpy for antimony (Sb), 43 tpy for As, 2 tpy for Be, 3 tpy for Cd, 222 tpy for Cr, 19 tpy for Co, 183 tpy for Mn, 387 tpy for Ni, and 258 tpy for Se.[89] Depending on the metal, EGUs account for between 13 and 83 percent of national metal HAP emissions, and as a result it remains appropriate to regulate EGUs.

TABLE 5—SUMMARY OF METAL EMISSIONS FROM EGU SOURCES

	2005 Metal HAP emissions from the inventory used for the National Air Toxics Assessment (NATA) (tpy)		Percent of total U.S. anthropogenic emissions in 2005
	U.S. EGU emissions	U.S. Non-EGU emissions	
Antimony	19	83	19
Arsenic	200	120	62
Beryllium	10	13	44
Cadmium	25	38	39
Chromium	120	430	22
Cobalt	54	60	47
Manganese	270	1,800	13
Nickel	320	840	28
Selenium	580	120	83

3. Quantitative Risk Characterizations To Inform the Appropriate and Necessary Finding

EPA conducted quantitative risk analyses to evaluate the extent of risk posed by emissions of HAP from U.S. EGUs. These analyses demonstrate that U.S. EGU HAP emissions do create the potential for risks to the public health, as described below.

a. Scope of Quantitative Risk Analyses

To evaluate the potential for public health hazards from emissions of Hg and non-Hg HAP from U.S. EGUs, EPA conducted quantitative risk analyses using several methods intended to address specific risk-related questions.[90] [91] Outputs from this assessment include: (1) The potential exposures to MeHg and risks associated with current U.S. EGU Hg emissions for populations most likely to be at risk from exposure to MeHg associated with U.S. EGU Hg emissions; (2) excess deposition of Hg in nearby locations within 50 kilometers (km) of EGUs that might result in Hg deposition "hotspots"; (3) for populations living in the vicinity of EGUs, the maximum individual risks (MIR) associated with U.S. EGU non-Hg HAP emissions, for both cancer and non-cancer risks, compared to established health benchmarks (*e.g.,* greater than one in a million for cancer risks, and a HQ exceeding one for chronic non-cancer risks).[92]

To evaluate the potential for health risks associated with U.S. EGU Hg emissions, EPA conducted a national scale assessment of the impacts of U.S. EGU Hg emissions on exposures to MeHg above the RfD, and as a contributor to exposures above the RfD in conjunction with exposures from other U.S. and non-U.S. Hg emissions. To evaluate risks of U.S. EGU Hg "hotspots," EPA conducted a national scale assessment based on the Hg deposition modeling used in the national-scale Hg risk assessment. To evaluate inhalation risks of U.S. EGU non-Hg HAP emissions, EPA recently conducted 16 case studies at EGUs. EPA selected these case studies based on HAP emissions information from the ICR. For each case study, EPA estimated the MIR for cancer and non-cancer health effects for each HAP emitted by the case study U.S. EGU facility. Cancer risks for non-Hg HAP are estimated as the number of excess cancer cases per million people. This section briefly describes the methods used in the analyses and the results for the national-scale Hg risk analysis and the non-Hg HAP inhalation risk case studies.

b. Emissions for Hg and Non-Hg HAP

The national-scale Hg risk analysis is based on modeling Hg deposition associated with 2005 U.S. EGU Hg emissions and 2016 projected Hg emissions.

The 2005 base case includes 105 tons of Hg and 430,000 tons of HCl from all sources, of which 53 tons of Hg and 350,000 tons of HCl are from EGUs. The 2016 projected total Hg emissions from all sources used in the risk modeling are 64 tons and HCl emissions are 140,000 tons, with 29 tons of Hg and 74,000 tons of HCl from EGUs. U.S. EGU Hg emissions accounted for 50 percent of total U.S. Hg emissions in 2005 and are projected to account for 45 percent of such emissions in 2016. Details regarding the emissions used in these analyses are provided in the emissions memorandum, "Emissions Overview: Hazardous Air Pollutants in Support of the Proposed Toxics Rule".[93]

Between 2005 and 2010, Hg emissions in the U.S. have declined as a result of state regulations of Hg or Federal regulatory and enforcement actions that required installation of SO_2 scrubbers at EGUs which decreased Hg emissions.[94]

[89] We believe our estimate of the current level of metal HAP emissions based on the 2010 ICR database may underestimate total EGU metal HAP emissions due to targeting of the 2010 ICR on the best performing EGUs.

[90] U.S. EPA. 2011. Technical Support Document: National-Scale Mercury Risk Assessment Supporting the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units. Office of Air Quality Planning and Standards.

[91] U.S. EPA. 2011. Technical Support Document: Non-Mercury HAP Case Studies Supporting the Appropriate and Necessary Finding for Coal- and Oil-Fired Electric Generating Units. Office of Air Quality Planning and Standards.

[92] The hazard quotient (HQ) is the estimated inhalation or ingestion exposure divided by the reference dose (RfD).

[93] Strum, M., Houyoux, M., op. cit., Section 4.

[94] The 2005 estimate is based on control configurations as of 2002, therefore it does not reflect reductions due to substantial control installations that took place between 2002 and 2005. The 2010 estimates reflect control

The 2010 ICR shows the EGU Hg and HCl totals are lower than in 2005, at 29 tons and 106,000 tons respectively.

Given that the 2010 emissions for Hg are much closer to the 2016 projected emissions than to the 2005 emissions, we focus on the results from 2016 from the national-scale Hg risk analysis described below, as the projected emissions are almost the same as current HAP emissions from EGUs.

c. National-Scale Hg Risk Modeling

i. Purpose and Scope of Analysis

The national-scale risk assessment for Hg focuses on risk associated with Hg released from U.S. EGUs that deposits to watersheds within the continental U.S., bioaccumulates in fish, and then is consumed as MeHg in fish eaten by subsistence fishers and other freshwater self-caught fish consumers. The risk assessment is intended to assess risk for scenarios representing high-end self-caught fish consumers active at inland freshwater lakes and streams. This reflects our goal of determining whether U.S. EGUs represent a potential public health hazard for the group of fish consumers likely to experience the highest risk attributable to U.S. EGUs. In defining the high fish consuming populations included in the analysis, we have used information from studies of fish consumption to ensure that we have identified fisher populations that are likely active to some extent across the watersheds included in this analysis (*i.e.,* they are not purely hypothetical). The risk assessment considered the magnitude and prevalence of the risk to public health posed by current U.S. EGU Hg emissions and the remaining risk posed by U.S. EGU Hg emissions after imposition of the requirements of the CAA, as described more fully below. In both cases, we assess the contribution of U.S. EGUs to potential risks from MeHg exposure relative to total MeHg risk associated with Hg deposited by other sources both domestic and international.

Risk from Hg exposures occurs primarily through the consumption of fish that have bioaccumulated MeHg originally deposited to watersheds following atmospheric release and transport. The population that is most at risk from consumption of MeHg in fish is children born to mothers who were exposed to MeHg during pregnancy through fish consumption. The type of fish consumption likely to lead to the greatest exposure to MeHg attributable to U.S. EGUs is associated with fishing activity at inland freshwater rivers and lakes located in regions with elevated U.S. EGU Hg deposition. Thus we focus on MeHg exposure to women of childbearing age who consume self-caught freshwater fish on a regular basis, *e.g.,* once a day to once every several days.

As noted above, current U.S. EGU Hg emissions as reflected in the 2010 ICR are closer to 2016 projected emissions than to the 2005 emissions. For this reason, in discussing risk estimates, we focus on the 2016 results rather than the 2005 results.

The risk assessment compares the U.S. EGU incremental contribution to total potential exposure with the RfD and also evaluates the percent of total Hg exposures from all sources contributed by U.S. EGUs (*i.e.,* the fraction of total risk associated with U.S. EGUs) to individual watersheds for which we have fish tissue MeHg data.

We used this information to assess whether a public health hazard is associated with U.S. EGU emissions. Our focus is on women of child-bearing age in subsistence fishing populations who consume freshwater fish that they or their family caught. These populations are likely to experience the greatest risk from Hg exposure when fishing at inland (freshwater) locations that receive the highest levels of U.S. EGU-attributable Hg deposition. We also acknowledge that additional populations are likely exposed to MeHg from consuming fish caught in near-coastal, *e.g.,* estuarine environments. However, there is high uncertainty about the relationship of MeHg levels in those fish and deposition of Hg from U.S. EGUs, and as such we have not included those types of fish consumption in our analysis. However, it is likely that the range of potential exposures to U.S. EGU Hg deposition across inland watersheds captures the types of potential exposures that occur in near-coastal environments, and, thus, likely represents potential risks from consumption of fish caught in those environments.

Consumption rates for the high-end fishing populations included in the risk assessment are based on studies in the published literature, and are documented in the TSD accompanying this finding.

We do not estimate risks associated with commercial fish consumption because of the expected low contribution of U.S. EGU Hg to this type of fish, relative to non-U.S. Hg emissions, and the high levels of uncertainty in mapping U.S. EGU Hg emissions to concentrations of MeHg in ocean-going fish. The population affected by those U.S. EGU Hg emissions that go into the global pool of Hg will potentially be much larger than the population of the U.S. Thus, the impacts of U.S. EGUs on global exposures to Hg, while highly uncertain, adds additional support to the finding that Hg emissions from U.S. EGUs pose a hazard to public health.

ii. Risk Characterization Framework

EPA assessed risk from potential exposure to MeHg through fish consumption at a subset of watersheds across the country for which we have measured fish tissue MeHg data. This risk assessment uses estimates of potential exposure for subsistence fisher populations to generate risk metrics based on comparisons of MeHg exposure to the reference dose. We are focusing on exposures above the RfD because it represents a sensitive risk metric that captures a wide range of neurobehavioral health effects. Reductions in exposure to MeHg are also expected to result in reductions in specific adverse effects including lost IQ points, and we discuss the risk analysis related to IQ loss in the National Scale Mercury Risk Assessment TSD.

For the analysis, we have developed a risk characterization framework for integrating two types of U.S. EGU-attributable risk estimates. This framework estimates the percent of watersheds where populations may be at risk due to potential exposures to MeHg attributable to U.S. EGU. The analysis is limited to those watersheds for which we have fish tissue MeHg samples, a total of approximately 2,400 out of 88,000 watersheds in the U.S. This total percent of watersheds includes ones that either have deposition of Hg from U.S. EGUs that is sufficient to lead to potential exposures that exceed the reference dose, even without considering the contributions from other U.S. and non-U.S. sources, or have deposition of Hg from U.S. EGUs that contributes at least 5 percent to total Hg deposition from all sources, in watersheds where potential exposures to MeHg from all sources (U.S. EGU, U.S. non-EGU, and non-U.S.) exceed the RfD.

This framework allows EPA to consider whether U.S. EGUs, evaluated without consideration of other sources, or in combination with other sources of Hg, pose a potential public health hazard.

iii. Analytical Approach

Several elements of this risk analysis including spatial scale, estimates of Hg deposition, estimates of fish tissue MeHg concentrations, estimates of fish consumptions rates, and calculation of

information reported to EPA as part of the recent 2010 ICR in late 2009.

MeHg exposure are discussed in detail in the National Scale Mercury Risk Assessment TSD accompanying this finding, and are briefly summarized below.

Watersheds can be defined at varying levels of spatial resolution. For the purposes of this risk analysis, we have selected to use watersheds classified using 12-digit Hydrologic Unit Codes (HUC12),[95] representing a fairly refined level of spatial resolution with watersheds generally 5 to 10 km on a side, which is consistent with research on the relationship between changes in Hg deposition and changes in MeHg levels in aquatic biota.

After estimating total MeHg risk based on modeling consumption of fish at each of these watersheds, the ratio of U.S. EGU to total Hg deposition over each watershed (estimated using Community Multi-scale Air Quality modeling) is used to estimate the U.S. EGU-attributable fraction of total MeHg risk. This apportionment of total risk between the U.S. EGU fraction and the fraction associated with all other sources of Hg deposition is based on the EPA's Office of Water's Mercury Maps (MMaps) approach that establishes a proportional relationship between Hg deposition over a watershed and resulting fish tissue Hg levels, assuming a number of criteria are met.[96]

The fish tissue dataset for the risk assessment includes fish tissue Hg samples from the years 2000 to 2009, with samples distributed across 2,461 HUC12s. The samples are more heavily focused on locations east of the Mississippi River. The fish tissue samples come primarily from three sources: the National Listing of Fish Advisory (NLFA) database managed by EPA; [97] the U.S. Geologic Survey (USGS), which manages a compilation of Hg datasets as part of its Environmental Mercury Mapping and Analysis (EMMA) program, and EPA's National River and Stream Assessment (NRSA) study data. Most of the watersheds with measured fish tissue MeHg data had multiple measurements. This assessment used the 75th percentile fish tissue value at each watershed as the basis for exposure and risk characterization, based on the assumption that subsistence fishers would favor larger fish which have the potential for higher bioaccumulation. The use of the 75th percentile fish tissue MeHg value as the basis for risk characterization reflects our overall goal of modeling realistic high-end fishing behavior; in this case, reflecting individuals who target somewhat larger fish for purposes of supplementing their diets (the average fisher may eat a variety of different sized fish, but in order to capture higher potential MeHg exposure scenarios, it is realistic to assume that some fishers may favor somewhat larger fish).

Deposition of Hg for the continental U.S. was estimated using the Community Multiscale Air Quality model v4.7.1 (*http://www.cmaq-model.org*), applied at a 12 km grid resolution.

The CMAQ modeling was used to estimate total annual Hg deposition from U.S. and non-U.S. anthropogenic and natural sources over each watershed. In addition, CMAQ simulations were conducted where U.S. EGU Hg emissions were set to zero to determine the contribution of U.S. EGU Hg emissions to total Hg deposition. U.S. EGU-related Hg deposition characterized at the watershed-level for 2005 and 2016 is summarized in Table 6 of this preamble for the complete set of 88,000 HUC12 watersheds.

Table 6 is intended to demonstrate the wide variation across watersheds in the contribution of EGU emissions to deposition. The percentiles of total Hg deposition and U.S. EGU-attributable deposition are not linked, *e.g.,* the 99th percentile of the percent of total deposition attributable to U.S. EGUs is based on the distribution of total Hg deposition, and the 99th percentile of U.S. EGU-attributable Hg deposition is based on the distribution of U.S. EGU-attributable deposition. These percentiles do not occur at the same watershed.

TABLE 6—COMPARISON OF TOTAL AND U.S. EGU-ATTRIBUTABLE Hg DEPOSITION (μg/m^2) FOR THE 2005 AND 2016 SCENARIOS *

Statistic	2005		2016	
	Total Hg deposition	U.S. EGU-attributable Hg deposition	Total Hg deposition	U.S. EGU-attributable Hg deposition
Mean	19.41	0.89	18.66	0.34
Median	17.25	0.24	16.59	0.15
75th percentile	23.69	1.07	22.83	0.46
90th percentile	30.78	2.38	29.90	0.85
95th percentile	36.85	3.60	35.16	1.18
99th percentile	58.32	7.77	56.23	2.41

* Statistics are based on CMAQ results interpolated to the watershed-level and are calculated using all ~88,000 watersheds in the U.S.

To give a better idea of the relationship between total deposition and U.S. EGU-attributable deposition, we also summarize the percent of total Hg deposition attributable to U.S. EGUs (by percentile) in Table 7. Table 7 shows the high variability in the percent contribution from U.S. EGU Hg emissions. Tables 6 and 7 cannot be directly compared, as the watershed with the 99th percentile U.S. EGU-attributable deposition is not the same watershed as the watershed with the 99th percentile U.S. EGU-attributable fraction of total Hg deposition. A watershed can have a high U.S. EGU-attributable fraction of total deposition and still have overall low Hg deposition.

[95] U.S. Geological Survey and U.S. Department of Agriculture, Natural Resources Conservation Service, 2009, Federal guidelines, requirements, and procedures for the national Watershed Boundary Dataset: U.S. Geological Survey Techniques and Methods 11–A3, 55 p.

[96] Mercury Maps—A Quantitative Spatial Link Between Air Deposition and Fish Tissue Peer Reviewed Final Report. U.S. EPA, Office of Water, EPA–823–R–01–009, September, 2001.

[97] *http://water.epa.gov/scitech/swguidance/fishshellfish/fishadvisories/.*

TABLE 7—COMPARISON OF PERCENT OF TOTAL Hg DEPOSITION ATTRIBUTABLE TO U.S. EGUS FOR 2005 AND 2016 *

Statistic	2005 (percent)	2016 (percent)
Mean	5	2
Median	1	1
75th percentile	6	3
90th percentile	13	5
95th percentile	18	6
99th percentile	30	11

* Values are based on CMAQ results interpolated to the watershed-level and reflect trends across all ~88,000 watersheds in the U.S.

U.S. EGUs are estimated to contribute up to 30 percent of total Hg deposition in 2005 and up to 11 percent in 2016.

EPA estimates the relationship between the EGU-attributable Hg deposition and EGU-attributable fish tissue MeHg concentrations using an assumption of linear proportionality based on the agency's MMaps approach. The MMaps assumption specifies that, under certain conditions (*e.g.,* Hg air deposition is the primary source of Hg loading to a watershed and near steady-state conditions have been reached), a fractional change in Hg deposition to a watershed will ultimately be reflected in a matching proportional change in the levels of MeHg in fish.[98] [99] This assumption holds in watersheds where air deposition is the primary source of Hg loadings, and as a result, watersheds where this is not the case are removed from the risk analysis. The practical application of the MMaps approach is that U.S. EGUs will account for the same proportion of fish tissue MeHg in a watershed as they do for Hg deposition. MMaps is discussed in greater detail in section 1.3 and Appendix E of the National Scale Mercury Risk Assessment TSD. Patterns of U.S. EGU-attributable fish tissue MeHg concentrations are summarized in Table 8 of this preamble. Table 8 of this preamble compares total and U.S. EGU-attributable fish tissue MeHg concentrations for the 2005 and 2016 scenarios by watershed percentile.

TABLE 8—COMPARISON OF TOTAL AND U.S. EGU-ATTRIBUTABLE FISH TISSUE MeHg CONCENTRATIONS FOR 2005 AND 2016

Statistic	Fish tissue MeHg concentration (ppm)			
	2005		2016	
	Total	U.S. EGU-attributable	Total	U.S. EGU-attributable
Mean	0.31	0.024	0.29	0.008
50th Percentile	0.23	0.014	0.20	0.005
75th Percentile	0.39	0.032	0.36	0.011
90th Percentile	0.67	0.056	0.63	0.019
95th Percentile	0.91	0.079	0.87	0.026
99th Percentile	1.34	0.150	1.29	0.047

Because the focus of this analysis is on higher-consumption self-caught fisher populations active at inland freshwater locations, we identified surveys of higher consumption fishing populations active at inland freshwater rivers and lakes within the continental U.S. to inform the selection of consumption rate scenarios.[100]

[98] The MMaps approach implements a simplified form of the IEM–2M model applied in EPA's Mercury Study Report to Congress (Mercury Maps—A Quantitative Spatial Link Between Air Deposition and Fish Tissue Peer Reviewed Final Report. U.S. EPA, Office of Water, EPA–823–R–01–009, September, 2001). By simplifying the assumptions inherent in the freshwater ecosystem models that were described in the Report to Congress, the MMaps model showed that these models converge at a steady-state solution for MeHg concentrations in fish that are proportional to changes in Hg inputs from atmospheric deposition (*e.g.,* over the long term fish concentrations are expected to decline proportionally to declines in atmospheric loading to a watershed). This solution only applies to situations where air deposition is the only significant source of Hg to a water body, and the physical, chemical, and biological characteristics of the ecosystem remain constant over time. EPA recognizes that concentrations of MeHg in fish across all ecosystems may not reach steady state and that ecosystem conditions affecting Hg dynamics are unlikely to remain constant over time. EPA further recognizes that many water bodies, particularly in areas of historic gold and Hg mining in western states, contain significant non-air sources of Hg (note, however, that as described below, we have excluded those watersheds containing gold mines or with other non-EGU related anthropogenic Hg releases exceeding specified thresholds).

[99] The risk assessment is not designed to track the detailed temporal profile associated with changes in fish tissue MeHg levels following changes in Hg deposition. Rather, we are focusing on estimating risk in the future, assuming that near steady state conditions have been reached (following a simulated change in Hg deposition). Additional detail regarding the temporal profile issue and other related factors (*e.g.,* methylation potential across watersheds) is discussed in Section 1.3 and in Appendix E of the National Scale Mercury Risk Assessment TSD).

[100] A number of criteria had to be met for a study to be used in providing explicit consumption rates for the high-end fisher populations of interest in this analysis. For example, studies had to provide estimates of self-caught fish consumption and not conflate these estimates with consumption of commercially purchased fish. Furthermore, these studies had to focus on freshwater fishing activity, or at least have the potential to reflect significant contributions from that category, such that the fish consumption rates provided in a study could be reasonably applied in assessing freshwater fishing activity. Studies also had to provide statistical estimates of fish consumptions (*i.e.,* means, medians, 90th percentiles, *etc*). Given our interest in higher-end consumption rates, the studies also had to either provide upper percentile estimates, or support the derivation of those estimates (*e.g.,* provide medians and a standard deviations). Studies of activity at specific watersheds (*e.g.,* creel surveys), while informative in supporting the presence of higher-end consumption rates, could not be used as the basis for defining our high-end consumption rates since there would be greater uncertainty in extrapolating activity at a specific river or lake more broadly to fishing populations in a region. Therefore, we focused on studies characterizing fishing activity more broadly than at a specific fishing location.

Information on the studies used to develop the high end fish consumption scenarios for the risk analysis is provided in the National Scale Mercury Risk Assessment TSD.

Generally all of the studies identified high-end percentile consumption rates (90th to 99th percentiles for the populations surveyed) ranging from approximately one fish meal every few days to a fish meal a day (*i.e.,* 120 grams per day (g/day) to greater than 500 g/day fish consumption). We used this trend across the studies to support application of a generalized female high-end fish consumption scenario (high-end female consumer scenario) across most of the 2,461 watersheds.[101]

iv. Risk Related to Exposure to MeHg in Fish and Assessment of Contribution of U.S. EGUs to MeHg Exposure and Risk

For the scenario representing high-end female fish consumption, we estimated total exposure to MeHg at each of the 2,461 watersheds.[102] Estimates of total Hg exposure were generated by combining 75th percentile fish tissue values with the consumption rates for female subsistence fishers. A cooking loss factor (reflecting the fact that the preparation of fish can result in increased Hg concentrations) was also included in exposure calculations.[103]

Our estimates of total percent of watersheds where female subsistence fishing populations may be at risk from exposure to U.S. EGU-attributable MeHg are as high as 28 percent. The upper end estimate of 28 percent of watersheds reflects the 99th percentile fish consumption rate for that population, and a benchmark of 5 percent U.S. EGU contribution to total Hg deposition in the watershed. Any contribution of Hg emissions from EGUs to watersheds where potential exposures from total Hg deposition exceed the RfD is a hazard to public health, but for purposes of our analyses we evaluated only those watersheds where we determined EGUs contributed 5 percent or more to deposition to the watershed. EPA believes this is a conservative approach given the increasing risks associated with incremental exposures above the RfD. Of the total number of watersheds where populations may be at risk from exposure to EGU-attributable MeHg, we estimate that up to 22 percent of watersheds included in this analysis could potentially have populations at risk based on consideration of the U.S. EGU attributable fraction (*e.g.,* 5, 10, 15, or 20 percent) of total Hg deposition over watersheds with total risk judged to represent a public health hazard (MeHg total exposure greater than the RfD).[104] Of the total number of watersheds where populations may be at risk from exposures to U.S. EGU-attributable MeHg, we estimate that up to 12 percent of watersheds included in this analysis could potentially have populations at risk because the U.S. EGU incremental contribution to exposure is above the RfD, even before consideration of contributions to exposures from U.S. non-EGU and non-U.S. sources. In other words, for this 12 percent of watersheds, even if there were no other sources of Hg exposure, exposures associated with deposition attributable to U.S. EGUs would place female high-end consumers above the MeHg RfD. The upper end estimate of 12 percent of watersheds reflects a scenario using the 99th percentile fish consumption rate.

The two estimates of percent of watersheds where populations may be at risk from EGU-attributable Hg do not sum to the total estimates of 28 percent because some watersheds where U.S. EGUs contribute greater than 5 percent to total Hg deposition also have U.S. EGU attributable exposures that exceed the RfD without consideration of exposures from other U.S. and non-U.S. Hg sources.

Exposures based on the 99th percentile consumption rate represent close to maximum potential individual risk estimates. These consumption rates are based on data reported by fishers in surveys, and, thus, represent actual consumption rates in U.S. populations. There are also a number of case studies in other locations, such as poor urban areas, which provide additional evidence that high fish consumption occurs in a number of locations throughout the U.S.[105] [106] [107] [108] However, EPA does not have sufficiently complete data on the specific locations where these high self-caught fish consuming populations reside and fish, and as a result, there is increased uncertainty about the prevalence of populations who are high-end consumers of fish caught in the set of watersheds included in the analysis. Populations matching the high-end fish consumption scenario could be restricted to a subset of these watersheds, or could be more heavily focused at watersheds with higher or lower U.S. EGU-attributable fish tissue MeHg (and consequently higher or lower U.S. EGU-attributable risk).

With regard to the other fisher populations included in the full risk assessment described in the TSD (Vietnamese, Laotians, Hispanics, blacks and whites in the southeast, and tribes in the vicinity of the Great Lakes), our risk estimates suggests that the high-end female consumer assessed at the national-level generally provides coverage (in terms of magnitude of risk) for all of these fisher populations except blacks and whites in the southeast.[109] [110]

[101] Reflecting the fact that higher levels of self-caught fish consumption (approaching subsistence) have been associated with poorer populations, we only assessed this generalized high-end female consumer scenario at those watersheds located in U.S. Census tracts with at least 25 individuals living below the poverty line (this included the vast majority of the 2,461 watersheds and only a handful were excluded due to this criterion).

[102] As noted earlier, each high-end fish consuming female population included in the analysis was assessed for a subset of these watersheds, depending on which of those watersheds intersected a U.S. Census tract containing a "source population" for that fish consuming population. Of the populations assessed, the low-income female subsistence fishing population scenario was assessed for the largest portion (2,366) of the 2,461 watersheds.

[103] Morgan, J.N., M.R. Berry, and R.L. Graves. 1997. "Effects of Commonly Used Cooking Practices on Total Mercury Concentration in Fish and Their Impact on Exposure Assessments." Journal of Exposure Analysis and Environmental Epidemiology 7(1):119–133.

[104] Because of the MMaps assumption of linear proportionality between deposition and exposures, a 5 percent U.S. EGU contribution to deposition will produce an equivalent 5 percent U.S. EGU contribution to MeHg exposures.

[105] Burger, J., K. Pflugh, L. Lurig, L. Von Hagen, and S. Von Hagen. 1999. Fishing in Urban New Jersey: Ethnicity Affects Information Sources, Perception, and Compliance. Risk Analysis 19(2): 217–229.

[106] Burger, J., Stephens, W., Boring, C., Kuklinski, M., Gibbons, W.J., & Gochfield, M. (1999). Factors in exposure assessment: Ethnic and socioeconomic differences in fishing and consumption of fish caught along the Savannah River. Risk Analysis, 19(3).

[107] Chemicals in Fish Report No. 1: Consumption of Fish and Shellfish in California and the United States Final Draft Report. Pesticide and Environmental Toxicology Section, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, July 1997.

[108] Corburn, J. (2002). Combining community-based research and local knowledge to confront asthma and subsistence-fishing hazards in Greenpoint/Williamsburg, Brooklyn, New York. Environmental Health Perspectives, 110(2).

[109] Specifically, upper percentile risk estimates for the high-end female consumer assessed at the national level were notably higher than matching percentile estimates for the Hmong, Vietnamese, Hispanic, and Tribal populations. By contrast, risk estimates for whites in the southeast were somewhat higher than the high-end female consumer, while risk estimates for blacks in the southeast were notably higher (see summary of risk estimates in the TSD supporting this finding).

[110] The National Scale Mercury Risk Assessment TSD discusses the greater uncertainty in characterizing the magnitude of high-end fish consumption for these specialized populations due, in particular, to the lower sample sizes associated with the survey data (see Appendix C, Table C–1).

v. Variability and Uncertainty (Including Discussion of Sensitivity Analyses)

There are some uncertainties in EPA's analyses which could lead to under or over prediction of risk to public health from U.S. EGU Hg emissions. Based on sensitivity analyses we have conducted, we conclude that even under different assumptions about the applicability of the MMaps proportionality assumption, Hg from U.S. EGUs constitutes a hazard to public health due to the percent of watersheds where U.S. EGUs cause or contribute to exposures to MeHg above the RfD.

Key sources of uncertainty potentially impacting the risk analysis include: (1) Uncertainty in predicting Hg deposition over watersheds using CMAQ; (2) uncertainty in predicting which watersheds will be subject to high-end fishing activity and the nature of that activity (*e.g.,* frequency of repeated activity at a given watershed and the types/sizes of fish caught); (3) uncertainty in using MMaps to apportion exposure and risk between different sources, including U.S. EGUs, and predicting changes in fish tissue MeHg levels for future scenarios; and (4) potential under-representation of watersheds highly impacted by U.S.-attributable Hg deposition due to limited MeHg sampling. In the National Scale Mercury Risk Assessment TSD, we describe in greater detail key sources of uncertainty impacting the risk analysis, including their potential impact on the risk estimates and the degree to which their potential impact is characterized as part of the analysis.

As part of the analysis, we have also completed a number of sensitivity analyses focused on exploring the impact of uncertainty related to the application of the MMaps approach in apportioning exposure and risk estimates between sources (U.S. EGU and total) and in predicting changes in fish tissue MeHg levels.[111] These sensitivity analyses evaluated: (1) The effect of including watersheds that may be disproportionately impacted by non-air Hg sources; [112] and (2) the representativeness of the MMaps approach, which was tested for lakes, when applied to streams and rivers (in the analysis, the MMaps was applied to watersheds including a mixture of streams, rivers, and lakes). The results of the limited sensitivity analyses we were able to conduct suggest that uncertainties due to application of MMaps would not affect our finding that U.S. EGU-attributable Hg deposition poses a hazard to public health.

We also examined the potential for under-representation of watersheds highly impacted by U.S.-attributable Hg deposition due to limited MeHg sampling, by identifying watersheds that did not have fish tissue MeHg samples, but had U.S. EGU-attributable Hg deposition at least as high as watersheds that were identified as being at risk of potential exposures greater than the RfD. Comparing the pattern of U.S. EGU-attributable Hg deposition across all watersheds with that for watersheds containing fish tissue MeHg data shows that while we have some degree of coverage for watersheds with high U.S. EGU-attributable deposition, this coverage is limited, especially in areas of Pennsylvania which have high levels of U.S. EGU-attributable deposition. For this reason, we believe that the actual number of watersheds where populations may be at risk from exposures to U.S. EGU-attributable MeHg could be substantially larger than the number estimated based on the available fish tissue MeHg sampling data.

d. U.S. EGU Case Studies of Cancer and Non-Cancer Inhalation Risks for Non-Hg HAP

EPA conducted 16 case studies to estimate the potential for human health impacts from current emissions of HAP other than Hg from EGUs. A refined chronic inhalation risk assessment was performed for each case study facility. The results of this analysis were that 4 (out of 16) facilities posed a lifetime cancer risk of greater than 1 in 1 million (the maximum was 10 in 1 million) and 3 more posed a risk at 1 in 1 million. Risk was driven by Ni (the oil-fired unit) and Cr^{+6} (the coal-fired units).

i. Case Study Selection

An initial set of eight case study facilities was selected based on several factors. First, we considered facilities with the highest estimated cancer and non-cancer risks using the 2005 National Emissions Inventory (NEI) data and the Human Exposure Model (HEM). The 2005 NEI data were used because the initial set of case study facilities was selected before we received the bulk of the emissions data from the 2010 ICR. Other factors considered in the selection included whether facilities had implemented emission control measures since 2005, and their proximity to residential areas. After the receipt of more data through the 2010 ICR, additional case study facilities were selected, based on the magnitude of emissions, heat input values (throughput), and level of emission control. There were a total of 16 case study facilities, 15 that use coal as fuel, and 1 that uses oil.

ii. Methods

Annual emissions estimates for each EGU (including those in the initial set of case study facilities) were developed using data from the 2010 ICR. The results for the initial set indicated that Ni, Cr^{+6}, and As were the cancer risk drivers, and that non-cancer risks did not produce any hazard index (HI) estimates exceeding one. Although the non-cancer risks were low (the maximum chronic noncancer HI was 0.4), they were driven by emissions of Ni, As, and HCl. For the reasons discussed above, emissions were estimated only for Ni, Cr^{+6}, and As for the additional case study facilities. Additional details on the emissions used in the modeling are provided in a supporting memorandum to the docket for this action (Non-Hg Case Study Chronic Inhalation Risk Assessment for the Utility MACT "Appropriate and Necessary" Analysis) (Non-Hg Memo). For each of the 16 case study facilities, we conducted refined dispersion modeling with EPA's AERMOD modeling system (U.S. EPA, 2004) to calculate annual ambient concentrations. Average annual concentrations were calculated at census block centroids.

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, based on application of the unit risk estimate from EPA's IRIS, which is a human health assessment program that evaluates quantitative and qualitative risk information on effects that may result from exposure to environmental contaminants. For Ni compounds, we

[111] The sensitivity analyses completed for the risk assessment focused on assessing sources of uncertainty associated with the application of the MMaps approach, because this was a critical element in the risk assessment and identified early on as a key source of potential uncertainty. Given the schedule of the analysis, we did not have time to complete a full influence analysis to identify those additional modeling elements that might introduce significant uncertainty and therefore should be included in a sensitivity analysis. Appendix F, Table F–2 of the Mercury Risk TSD provides a qualitative discussion of key sources of uncertainty and their potential impact on the risk assessment.

[112] In addition to non-air Hg sources of loadings, some regions of concern may also have longer lag period associated with the linkage between Hg deposition such that the fish tissue MeHg levels we are using are actually associated with older historical Hg deposition patterns.

used 65 percent of the IRIS URE for nickel subsulfide. The determination of this value is discussed in the Non-Hg Memo, and the value is receiving peer review as discussed in section later. To assess the risk of non-cancer health effects from chronic exposures, following the approach recommended in EPA's Mixtures Guidelines,[113] [114] we summed the HQs for all HAP that affect a common target organ system to obtain the HI for that target organ system (target-organ-specific HI, or TOSHI). The HQ for chronic exposures is the estimated chronic exposure (again, based on the estimated annual average ambient concentration at each nearby census block centroid) divided by the chronic non-cancer reference level, which is usually the EPA reference concentration (RfC). In cases where an IRIS RfC is not available, EPA utilizes the following prioritized sources for chronic dose-response values: (1) The Agency for Toxic Substances and Disease Registry (ATSDR) Minimum Risk Level (MRL), and (2) the California Environmental Protection Agency chronic Reference Exposure Level (REL). In this assessment, we used the IRIS RfC values for Cr^{+6} and HCl, the ATSDR MRL for Ni compounds, and the California Environmental Protection Agency REL for As.

iii. Results

The highest estimated lifetime cancer risk from any of the 16 case study facilities was 10 in 1 million (1×10^{-5}), driven by Ni emissions from the 1 case study facility with oil-fired units. For the facilities with coal-fired units, there were 3 with maximum cancer risks greater than 1 in 1 million (the highest was 8 in 1 million), all driven by Cr^{+6}, and there were 4 with maximum cancer risks at 1 in 1 million. All of the facilities had non-cancer TOSHI values less than one, with a maximum HI value of 0.4 (also driven by Ni emissions from the one case study facility with oil-fired units). The maximum chronic impacts of HCl emissions were all less than 10 percent of its chronic RfC. Because of uncertainties in their emission rates, other acid gases (Cl_2, HF, and HCN) were not included in the assessment of noncancer impacts. Because EGUs are not generally co-located with other source categories, facility-wide HAP emissions and risks are equal to those associated with the EGU source category.

The cancer risk estimates from this assessment indicate that the EGU source category is not eligible for delisting under CAA section 112(c)(9)(B)(i), which specifies that a category may be delisted only when the Administrator determines "* * * that no source in the category (or group of sources in the case of area sources) emits such HAP in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source * * *" We note that, because these case studies do not cover all facilities in the category, and because our assessment does not include the potential for impacts from different EGU facilities to overlap one another (*i.e.,* these case studies only look at facilities in isolation), the maximum risk estimates from the case studies may underestimate true maximum risks.

e. Peer-Review of Quantitative Risk Analyses

The Agency has determined that the National-Scale Mercury Risk Analysis supporting EPA's 2011 review of U.S. EGU health impacts should be peer-reviewed. In addition, the Agency has determined that the characterization of the chemical speciation for the emissions of Cr and Ni should be peer-reviewed. The Agency has evaluated the other components of the analyses supporting this finding and determined that the remaining aspects of the case study analyses for non-Hg HAP use methods that have already been subject to adequate peer-review. As a result, the Agency is limiting the peer-review to the National-Scale Mercury Risk Analysis and the speciation of emissions for Cr and Ni. Due to the court-ordered schedule for this proposed rule, EPA will conduct these peer reviews as expeditiously as possible after issuance of this proposed rule and will publish the results of the peer reviews and any EPA response to them before the final rule.

4. Qualitative Assessment of Potential Environmental Risks From Exposures of Ecosystems Through Hg and Non-Hg HAP Deposition

Adverse effects on fish and wildlife have been observed to be occurring today which are the result of elevated exposures to MeHg, although these effects have not been quantitatively assessed.

Elevated MeHg concentrations in fish and wildlife can occur not only in areas of high Hg deposition. Elevated MeHg concentrations can also occur in diverse locations, including watersheds that receive average or even relatively low Hg deposition, but are particularly sensitive to Hg pollution, for example, they have higher than average methylation rates due to high levels of sulfur deposition. Such locations are characterized by moderate deposition levels that have generated high Hg concentrations in biota compared to the surrounding landscape receiving a similar Hg loading. These Hg-sensitive watersheds readily transport inorganic Hg, convert the inorganic Hg to MeHg, and bioaccumulate this MeHg through the food web. Areas of enhanced MeHg in fish and wildlife are not constrained to a single Hg source, because ecosystems respond to the combined effects of Hg pollution from multiple sources.

A review of the literature on effects of Hg on reproduction in fish[115] reports adverse reproductive effects for numerous species including trout, bass (large and smallmouth), northern pike, carp, walleye, salmon, and others from laboratory and field studies. Mercury also affects avian species. In previous reports [116] much of the focus has been on large fish-eating species, in particular the common loon. Breeding loons experience significant adverse effects including behavioral (reduced nest-sitting), physiological (flight feather asymmetry) and reproductive (chicks fledged/territorial pair) effects.[117]

Other fish-eating bird species such as the white ibis and great snowy egret experience a range of adverse effects due to exposure to Hg. The white ibis has been observed to have decreased foraging efficiency [118] and decreased

[113] U.S. EPA, 1986, Guidelines for the Health Risk Assessment of Chemical Mixtures, EPA–630–R–98–002. *http://www.epa.gov/NCEA/raf/pdfs/chem_mix/chemmix_1986.pdf.*

[114] U.S. EPA, 2000. Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. EPA–630/R–00–002. *http://www.epa.gov/ncea/raf/pdfs/chem_mix/chem_mix_08_2001.pdf.*

[115] Crump, Kate L., and Trudeau, Vance L. Mercury-induced reproductive impairment in fish. Environmental Toxicology and Chemistry. Vol. 28, No. 5, 2009.

[116] U.S. Environmental Protection Agency (EPA). 1997. Mercury Study Report to Congress. Volume V: Health Effects of Mercury and Mercury Compounds. EPA–452/R–97–007. U.S. EPA Office of Air Quality Planning and Standards, and Office of Research and Development.

U.S. Environmental Protection Agency (U.S. EPA). 2005. *Regulatory Impact Analysis of the Final Clean Air Mercury Rule.* Office of Air Quality Planning and Standards, Research Triangle Park, NC., March; EPA report no. EPA–452/R–05–003. Available on the Internet at *http://www.epa.gov/ttn/ecas/regdata/RIAs/mercury_ria_final.pdf.*

[117] Evers, David C., Savoy, Lucas J., DeSorbo, Christopher R., Yates, David E., Hanson, William, Taylor, Kate M., Siegel, Lori S., Cooley, John H. Jr., Bank, Michael S., Major, Andrew, Munney, Kenneth, Mower, Barry F., Vogel, Harry S., Schoch, Nina, Pokras, Mark, Goodale, Morgan W., Fair, Jeff. Adverse effects from environmental mercury loads on breeding common loons. Ecotoxicology. 17:69–81, 2008.

[118] Adams, Evan M., and Frederick, Peter C. Effects of methylmercury and spatial complexity on foraging behavior and foraging efficiency in juvenile

reproductive success and altered pair behavior.[119] These effects include significantly more unproductive nests, male/male pairing, reduced courtship behavior and lower nestling production by exposed males. In egrets, Hg has been implicated in the decline of the species in south Florida [120] and studies show liver and possibly kidney effects.[121] Insectivorous birds have also been shown to suffer adverse effects due to Hg exposure. Songbirds such as Bicknell's thrush, tree swallows and the great tit have shown reduced reproduction, survival, and changes in singing behavior. Exposed tree swallows produced fewer fledglings,[122] lower survival,[123] and had compromised immune competence.[124] The great tit has exhibited reduced singing behavior and smaller song repertoire in areas of high contamination.[125]

In mammals, adverse effects from Hg including mortality have been observed in mink and river otter, both fish eating species. Other adverse effects may include increased activity, poorer maze performance, abnormal startle reflex, and impaired escape and avoidance behavior.[126] EPA is also concerned about the potential impacts of HCl and other acid gas emissions on the environment. When HCl gas encounters water in the atmosphere, it forms an acidic solution of hydrochloric acid. In areas where the deposition of acids derived from emissions of sulfur and NO_X are causing aquatic and/or terrestrial acidification, with accompanying ecological impacts, the deposition of hydrochloric acid would further exacerbate these impacts. Recent research[127] has, in fact, determined that deposition of airborne HCl has had a greater impact on ecosystem acidification than anyone had previously thought, although direct quantification of these impacts remains an uncertain process.

5. Potential for Deposition "Hotspots" in Areas Near U.S. EGUs

Although it has been characterized and addressed as a global issue, Hg from U.S. EGUs is shown to deposit in higher quantities close to emission sources, and around some sources can be as high as 3 times the regional average deposition. EPA evaluated the potential for "hot spot" deposition near U.S. EGU emission sources on a national scale, based on the CMAQ modeled Hg deposition for 2005 and 2016.[128] We calculated the excess deposition within 50 km of U.S. EGU sources by first calculating the average U.S. EGU attributable Hg deposition within a 500 km radius around the U.S. EGU source. This deposition represents the likely regional contribution around the EGU. We then calculated the average U.S. EGU attributable Hg deposition within 50 km of the U.S. EGUs to characterize local deposition plus regional deposition near the EGU facility. Excess local deposition is then the 50 km radius average deposition minus the 500 km radius average deposition. Summary statistics for the excess local deposition are provided in Table 9 of this preamble. Table 9 of this preamble shows both the mean excess deposition around all U.S. EGUs, and the mean excess deposition around just the top 10 percent of Hg emitting U.S. EGUs. Table 9 of this preamble also shows the excess Hg deposition as a percent of the average regional deposition to provide context for the magnitude of the local excess deposition. In 2005, for all U.S. EGU, the excess was around 120 percent of the average deposition, while for the top 10 percent of Hg emitting U.S. EGU, local deposition was around 3.5 times the regional average. By 2016, although the absolute excess deposition falls, the local excess still remains around 3 times the regional average for the highest 10 percent of Hg emitting U.S. EGUs.

TABLE 9—EXCESS LOCAL DEPOSITION OF Hg BASED ON 2005 CMAQ MODELED Hg DEPOSITION

	50 km-Radius-average excess local deposition values (μg/m²)	
	Mean across EGUs (percent of regional average deposition)	
	2005	2016
All U.S. EGU sites with Hg emissions > 0 (672 sites)	1.65 (119%)	0.36 (93%)
Top ten percent U.S. EGU in Hg emissions (67 sites)	4.89 (352%)	1.18 (302%)

This analysis shows that there is excess deposition of Hg in the local areas around EGUs, especially those with high Hg emissions. Although this is not necessarily indicative of higher risk of adverse effects from consumption of MeHg contaminated fish from waterbodies around the U.S. EGUs, it does indicate an increased chance that Hg from U.S. EGUs will impact local waterbodies around the EGU sources, and not just impact regional deposition.

6. Emissions Controls for Emissions of Hg and Non-Hg HAP Are Available and Effective

Analyses of currently available control technologies for Hg, acid gases,

white ibises (Eudocimus albus). Environmental Toxicology and Chemistry. Vol 27, No. 8, 2008.

[119] Frederick, Peter, and Jayasena, Nilmini. Altered pairing behavior and reproductive success in white ibises exposed to environmentally relevant concentrations of methylmercury. Proceedings of The Royal Society B. doi: 10–1098, 2010.

[120] Sepulveda, Maria S., Frederick, Peter C., Spalding, Marilyn G., and Williams, Gary E. Jr. Mercury contamination in free-ranging great egret nestlings (Ardea albus) from southern Florida, USA. Environmental Toxicology and Chemistry. Vol. 18, No.5, 1999.

[121] Hoffman, David J., Henny, Charles J., Hill, Elwood F., Grover, Robert A., Kaiser, James L., Stebbins, Katherine R. Mercury and drought along the lower Carson River, Nevada: III. Effects on blood and organ biochemistry and histopathology of snowy egrets and black-crowned night-herons on Lahontan Reservoir, 2002–2006. Journal of Toxicology and Environmental Health, Part A. 72:20, 1223–1241, 2009.

[122] Brasso, Rebecka L., and Cristol, Daniel A. Effects of mercury exposure in the reproductive success of tree swallows (Tachycineta bicolor). Ecotoxicology. 17:133–141, 2008.

[123] Hallinger, Kelly K., Cornell, Kerri L., Brasso, Rebecka L., and Cristol, Daniel A. Mercury exposure and survival in free-living tree swallows (Tachycineta bicolor). Ecotoxicology. Doi: 10.1007/s10646–010–0554–4, 2010.

[124] Hawley, Dana M., Hallinger, Kelly K., Cristol, Daniel A. Compromised immune competence in free-living tree swallows exposed to mercury. Ecotoxicology. 18:499–503, 2009.

[125] Gorissen, Leen, Snoeijs, Tinne, Van Duyse, Els, and Eens, Marcel. Heavy metal pollution affects dawn singing behavior in a small passerine bird. Oecologia. 145:540–509, 2005.

[126] Scheuhammer, Anton M., Meyer Michael W., Sandheinrich, Mark B., and Murray, Michael W. Effects of environmental methylmercury on the health of wild birds, mammals, and fish. Ambio. Vol.36, No.1, 2007.

[127] Evans, Chris D., Monteith, Don, T., Fowler, David, Cape, J. Neil, and Brayshaw, Susan. Hydrochloric Acid: An Overlooked Driver of Environmental Change, Env. Sci. Technol., DOI: 10.1021/es10357u.

[128] More details are provided in the National Scale Mercury Risk Assessment TSD.

and non-Hg metal HAP show that significant reductions in these pollutants can be achieved from EGUs with significant coincidental reductions in the emissions of other pollutants as well.

a. Availability of Hg Emissions Control Options

The control of Hg in a coal combustion flue gas is highly dependent upon the form (or species) of the Hg. The Hg can be present in one of three forms: as Hg^0, as a vapor of Hg^{+2} (*e.g.,* mercuric chloride, $Hg(Cl_2)$), or as Hg_P (*e.g.,* adsorbed on fly ash or unburned carbon). The specific form of the Hg in the flue gas will strongly influence the effectiveness of available control technology for Hg control. The form (or "speciation") of the Hg is determined by the flue gas chemistry and by the time-temperature profile in the post combustion environment. During coal combustion, Hg is released into the exhaust gas as Hg^0. This vapor may then continue through the flue gas cleaning equipment and exit the stack as gaseous Hg^0 or it may be oxidized to Hg^{+2} compounds (such as $HgCl_2$) via homogeneous (gas-gas) or heterogeneous (gas-solid) reactions. The primary homogeneous oxidation mechanism is the reaction with gas-phase chlorine (Cl radical or possibly, HCl) to form $HgCl_2$. Although this mechanism is thermodynamically favorable, it is thought to be kinetically limited due to rapid cooling of the flue gas stream. Heterogeneous oxidation reactions occur on the surface of fly ash and unburned carbon. It is thought that in-duct chlorination of the surface of the fly ash, unburned carbon, or injected activated carbon sorbent is the first step to heterogeneous oxidation and surface binding of vapor-phase Hg^0 in the flue gas stream (i.e., the formation of Hg_P).

Mercury control can occur as a "co-benefit" of conventional control technologies that have been installed for other purposes. Particulate Hg can be effectively removed along with other flue gas PM (including non-Hg metal HAP) in the primary or secondary PM control device. For units using electrostatic precipitators (ESPs), the effectiveness will depend upon the amount of Hg_P entering the ESP. Units that burn coals with higher levels of native chlorine and that produce more unburned carbon can see good Hg removal in the ESP. Fabric filters (FF) have been shown to provide very high levels of control when there is adequate halogen to convert the Hg to the oxidized form. Units with wet FGD scrubbers can achieve high levels of Hg control—provided that the Hg is present in the oxidized (*i.e.,* the soluble) form. A selective catalytic reduction (SCR) catalyst can enhance the Hg removal by catalytically converting Hg^0 to Hg^{+2}, making it more soluble and more likely to be captured in the scrubber solution. Halogen additives (usually bromide salts, but chloride salts may also be used) can also be added directly to the coal or injected into the boiler to enhance the oxidation of Hg.

Activated carbon injection (ACI) is the most successfully demonstrated Hg-specific control technology. In this case, a powdered AC sorbent is injected into the duct upstream of the primary or a secondary PM control device. The carbon is injected to maximize contact with the flue gas. Mercury binds on the surface of the carbon to form Hg_P, which is then removed in the PM control device. Conventional (*i.e.,* non-halogenated) AC is effective when capturing Hg that is already predominantly in the oxidized state or when there is sufficient flue gas halogens to promote oxidation of the Hg on the AC surface. Pre-halogenated (*i.e.,* brominated) AC has been shown to be very effective when used in combination with low chlorine coals (such as U.S. western subbituminous coals). Activated carbons can suffer from poor performance when used with high sulfur coals. Firing high sulfur coals (especially when an SCR is also used) can result in sulfur trioxide (SO_3) vapor in the flue gas stream. The SO_3 competes with Hg for binding sites on the surface of the AC (or unburned carbon) and limits the effectiveness of the injected AC. An SO_3 mitigation technology—such as dry sorbent injection (DSI, *e.g.,* trona or hydrated lime)—applied upstream of the ACI can minimize this effect.

Mingling of AC with the fly ash can affect the viability for use of the captured fly ash as an additive in concrete production. Use of the TOXECON™ configuration can keep the fly ash and the AC separate. This configuration consists of the primary PM control device (ESP or FF) followed by a secondary downstream pulsejet FF. The AC is injected prior to the secondary FF. The fly ash is captured in the primary PM control device and the AC and Hg are captured in the downstream secondary FF.

b. Availability of PM or Metal HAP Emissions Control Options

Electrostatic precipitators and FFs are the most commonly applied PM control technologies in U.S. coal-fired EGUs. Newer units have tended to install FFs, which usually provide better performance than ESPs. An existing facility that wants to upgrade the PM control may choose to replace the current equipment with newer, better performing equipment. The facility may also consider installation of a downstream secondary PM control device—such as a secondary FF. A wet ESP (WESP) can be installed downstream of a wet FGD scrubber for control of condensable PM.

c. Availability of Acid Gas Emissions Control Options

Acid gases are likely to be removed in typical FGD systems due to their solubility or their acidity (or both). The acid-gas HAP—HCl, HF, and HCN (representing the "cyanide compounds")—are water-soluble compounds, more soluble in water than is SO_2. This indicates that HCl, HF, and HCN should be more easily removed from a flue gas stream in a typical FGD system than will SO_2, even when only plain water is used. Hydrogen chloride is also a strong acid and will react easily in acid-base reactions with the caustic sorbents (*e.g.,* lime, limestone) that are commonly used in FGD systems. Hydrogen fluoride is a weaker acid, having a similar acid dissociation constant as that of SO_2. Cyanide is the weakest of these acid gases. In the slurry streams, composed of water and sorbent (*e.g.,* lime, limestone) used in both wet-scrubber and dry spray dryer absorber FGD systems, acid gases and SO_2 are absorbed by the slurry mixture and react to form alkaline salts. In fluidized bed combustion (FBC) systems, the acid gases and SO_2 are adsorbed by the sorbent (usually limestone) that is added to the coal and an inert material (*e.g.,* sand, silica, alumina, or ash) as part of the FBC process. Hydrogen chloride and HF have also been shown to be effectively removed using DSI where a dry, alkaline sorbent (*e.g.,* hydrated lime, trona, sodium carbonate) is injected upstream of a PM control device. Chlorine in the fuel coal may also partition in small amounts to Cl_2. This is normally a very small fraction relative to the formation of HCl. Limited testing has shown that Cl_2 gas is also effectively removed in FGD systems. Although Cl_2 is not strictly an acidic gas, it is grouped here with the "acid gas HAP" because it is controlled using the same technologies.

d. Expected Impact of Available Controls on HAP Emissions from EGUs

In 2016, EGUs are projected to account for an estimated 45 percent of anthropogenic Hg (excluding fires) in the continental U.S. Application of available Hg controls in 2016 that would be required under section 112 reduces

Hg emissions from 29 down to 6 tons, achieving a 23 tpy reduction of Hg from EGUs, which results in a 79 percent reduction in U.S. EGU emissions, and a 36 percent reduction of total anthropogenic Hg emissions nationally.

In 2016, EGUs are projected to account for 53 percent of total U.S. anthropogenic HCl. Application of available HCl controls in 2016 that would be required under section 112 achieves a 68,000 tpy reduction in HCl emissions (a 91 percent reduction in EGU emissions), resulting in a 49 percent reduction of anthropogenic emissions nationally.

Metal HAP emissions are a component of PM, and are expected to be reduced along with PM as a result of application of PM controls. In 2016, application of controls required under section 112 is expected to provide an average reduction in PM for the continental U.S. of 38 percent. Although no specific projection of metals is available for 2016, applying the 38 percent reduction in PM to the 2010 ICR emissions levels of anthropogenic metals,[129] results in reductions of approximately 430 tons of metals per year.[130]

EPA believes these projected reductions in Hg, acid gases, and metal HAP emissions demonstrate the effectiveness of available controls.

6. Consideration of the Role of U.S. EGU Hg Emissions in the Global Effort To Decrease Hg Loadings in the Environment

This would allow the U.S. to demonstrate effective technologies to reduce Hg; such leadership could provide confidence to other countries that they can succeed in meeting their commitments. Mercury pollution is a significant international environmental challenge, and it is well understood that efforts that reduce Hg emissions in other countries will reduce Hg that impacts U.S. public health and the environment. Recognizing this, EPA and others in the U.S. Government are actively involved in international efforts to reduce Hg pollution. These efforts include global negotiations aimed at concluding a legally-binding agreement to reduce Hg that were initiated in February 2009 under the UNEP.[131] Negotiation of the agreement is not expected to be completed until early 2013. Once the international process is complete, the agreement must be ratified domestically before the agreement will become binding in the U.S. The agreement is expected to cover major man-made sources of air Hg emissions, including coal-fired EGUs. Current negotiations are considering the application of best available technologies and practices to reduce air Hg emissions significantly. Regulations such as the proposed rule demonstrate the U.S. commitment to addressing the global Hg problem by decreasing the largest source of Hg emissions in the U.S. and serve to encourage other countries to address Hg emissions from their own sources.

7. It Remains Appropriate and Necessary To Regulate EGUs To Address Public Health and Environmental Hazards Associated With Emissions of Hg and Non-Hg HAP From EGUs

The extensive analyses summarized above confirm that it remains appropriate and necessary today to regulate EGUs under section 112. It is appropriate to regulate emissions from coal- and oil-fired EGUs under CAA section 112 because: (1) Hg and non-Hg HAP continue to pose a hazard to public health, and U.S. EGU emissions cause and/or contribute to this hazard; (2) Hg and some non-Hg HAP pose a hazard to the environment; (3) U.S. EGU emissions, accounting for 45 percent of U.S. Hg emissions, are still the largest domestic source of U.S. Hg emissions (by 2016, EPA projects that U.S. EGU Hg emissions will be over 6 times larger than the next largest source, which is iron and steel manufacturing), as well as the largest source of HCl and HF emissions, and a significant source of other HAP emissions; (4) Hg emissions from individual EGUs leads to hot spots of deposition in areas directly surrounding those individual EGUs, and, thus, deposition is not solely the result of regionally transported emissions, and will not be adequately addressed through reductions in regional levels of Hg emissions, requiring controls to be in place at all U.S. EGU sources that emit Hg; (5) Hg emissions from EGUs affect not only deposition, exposures, and risk today, but may contribute to future deposition, exposure and risk due to the processes of reemission of Hg that occur given the persistent nature of Hg in the environment—the delay in issuing Hg regulations under section 112 has already resulted in several hundred additional tons of Hg being emitted to the environment, and that Hg will remain part of the global burden of Hg; and (6) effective controls for Hg and non-Hg HAP are available for U.S. EGU sources.

EPA concludes that Hg emissions from U.S. EGUs are a public health hazard today due to their contribution to Hg deposition that leads to potential MeHg exposures above the RfD. EPA also concludes that U.S. EGU Hg emissions contribute to environmental concentrations of Hg that are harmful to wildlife and can affect production of important ecosystem services, including recreational hunting and fishing, and wildlife viewing. EPA further concludes that non-Hg HAP emissions from U.S. EGU are a public health hazard because they contribute to elevated cancer risks.

Finally, EPA concludes that U.S. EGU's HCl and HF emissions contribute to acidification in sensitive ecosystems and, therefore, pose a risk of adverse effects on the environment.

a. U.S. EGU Hg Emissions Continue To Pose a Hazard to Public Health and the Environment

The CAA does not define what constitutes a hazard to public health. As noted earlier, the agency must use its scientific and technical expertise to determine what constitutes a hazard to public health in the context of Utility Hg emissions. Congress did provide guidance as to what it considered an important benchmark for public health hazards, particularly in regard to Hg. In section 112(n)(1)(C), Congress required the NIEHS to determine "the threshold level of Hg exposure below which adverse human health effects are not expected to occur." This threshold level is represented by the RfD, and as such, the RfD is the benchmark for determining hazards to public health that is most consistent with Congress's interpretation of adverse health effects. As a result, our assessment of the hazard to public health posed by U.S. EGU Hg emissions is focused on comparisons to the RfD of exposures caused or contributed to by U.S. EGU Hg emissions.

As described above, almost all (98 percent) of the more than 2,400 watersheds for which we have fish tissue data exceed the RfD, above which there is the potential for an increased risk of adverse effects on human health. U.S. EGU-attributable deposition of Hg contributes to a large number of those watersheds in which total potential exposures to MeHg from all sources exceed the RfD and, thus, pose a hazard to public health. For our analysis, we focused on the watersheds to which EGUs contributed at least 5 percent of the total Hg deposition and related

[129] It is generally assumed that the same types of controls that reduce PM will also reduce metals, because they are components of the PM.

[130] This value is 38 percent of 1,140 tons, which is the total tonnage of the metals listed in Table 5, based on the 2010 ICR emissions data.

[131] Governing Council of the United Nations Environment Programme *http://www.unep.org/hazardoussubstances/Mercury/Negotiations/Mandates/tabid/3321/language/en-US/Default.aspx.*

MeHg exposures at a watershed, or contributed enough Hg deposition resulting in potential MeHg exposures above the RfD, regardless of the additional deposition from other sources of Hg deposition. We believe this is a conservative approach because any contribution of Hg to watersheds where potential exposures to MeHg exceed the RfD poses a public health hazard. Thus, because we are finding a large percentage of watersheds with populations potentially at risk even using this conservative approach, we have confidence that emissions of Hg from U.S. EGUs are causing a hazard to public health, as we believe that there are additional watersheds that have contributions at lower percent benchmarks.

In total, 28 percent of sampled watersheds have populations that are potentially at risk from exposure to MeHg based on the contribution of U.S. EGUs, either because U.S. EGU attributable deposition is sufficient to cause potential exposures to exceed the reference dose even before considering the deposition from other U.S. and non-U.S. sources, or because the U.S. EGU attributable deposition contributes greater than 5 percent of total deposition and total exposure from all sources is greater than the reference dose. At the 99th percentile fish consumption level for subsistence fishers, 22 percent of sampled watersheds where total potential exposures to MeHg exceed the RfD have a contribution from U.S. EGUs of at least 5 percent of Hg deposition.

Although the most complete estimate of potential risk is based on total exposures to Hg, including that due to deposition from U.S. EGU sources, U.S. non-EGU sources, and global sources, the deposition resulting from U.S. EGU Hg emissions is large enough in some watersheds that persons consuming contaminated fish would have exposures that exceed the RfD even before taking into account the deposition from other sources. At the 99th percentile fish consumption level for subsistence fishers, in 12 percent of the sampled watersheds, U.S. EGUs are responsible for deposition that causes the RfD to be exceeded, even before considering the additional deposition from other sources.

In addition, we believe the estimate of where populations may be at risk from U.S. EGU-attributable Hg deposition is likely understated because the data on fish tissue MeHg concentrations is limited in some regions of the U.S., such as Pennsylvania, with very high U.S. EGU attributable Hg deposition, and it is possible that watersheds with potentially high MeHg exposures were excluded from the risk analysis.[132] In addition, due to limitations in our models and available data, we have not estimated risks in near-coastal waters, and some of these waters, including the Chesapeake Bay, have EGU-attributable Hg deposition.

Further, scientific studies have found strong evidence of adverse impacts on species of fish-eating birds with high bird-watching value, including loons, white ibis, and great snowy egrets. Studies have also shown adverse effects on insect-eating birds including many songbirds. Adverse effects in fish-eating mammals, such as mink and otter, include neurological responses (impaired escape and avoidance behavior) which can influence survival rates. Because EGUs contribute to Hg deposition in the U.S., we reasonably conclude that EGUs are contributing to the identified adverse environmental effects.

Mercury emitted into the atmosphere persists for years, and once deposited, can be reemitted into the atmosphere due to a number of processes, including forest fires and melting of snow packs. As a result, Hg emitted today can have impacts for many years. In fact, Hg emitted by U.S. EGUs in the past, including over the last decade, is still having impacts on concentrations of Hg in fish today. Failing to control Hg emissions from U.S. EGU sources will result in long term environmental loadings of Hg, above and beyond those loadings caused by immediate deposition of Hg within the U.S. Although we are not able to quantify the impact of U.S. EGU emissions on the global pool of Hg, U.S. EGUs do contribute to that global pool. Controlling Hg emissions from U.S. EGUs helps to reduce the potential for environmental hazard from Hg now and in the future. These findings independently support a determination that it is appropriate to regulate HAP emissions from EGUs.

b. U.S. EGU Non-Hg HAP Emissions Continue To Pose a Hazard to Public Health and the Environment

EPA recently conducted 16 case studies of U.S. EGUs for which we had 2007 to 2009 emissions data (based on the 2010 ICR) and that we anticipated would have relatively higher emissions of non-Hg HAP compared to other U.S. EGUs. Of the 16 facilities modeled, 4 facilities, 3 coal and 1 oil facility, have estimated risks of greater than 1 in 1 million for the most exposed individual. Although section 112(n)(1)(A) does not specify what constitutes a hazard to public health for the purposes of the appropriate and necessary finding, CAA section 112(c)(9) is instructive. As explained in section III.A above, for carcinogenic HAP, section 112(c)(9) contains a test for delisting source categories based on lifetime risk of cancer. That test reflects Congress' view as to the level of health effects associated with HAP emissions that Congress thought warranted continued regulation under section 112. Specifically, section 112(c)(9) provides that a source category can be delisted only if no source emits HAP in quantities which may cause a lifetime risk of cancer greater than 1 in 1 million to the most exposed individual. As noted above, the results of the case study risk analysis confirm that sources in the EGU source category emit HAP in quantities that cause a lifetime risk of cancer greater than 1 in 1 million. Given Congress' determination that categories of sources which emit HAP resulting in a lifetime cancer risk greater than 1 in 1 million should not be removed from the section 112(c) source category list and should continue to be regulated under 112, we believe risks above that level represent a hazard to public health such that it is appropriate to regulate EGUs under section 112.

Although our case studies did not identify significant chronic non-cancer risks from acid gas emissions from the specific EGUs assessed, the Administrator remains concerned about the potential for acid gas emissions to add to already high atmospheric levels of other chronic respiratory toxicants and to environmental loading and degradation due to acidification. EGUs emit over half of the nationwide emissions of HCl and HF, based on 2010 emissions estimates. In addition, given that many sensitive ecosystems across the country are experiencing acidification, it is appropriate to reduce emissions of this magnitude which carry the potential to aggravate acidification. The Administrator concludes that, in addition to the regulation of non-Hg HAP which cause elevated cancer risks, it is appropriate to regulate those HAP which are not known to cause cancer but are known to contribute to chronic non-cancer toxicity and environmental degradation, such as the acid gases.

These findings independently support a determination that it is appropriate to regulate HAP emissions from EGUs.

[132] An analysis of the impact of sampling location limitations on coverage of high U.S. EGU deposition watersheds is provided in the National Scale Mercury Risk Assessment TSD.

c. Effective Controls Are Available To Reduce Hg and Non-Hg HAP Emissions

Particle-bound Hg can be effectively removed along with other flue gas PM (including non-Hg metal HAP) in primary or secondary PM control devices. Electrostatic precipitators, FF, and wet FGD scrubbers are all effective at removing Hg, with the degree of effectiveness depending on the specific characteristics of the EGU and fuel types. These devices are all effective in removing metal HAP as well. Activated carbon injection is the most successfully demonstrated Hg-specific control technology, although performance may be reduced when used with high sulfur coals. Acid gases are readily removed in typical FGD systems due to their solubility or their acidity (or both). The availability of controls for HAP emissions from EGUs supports the appropriate finding because sources will be able to reduce their emissions effectively and, thereby, reduce the hazards posed by HAP emissions from EGUs.

d. The Administrator Finds That It Remains Necessary To Regulate Coal- and Oil-Fired EGUs Under CAA Section 112

EPA determined that in 2016 the hazards posed to human health and the environment by HAP emissions from EGUs will not be addressed; therefore, it is necessary to regulate EGUs under section 112. In addition, it is necessary to regulate EGUs under section 112 because the only way to ensure permanent reductions in U.S. EGU emissions of HAP and the associated risks to public health and the environment is through standards set under section 112.

The Agency first evaluates whether it is necessary to regulate HAP emissions from EGUs "after imposition of the requirements of the CAA." As explained above, we interpret that phrase to require the Agency to consider only those requirements that Congress directly imposed on EGUs through the CAA as amended in 1990 and for which EPA could reasonably predict HAP emission reductions at the time of the Study. Nonetheless, the Agency recognizes that it has discretion to look beyond the Utility Study in determining whether it is necessary to regulate EGUs under section 112. Because several years have passed since the December 2000 Finding, we conducted an additional, updated analysis, examining a broad array of diverse requirements.

Specifically, we analyzed EGU HAP emissions remaining in 2016. Our analysis included the proposed Transport Rule; CAA section 112(g); the ARP; Federal, state, and citizen enforcement actions related to criteria pollutant emissions from EGUs; and some state rules related to criteria pollutant emissions. We included state requirements and citizen and state enforcement action settlements associated with criteria pollutants because those requirements may have a basis under the CAA. We did not, however, conduct an analysis to determine whether the requirements are, in fact, based on requirements of the CAA. As such, we believe there may be instances where we should not have considered certain state rules or state and citizen suit enforcement settlements in our analysis, because those requirements are based solely in state law and are not required by Federal law. We did not include in our analysis any state-only requirements or voluntary actions to reduce HAP emissions because we knew there was no Federal backstop for those requirements and actions.

Our analysis confirms that Hg emissions from EGUs remaining in 2016 still pose a hazard to public health and the environment and, for that reason, it remains necessary to regulate EGUs under section 112. Specifically, we estimate that U.S. EGU emissions of Hg after imposition of the requirements of the CAA will be 29 tpy in 2016, the same as the level of Hg emitted today. As we stated above, we evaluated the hazards to public health and the environment from Hg based on the estimated Hg emissions in 2016 and found that a hazard exists. Because a hazard remains after imposition of the requirements of the CAA, it is necessary to regulate EGUs.

It is necessary to regulate HAP emissions from EGUs, even though the hazards from Hg will not be resolved through regulation under section 112. EPA finds that incremental reductions in Hg are important because as exposure above the RfD increases the likelihood and severity of adverse effects increases.

EGUs are the largest source of Hg in the U.S. and, thus, contribute to the risk associated with exposure to MeHg. By reducing Hg emissions from U.S. EGUs, this proposed rule will help to reduce the risk to public health and the environment from Hg exposure.

We also find that it is necessary to regulate EGUs under section 112 based on non-Hg HAP emissions because we cannot be certain that the identified cancer risks attributable to EGUs will be addressed through imposition of the requirements of the CAA. In addition, the environmental hazards posed by acidification will not be fully addressed through imposition of the CAA.

We also find it necessary to regulate EGUs because regulation under section 112 is the only way to ensure that HAP emissions reductions that have been achieved since 2005 remain permanent.

The difference between the 53 ton 2005 estimate and the 2010 ICR-based estimate of total EGU emissions may be overstated. While EPA has estimated 2010 total EGU Hg emissions of 29 tons based on data from the 2010 ICR database, this may underestimate total 2010 EGU Hg emissions due to the fact that emission factors used to develop the estimates may not accurately account for larger emissions from units with more poorly performing emission controls. The 2010 ICR by which the data used to develop the factors was collected was designed to provide the agency the data to determine the appropriate MACT levels and was not designed to collect data to fully characterize all units' Hg emissions, particularly those that might have poorly performing controls. EPA tested only 50 randomly selected units that were not selected for testing as best performing units (the bottom 85 percent of units), and we used that small sample to attempt to characterize the lower performing units. Because the 50 units were randomly selected, we do not believe we have sufficiently characterized the units that have poorly performing controls. In addition, the methodology for estimating the 2005 and 2010 emission estimates are not the same. The 2005 estimate is based on control configurations as of 2002, therefore, it does not reflect reductions due to control installations that took place between 2002 and 2005. As a result, the apparent difference between 2005 and 2010 is overstated. There are real factors that explain why Hg reductions would have occurred between 2005 and 2010. The actual reductions between 2005 and 2010 are attributable to state Hg regulations and to CAIR and Federal enforcement actions that achieve Hg reductions as a co-benefit of controls for PM, NO_X, and SO_2 emissions. However, there are no national, Federally binding regulations for Hg. State Hg regulations can potentially change or be revoked without EPA approval, and reductions that occur as a co-benefit of criteria pollutant regulations can also change. Furthermore, companies can change their criteria pollutant compliance strategies and use methodologies that do not achieve the same level of Hg or other HAP co-benefit (*e.g.,* purchasing allowances in a trading program instead of using add-on controls).

As with Hg, the most recent data on U.S. EGU HCl and HF emissions show a significant reduction between 2005 and 2010. These reductions in HCl and HF are the co-benefit of controls installed to meet other CAA requirements, including enforcement actions, and to a lesser extent, state regulations. There is no guarantee other than regulation under section 112 that these significant decreases in HCl and HF emissions will be permanent. Although we do not have estimates for the remaining HAP emitted from EGUs, we believe it is likely that such emissions have also decreased between 2005 and 2010. Thus, the Administrator finds it necessary to regulate HAP emissions from EGUs to ensure that HAP emissions reductions are permanent.

Finally, direct control of Hg emissions affecting U.S. deposition is only possible through regulation of U.S. emissions; we are unable to control global emissions directly. Although the U.S. is actively involved in international efforts to reduce Hg pollution, the ability of the U.S. to argue effectively in these negotiations for strong international policies to reduce Hg air emissions depends in large part on our domestic policies, programs and regulations to control Hg.

All of these findings independently support a finding that it is necessary to regulate EGUs under section 112.

Therefore, given the Agency's finding that it remains appropriate and necessary to regulate coal- and oil-fired EGUs under CAA section 112, EPA is confirming its inclusion of coal- and oil-fired EGUs on the list of source categories regulated under CAA section 112(c).

8. Implications of Hazards to Public Health for Children and Environmental Justice Communities

Children are at greatest risk of adverse health effects from exposures to Hg, and this risk is amplified for children in minority and low income communities who subsist on locally-caught fish. Today's proposed rule is therefore an important step in addressing disparate impacts on children and environmental justice (EJ) communities.

Children are more vulnerable than adults to many HAP, because of differences in physiology, higher per body weight breathing rates and consumption, rapid development of the brain and bodily systems, and behaviors that increase chances for exposure. Even before birth, the developing fetus may be exposed to HAP through the mother that affect development and permanently harm the individual. Infants and children breathe at much higher rates per body weight than adults, with infants under one year of age having a breathing rate up to five times that of adults.[133] In addition, children breathe through their mouths more than adults and their nasal passages are less effective at removing pollutants, which leads to a higher deposition fraction in their lungs.[134] Crawling and frequent hand-to-mouth activity lead to infants' higher levels of ingestion of contaminants deposited onto soil or in dust. Infants' consumption of breast milk can pass along high levels of accumulated persistent bioaccumulative pollutants from their mothers. Children's dietary intake also exceeds that of adults, per body weight, posing a potential added risk from persistent HAP that accumulate in food. In addition to the greater exposure, the less-well developed detoxification pathways and rapidly developing systems and organs put children at potentially greater risk.

Mercury is the HAP from EGUs of most concern to early life stages. The adverse affects of Hg on developing neuropsychological systems is well-established and permanent. The prenatal period of development has been established to be the most sensitive lifestage to the neurodevelopmental effects of MeHg.[135] Children who are exposed to low concentrations of MeHg prenatally are at increased risk of poor performance on neurobehavioral tests, such as those measuring attention, fine motor function, language skills, visual-spatial abilities, and verbal memory.[136] [137] Impaired cognitive development from exposures to MeHg prenatally and in early childhood affect the individual into adulthood, by affecting learning and potential future earnings, and contributing to behavioral problems.

Other HAP related to EGU emissions present greater risks to children as well. For example, mutagenic carcinogens such as Cr^{+6} have a larger impact during young lifestages, given the rapid development of the corporal systems.[138] Exposure at a young age to these carcinogens could lead to a higher risk of developing cancer later in life.

The adverse effects of individual non-Hg HAP may be more severe for children, particularly the youngest age groups, than adults. A number of epidemiologic studies suggest that children are more vulnerable than adults to lower respiratory symptoms associated with PM.[139] [140] Non-Hg metal HAP may behave similarly to particulate matter, at least in terms of the deposition fraction that reaches children's lungs. As with Hg, Pb and Cd are known to affect children's neurologic development. A meta-analysis of seven studies has shown an association between exposure to formaldehyde, another HAP of concern, and development of asthma in children.[141]

Within communities overburdened with environmental exposures, the youngest lifestages are likely the most vulnerable. Looking at the health effects for children in those communities can be an important part of appropriately assessing community risks.

EPA has also considered the effects of this rule on EJ communities. The nature of exposures to Hg is such that populations with high levels of self-caught fish consumption are likely to be disproportionately affected. EPA's risk analysis identified many EJ communities, including Laotian, Vietnamese, Hispanic, African-American, tribal, and low income communities, as having higher levels of subsistence fishing activities. Consequently, individuals in these

[133] U.S. Environmental Protection Agency. 2006. *Revision of the metabolically-derived ventilation rates within the Exposure Factors* Handbook. (External review draft) Washington, DC: Office of Research and Development. EPA/600/R–06/129A. *http://oaspub.epa.gov/eims/eimscomm.getfile?p_download_id=460261.*

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[140] Gauderman, W.J., R. McConnell, F. Gilliland, S. London, et al. 2000. Association between air pollution and lung function growth in Southern California children. *Am J Respir Crit Care Med* 162: 1283–1390.

[141] McGwinn, G. Jr., J. Lienert, and J.I. Kennedy Jr. 2010. Formaldehyde Exposure and Asthma in Children: A Systematic Review. *Environ Health Perspect* 118: 313–317.

communities are potentially exposed to levels of MeHg in fish that may result in these individuals' exposure exceeding the RfD. These EJ populations are thus at higher risk for the health effects associated with exposures to MeHg, which include impacts on neurological functions that can cause children to struggle in school. In EJ populations which often face numerous other stressors that can result in lower educational performance, the additional burdens imposed by exposure to Hg may cause significant and long-lasting impacts on children that continue into adulthood, affecting learning potential and measures of IQ, including future earnings and indicators of quality of life.

9. The Analysis Supporting the 2005 Action Was Subject to Technical Limitations and These Flaws Undermine the Basis for the 2005 Action

In 2005, EPA conducted a set of technical analyses to support a revision to the 2000 appropriate and necessary finding.[142] In those analyses, EPA made several assumptions that were not justified based on scientific or technical grounds, and which we have corrected in our technical analysis supporting our current confirmatory finding that it is appropriate and necessary to regulate coal- and oil-fired EGUs under section 112.

a. Interpretation of the MeHg Reference Dose and Incremental U.S. EGU-Attributable Exposures

In the 2005 analysis, EPA made the following statement:

The RfD provides a useful reference point for comparisons with measured or modeled exposure. The Agency defines the RfD as an exposure level below which the Agency believes exposures are likely to be without an appreciable risk over a lifetime of exposure. For the purposes of assessing population exposure due to EGUs, we create an index of daily intake (IDI). The IDI is defined as the ratio of exposure due solely to EGUs to an exposure of 0.1 μg/kg bw/day. The IDI is defined so that an IDI of 1 is equal to an incremental exposure equal to the RfD level, recognizing that the RfD is an absolute level, while the IDI is based on incremental exposure without regard to absolute levels. Note that an IDI value of 1 would represent an absolute exposure greater than the RfD when background exposures are considered.[143]

Upon further consideration, EPA concludes that it did not have a scientific or technical justification for creating a metric other than the HQ[144] to compare U.S. EGU-attributable exposures to the RfD. As EPA recognized in 2005, the RfD is an absolute level above which the potential risks of exposures increase, based on total exposures to MeHg. The concept of the IDI was created by EPA in 2005 solely to support its interpretation that it must assess hazards to public health solely based on U.S. EGU emissions with no consideration of exposures to MeHg arising from other sources of Hg deposition. As noted above, nothing in section 112(n)(1)(A) prohibits consideration of HAP emissions from U.S. EGUs in conjunction with HAP emissions from other sources of HAP, including sources outside the U.S. Indeed, such an approach would ignore the manner in which the public is actually exposed to HAP emission. By focusing on whether incremental exposures attributable to U.S. EGU Hg emissions exceeded the RfD without consideration of other exposures, EPA implied that U.S. EGU Hg emissions were not causing a hazard to public health even though such emissions were increasing risks in locations where the RfD was already exceeded due to total exposures from all Hg sources, including U.S. EGU emissions. This is a serious flaw in EPA's 2005 assessment, due to reasons we discuss below.

Ninety-eight percent of watersheds with fish tissue MeHg samples have Hg deposition levels such that total potential exposure to MeHg exceeds the RfD, and many have exposures that are many times the RfD.[145] As a result, in almost all watersheds with fish tissue MeHg samples, *any* additional Hg will increase potential risk. Thus, U.S. EGU-attributable Hg deposition is contributing to increased potential risk. The Agency believes the assessment of potential risk due to Hg emissions from U.S. EGUs must consider both the extent to which U.S. EGUs contribute to such risk along with other sources, and the extent to which U.S. EGU-attributable deposition leads to exposures that exceed the RfD even before considering the contributions of other sources of Hg. The Agency has conducted such an evaluation in the national-scale MeHg risk analysis presented above. In 2005, as a result of relying on a flawed, non-scientific approach for comparing MeHg exposures to the RfD, and a failure to consider cumulative risk characterization metrics, EPA incorrectly determined that U.S. EGU emissions of Hg did not constitute a hazard to public health. As discussed above, EPA has revised this determination and concluded that U.S. EGU Hg emissions are a hazard to public health because they cause exposures to exceed the RfD or contribute to exposures in watersheds where total exposures to MeHg exceed the RfD.

b. Interpretation of Populations Likely To Be at Risk and Conclusions Regarding Acceptable Risk

In addition to developing a flawed exposure indicator based on only U.S. EGU attributable exposure (the IDI), EPA also erred in finding that exposures above the RfD (an IDI greater than 1) did not pose an "unacceptable risk" (*e.g.,* did not pose a hazard to public health). EPA cited three reasons for the finding in 2005: (1) Lack of confidence in the risk estimates; (2) lack of seriousness of the health effects of MeHg; and (3) small size of the population at risk and low probability of risks in that population. EPA was not justified in making its determination based on these three factors.

In the 2005 Action, EPA cited the underpinnings of the RfD as introducing a degree of conservatism. In fact, however, as discussed above, EPA has stated consistently, including in the RfD issued in 2001, that the RfD for Hg is a level above which there is the potential for increased risk. Only at levels at or below the RfD does the Agency maintain that exposures are without *significant* risk. EPA's interpretation in 2005 was a departure from prior EPA policy as it concerns exposures to Hg and was in error.

In the 2005 Action, EPA identified risk of poor performance on neurobehavioral tests, such as those measuring attention, fine motor function, language skills, visual-spatial abilities (like drawing), and verbal memory as the primary health effects of MeHg exposures. Although not stated explicitly, it is implicit in the 2005 Action that EPA did not consider these health effects to be serious. The Agency did not, and could not have, provided any scientific or policy rationale for dismissing these serious public health effects. For example, as mentioned

[142] U.S. EPA. 2005. Technical Support Document: Methodology Used to Generate Deposition, Fish Tissue Methylmercury Concentrations, and Exposure for Determining Effectiveness of Utility Emission Controls.

[143] U.S. EPA. 2005. Technical Support Document: Methodology Used to Generate Deposition, Fish Tissue Methylmercury Concentrations, and Exposure for Determining Effectiveness of Utility Emission Controls.

[144] The HQ is the ratio of observed or modeled exposures to the RfD.

[145] *See* the National Scale Mercury Risk Assessment Technical Support Document.

above, there are potentially serious implications of the identified effects on learning potential and measures of IQ, including future earnings and indicators of quality of life. EPA was not justified in dismissing these health effects as not serious without providing evidence or justification, which it could not do based on the information available at the time or today.

In the 2005 Action, EPA made several statements in the technical analysis suggesting that the probability that an IDI of 1 would be exceeded (*e.g.,* that U.S. EGU attributable exposures would be greater than the RfD) was low due to the rare occurrence of high consumption rate populations in high deposition watersheds. The 2005 analysis showed that 15 percent of watersheds would have U.S. EGU-attributable potential exposures that were twice the RfD for the highest fish consumption rates. EPA dismissed this high percent of watersheds by stating that those high fish consumption rates would only occur in Native American populations, and that those populations lived in locations that were not heavily impacted by U.S. EGU Hg deposition.

Information was available at the time of the 2005 analysis indicating that other populations besides Native Americans engaged in subsistence fishing activities that would result in consumption rates similar to Native Americans. EPA chose to selectively use information only on Native American consumption rates and erroneously concluded that subsistence fishing activities would not occur in a wider set of locations. This choice was in error, as EPA should have investigated whether other subsistence populations could fish in locations heavily impacted by U.S. EGU emissions (*e.g.,* watersheds with the top 15 percent of U.S. EGU-attributable fish tissue MeHg levels). A search of the literature available in 2005 reveals several studies that identified additional fishing populations with subsistence or near subsistence consumption rates, including urban fishing populations (including low-income populations),[146] [147] [148] Laotian communities,[149] and Hispanics. In fact, EPA participated in 1999 in a project investigating exposures of poor, minority communities in New York City to a number of contaminants including Hg, and should thus have been aware that these populations can have very high consumption rates.[150] If EPA had conducted a thorough investigation in 2005, it should have concluded that populations with the potential for subsistence-level fish consumption rates occur in many watersheds, and, thus, could not have concluded that exposures above the RfD (IDI greater than 1) were not likely.

Thus, based on the errors EPA made in the 2005 Action related to evaluating the risks from MeHg exposures attributable to U.S. EGUs, EPA's technical determination in 2005 that risks were acceptable based on that analysis was not justified. As a result the technical determination in 2005 which supported the finding of no public health hazard, and the determination that it was not appropriate or necessary to regulate HAP from U.S. EGUs was in error.

IV. Summary of This Proposed NESHAP

This section summarizes the requirements proposed in this proposed rule. Our rationale for the proposed requirements is provided in Section V of this preamble.

A. What source categories are affected by this proposed rule?

This proposed rule affects coal- and oil-fired EGUs.

B. What is the affected source?

An existing affected source for this proposed rule is the collection of coal- and oil-fired EGUs within a single contiguous area and under common control. A new affected source is a coal- or oil-fired EGU for which construction or reconstruction began after May 3, 2011.

CAA section 112(a)(8) defines an EGU as:

> a fossil fuel-fired combustion unit of more than 25 megawatts electric (MWe) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MWe output to any utility power distribution system for sale is also an electric utility steam generating unit.

If an EGU burns coal (either as a primary fuel or as a supplementary fuel), or any combination of coal with another fuel (except as noted below), the unit is considered to be coal fired under this proposed rule. If a unit is not a coal-fired unit and burns only oil, or oil in combination with another fuel other than coal (except as noted below), the unit is considered to be oil fired under this proposed rule. As noted below, EPA is proposing a definition to determine whether the combustion unit is "fossil fuel fired" such that it is an EGU for purposes of this proposed rule. The unit must be capable of combusting more than 73 megawatt-electric (MWe) (250 million British thermal units per hour, MMBtu/hr) heat input (equivalent to 25 MWe electrical output) of coal or oil. In addition, using the construct of the definition of "oil-fired" from the ARP, we are proposing that the unit must have fired coal or oil for more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years to be considered a "fossil fuel fired" EGU subject to this proposed rule. If a new or existing EGU is not coal- or oil-fired, and the unit burns natural gas exclusively or natural gas in combination with another fuel where the natural gas constitutes 90 percent or more of the average annual heat input during the previous 3 calendar years or 85 percent or more of the annual heat input during any 1 of those calendar years, the unit is considered to be natural gas-fired and would not be subject to this proposed rule. As discussed later, we believe that this definition will address those situations where either an EGU fires coal or oil on only a limited basis or co-fires limited amounts of coal or oil with other non-fossil fuels (*e.g.,* biomass).

To the extent a unit combusts solid waste, that unit is not an EGU under section 112, but rather would be subject to CAA section 129.

The Small Entity Representatives (SERs) serving on the Small Business Advocacy Review Panel (SBAR) established under the Small Business Regulatory Enforcement Fairness Act (SBREFA) suggested that EPA consider developing an area-source (*i.e.,* those EGUs emitting less than 10 tpy of any one HAP or less than 25 tpy of any combination of HAP) vs. major-source (*i.e.,* those EGUs emitting 10 tpy or more of any one HAP or 25 tpy of more of any

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[146] Burger, J., K. Pflugh, L. Lurig, L. Von Hagen, and S. Von Hagen. 1999. Fishing in Urban New Jersey: Ethnicity Affects Information Sources, Perception, and Compliance. Risk Analysis 19(2): 217–229.

[147] Burger, J., Stephens, W., Boring, C., Kuklinski, M., Gibbons, W.J., & Gochfield, M. (1999). Factors in exposure assessment: Ethnic and socioeconomic differences in fishing and consumption of fish caught along the Savannah River. Risk Analysis, 19(3).

[148] Chemicals in Fish Report No. 1: Consumption of Fish and Shellfish in California and the United States Final Draft Report. Pesticide and Environmental Toxicology Section, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, July 1997.

[149] Tai, S. 1999. "Environmental Hazards and the Richmond Laotian American Community: A Case Study in Environmental Justice." Asian Law Journal 6: 189.

[150] Corburn, J. (2002). Combining community-based research and local knowledge to confront asthma and subsistence-fishing hazards in Greenpoint/Williamsburg, Brooklyn, New York. Environmental Health Perspectives, 110(2).

combination of HAP) distinction for this source category. The proposed rule treats all EGUs the same and proposes MACT standards for all units.

Nothing in the CAA requires that we issue GACT standards for area sources. Indeed, here, the data show that similar HAP emissions and control technologies are found on both major and area sources greater than 25 MWe. In fact, because of the significant number of well-controlled EGUs of all sizes, we believe it would be difficult to make a distinction between MACT and GACT. Moreover, EPA believes the standards for area source EGUs should reflect MACT, rather than GACT, because there is no essential difference between area source and major source EGUs with respect to emissions of HAP. There are EGUs that are physically quite large that are area sources, and EGUs that are small that are major sources. Both large and small EGUs are represented in the MACT floor pools for acid gas, Hg, and non-Hg metal HAP. Finally, given that EPA is regulating both major and area source EGUs at the same time in this rulemaking, a common control strategy consequently appears warranted for these emissions.

If area sources tend to be very different from major sources and the capacity to control those sources is different, we could exercise our discretion under section 112(d)(5) to set GACT standards for area sources. But, as explained above, that is not the case here. Accordingly, we believe it is appropriate to set MACT standards for both major and area source EGUs. EPA solicits comment on its proposed approach. Specifically, we solicit comments on whether there would be a basis for considering area sources to be significantly different from major sources with respect to issues relevant to standard setting. Commenters should also explain the basis of their suggested approach and how that approach would lead to similar health and environmental benefits, including data that would underpin a GACT analysis.[151]

[151] As we have explained in other rules, determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

C. Does this proposed rule apply to me?

This proposed rule applies to you if you own or operate a coal- or oil-fired EGU as defined in this proposed rule.

D. Summary of Other Related DC Circuit Court Decisions

In March 2007, the DC Circuit Court issued an opinion (*Sierra Club* v. *EPA,* 479 F.3d 875 (DC Cir. 2007)) (Brick MACT) vacating and remanding CAA section 112(d) NESHAP for the Brick and Structural Clay Ceramics source categories. Some key holdings in that case were:

- Floors for existing sources must reflect the average emission limitation achieved by the best-performing 12 percent of existing sources, not levels EPA considers to be achievable by all sources (479 F.3d at 880–81);
- EPA cannot set floors of "no control." The DC Circuit Court reiterated its prior holdings, including *National Lime Ass'n.* v. *EPA* (233 F.3d625 (DC Cir. 2000)) (*National Lime II*), confirming that EPA must set floor standards for all HAP emitted by the source, including those HAP that are not controlled by at-the-stack control devices (479 F.3d at 883);
- EPA cannot ignore non-technology factors that reduce HAP emissions. Specifically, the DC Circuit Court held that "EPA's decision to base floors exclusively on technology even though non-technology factors affect emissions violates the Act." (479 F.3d at 883.) The DC Circuit Court also reiterated its position stated in *Cement Kiln Recycling Coalition* v. *EPA,* 255 F.3d 855 (DC Cir. 2001) that CAA section 112(d)(3) "requires floors based on the emission level actually achieved by the best performers (those with the lowest emission levels)."

Based on the *Brick MACT* decision, we believe a source's performance resulting from the presence or absence of HAP in fuel materials must be accounted for in establishing floors (*i.e.,* a low emitter due to low HAP fuel materials can still be a best performer). In addition, the fact that a specific level of performance is unintended is not a legal basis for excluding the source's performance from consideration. *National Lime II;* 233 F.3d at 640.

The *Brick MACT* decision also stated that EPA may account for variability in setting floors. The DC Circuit Court found that "EPA may not use emission levels of the worst performers to estimate variability of the best performers without a demonstrated relationship between the two." 479 F.3d at 882.

A second DC Circuit Court opinion is also relevant to this proposal. In *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), the DC Circuit Court vacated the portion of the regulations contained in the General Provisions which exempt major sources from NESHAP during periods of startup, shutdown and malfunction (SSM). The regulations (in 40 CFR 63.6(f)(1) and 63.6(h)(1)) provided that sources need not comply with the relevant CAA section 112(d) standard during SSM events and instead must "minimize emissions * * * to the greatest extent which is consistent with safety and good air pollution control practices." As a result of the DC Circuit Court decision, sources must comply with the emission standards at all times and we are addressing SSM in this proposed rulemaking. Discussion of this issue may be found later in this preamble.

A third relevant DC Circuit Court opinion is *National Lime II* (233 F.3d 625), where, in considering whether EPA may use PM, a criteria pollutant, as a surrogate for metal HAP, the DC Circuit Court stated that EPA "may use a surrogate to regulate hazardous pollutants if it is 'reasonable' to do so" and laid out criteria establishing a three-part analysis for determining whether the use of PM as a surrogate for non-Hg metal HAP was reasonable. The DC Circuit Court found that PM is a reasonable surrogate for HAP if: (1) "HAP metals are invariably present in * * * PM;" (2) "PM control technology indiscriminately captures HAP metals along with other particulates;" and (3) "PM control is the only means by which facilities 'achieve' reductions in HAP metal emissions." 233 F.3d at 639. If these criteria are satisfied and the PM emission standards reflect what the best sources achieve—complying with CAA section 7412(d)(3)—"EPA is under no obligation to achieve a particular numerical reduction in HAP metal emissions." We have considered this case in evaluating whether the surrogate standards we propose to establish in this proposed rule are reasonable.

E. EPA's Response to the Vacatur of the 2005 Action

After the vacatur of the Revision Rule, EPA evaluated the HAP and other emissions data available to establish CAA section 112(d) standards for coal- and oil-fired EGUs and determined that additional HAP emission data were required. EPA initiated an information collection effort entitled "Electric Utility Steam Generating Unit Hazardous Air Pollutant Emissions Information

Collection Effort" (OMB Control Number 2060–0631). This information collection (2010 ICR) was conducted by EPA's Office of Air and Radiation (OAR) pursuant to CAA section 114 to assist the Administrator in developing emissions standards for coal- and oil-fired EGUs pursuant to CAA section 112(d). CAA section 114(a) states, in pertinent part:

> For the purpose of * * * (iii) carrying out any provision of this Chapter * * * (1) the Administrator may require any person who owns or operates any emission source * * * to * * * (D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe); (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical * * *; (G) provide such other information as the Administrator may reasonably require * * *

Prior to issuance of the information collection effort, information necessary to identify all coal- and oil-fired EGUs as defined in CAA section 112(a)(8) was publicly available for EGUs owned and operated by publicly-owned utility companies, Federal power agencies, rural electric cooperatives, investor-owned utility generating companies, and nonutility generators (such units include, but may not be limited to, independent power producers (IPPs), qualifying facilities, and combined heat and power (CHP) units). The most recent information available was for 2005, and the available information generally did not include any information on permitted HAP emission limits; or monitoring, recordkeeping, and reporting requirements for HAP emissions; and we did not have complete HAP emissions data for any EGU. Additionally, we had little current information on the fuel amounts received, fuel sources, fuel shipment methods, or results of previously conducted fuel analyses for coal- and oil-fired EGUs, or for results from tests conducted since January 1, 2005. We did not have emissions test results that would provide data for emissions of a variety of pollutants, including: PM, PM with an aerodynamic diameter equal to or less than 2.5 micrometers ($PM_{2.5}$); SO_2; HCl/HF/HCN; metal HAP (including compounds of Sb, As, Be, Cd, Cr, Co, Pb, Mn, Ni, and Se); Hg; total organic hydrocarbons (THC); volatile organic compounds (VOC); and carbon monoxide (CO).

To obtain the information necessary to evaluate coal- and oil-fired EGUs, EPA developed a two-phase ICR and published the first notice in the **Federal Register** for comment consistent with the requirements of the PRA. 74 FR 31725 (July 2, 2009). We received comments from industry and other interested parties. We also met with industry and other interested parties, and published a revised ICR in the **Federal Register** for another round of comments consistent with the PRA. 74 FR 58012 (November 10, 2009). OMB approved the ICR on December 24, 2009, and we sent the ICR to owners and operators of EGUs on December 31, 2010.

As stated above, the ICR contained two phases or components. The first component solicited information from all potentially affected units. EPA provided the survey in electronic format; however, written responses were also accepted. The survey was submitted to all coal- and oil-fired EGUs listed in the 2007 version of the DOE's Energy Information Administration's (EIA) Forms 860 and 923, "Annual Electric Generator Report," and "Power Plant Operations Report," respectively.

The second component required the owners/operators of a limited number of coal-and oil-fired EGUs to conduct stack testing in accordance with an EPA-approved protocol. Some coal-fired units were selected to be tested because we determined based on the information available that the units were among the top performing 15 percent of sources in the coal subcategory for certain types of HAP. Best-performing coal-fired units to be tested were selected to cover three groups of HAP that may be regulated through the use of surrogate standards: (1) Non-Hg metallic HAP (*e.g.,* As, Pb, Se); (2) acid gas HAP (*e.g.,* HCl, HF, HCN); (3) and non-dioxin/furan organic HAP. We also required the non-Hg metallic HAP sources to test for Hg even though Hg is to be regulated separately and not covered by any non-Hg metallic HAP surrogacy. Fifty coal-fired units were also selected at random from the entire population of coal-fired EGUs to test for dioxin/furan organic HAP. An additional 50 coal-fired units were selected at random from among those units not selected as being "top performing" units to represent those coal-fired units not comprising the top-performing units in the three HAP surrogate groups; these 50 randomly selected units were required to test for all HAP except dioxin/furan organic HAP. Data from this last grouping was collected so we could estimate the HAP emission reductions associated with the proposed standards. Oil-fired units to be tested were also selected at random to test for HAP in all three groups of HAP noted above, in addition to testing for Hg and dioxin/furan.

The testing consisted of three runs at the sampling location and was in accordance with a specified emission test method. The owner/operator of each selected EGU was also required to collect and analyze, in accordance with an acceptable procedure, three fuel samples from the fuel fed to the EGU during each stack test. Additional details of the required sampling may be found in Docket entry EPA–HQ–OAR–2009–0234–0062.

In phase one, all coal- and oil-fired EGUs identified by EPA as being potentially subject sources under the definition in CAA section 112(a)(8), including all integrated gasification combined cycle (IGCC) EGUs and all EGUs fired by petroleum coke, were required to submit information to EPA. The sources were required to provide information on the current operational status of the unit, including applicable controls installed, along with emissions information from the preceding 5 years. This information was necessary for EPA to fully characterize the category and update our database of coal- and oil-fired EGUs.

Phase two was the testing phase. As stated above, coal-fired units to be tested were selected to cover five HAP or groups of HAP, three of which may be regulated through the use of surrogate pollutant standards and were chosen because EPA determined the units were best performing units for one or more of the three HAP surrogate groups. In the stack testing, each facility was required to test after the last control device or at the stack if the stack is not shared with other units using different controls. In this way, the facility would test before any "dilution" by gases from a separately-controlled unit. Under certain circumstances, however, testing after a common control device or at the common stack was allowed.

EPA selected for testing the sources that the Agency believed, based on a variety of factors and information available to the Agency at the time, were the best performing sources for the three HAP surrogate groups for which they were required to test. In targeting the best performing sources, EPA required testing for approximately 15 percent of all coal-fired EGUs for the 3 HAP surrogate groups—non-Hg metal HAP and PM; non-dioxin/furan organic HAP, total hydrocarbon, CO, and VOC; and acid gas HAP and SO_2. As we stated in response to comments on the proposed 2010 ICR, we targeted the best performing coal-fired sources for certain HAP groups because the statute requires the Agency to set the MACT floor at the "average emission limitation achieved by the best performing 12 percent of the

existing sources (for which the Administrator has information)" in the category. By targeting the best performing 15 percent of coal-fired EGUs for testing in the 3 HAP groups, we concluded that we would have emissions data on the best performing 12 percent of all existing coal-fired EGUs. In this proposed rule, we used data from sources representing the best performing 12 percent of all sources in any category or subcategory to establish the CAA section 112(d) standards for the 3 HAP groups because we believe we have identified the best performing 12 percent of sources for those subcategories with 30 or more sources. For Hg from coal-fired units, we used the top 12 percent of the data obtained because, even though we required Hg testing for the units testing for the non-Hg metallic HAP, we did not believe those units represented the top performing 12 percent of sources for Hg in the category at the time we issued the ICR and we made no assertions to that effect. For oil-fired units, we also used the top 12 percent of the data obtained because we were unable, based on the information available, to determine the best performing oil-fired units. The primary reason for our inability to identify best performing oil-fired units is that such units are generally uncontrolled or controlled only with an ESP. The approach for both coal- and oil-fired EGUs was discussed with, and agreed upon by, several industry and environmental organization stakeholders prior to finalizing the ICR.

The acid-gas HAP, HCl and HF, are water-soluble compounds and are more soluble in water than is SO_2. (Cyanide, representing the "cyanide compounds," and Cl_2 gas are also water-soluble and are considered "acid-gas HAP" in this proposal.) Hydrogen chloride also has a large acid dissociation constant (*i.e.,* HCl is a strong acid) and it, thus, will react easily in an acid-base reaction with caustic sorbents (*e.g.,* lime, limestone). The same is true for HF. This indicates that both HCl and HF will be more rapidly and readily removed from a flue gas stream than will SO_2, even when only plain water is used. In FBC systems, the acid gases and SO_2 are adsorbed by the sorbent (usually limestone) that is added to the coal and an inert material (*e.g.,* sand, silica, alumina, or ash) as part of the FBC process.

Hydrogen chloride and HF have also been shown to be effectively removed using DSI where a dry, alkaline sorbent (*e.g.,* hydrated lime, trona, sodium carbonate) is injected upstream of a PM control device.

Chlorine in the fuel coal may also partition in small amounts to Cl_2. This is normally a very small fraction relative to the formation of HCl. Limited testing has shown that Cl_2 gas is also effectively removed in FGD systems. Although Cl_2 is not strictly an acidic gas, it is grouped here with the "acid gas HAP" because it is controlled using the same technologies.

Because the technologies for removal of the acid gases are primarily those that are also used for FGD, we consider emissions of SO_2, a commonly measured pollutant, as a potential surrogate for emissions of the acid-gas HAP HCl, HF, HCN, and Cl_2. Although use of SO_2 as a surrogate for acid gas HAP has not been used in any CAA section 112 rules by EPA, it has been used in a number of state permitting actions (*see* Docket entry EPA–HQ–OAR–2009–0234–0062). Hydrogen chloride has been used as a surrogate for the acid gas HAP in other Agency actions (*e.g.,* Portland Cement NESHAP, 75 FR 54970, September 9, 2010 (final rule); major and area source Industrial, Commercial, and Institutional Boilers and Process Heaters NESHAP (collectively, Boiler NESHAP), 75 FR 32005, June 4, 2010; 75 FR 31895, June 4, 2010 (proposed rules; the final rules were signed on February 21, 2011)), and we propose to use HCl as a surrogate for all the acid gas HAP, with an alternative equivalent standard using SO_2 as a surrogate. In addition, we gathered sufficient data on HCl, HF, and HCN [152] to establish individual emission limitations if warranted.

EPA identified the units with the newest FGD controls installed for testing of acid gas HAP based on our analysis that FGD controls are the best at reducing acid gas HAP emissions. EPA also believes that the units with the newest FGD systems represent those units having to comply with the most recent, and, therefore, likely most stringent, emission limits for SO_2. We determined that efforts by units to comply with stringent SO_2 limits would also likely represent the top performers with regard to acid gas HAP emissions. Specifics of the required testing may be found in Docket entry EPA–HQ–OAR–2009–0234–0062.

Dioxin/furan emissions data were obtained in support of the 1998 Utility Report to Congress. However, approximately one-half of those data were listed as being below the minimum detection level (MDL) for the given test. Dioxin/furan emissions from coal-fired EGUs are generally considered to be low, presumably because of the insufficient amounts of available chlorine. As a result of previous work conducted on municipal waste combustors (MWC), it has also been proposed that the formation of dioxins and furans in exhaust gases is inhibited by the presence of sulfur.[153] Further, it has been suggested that if the sulfur-to-chlorine ratio (S:Cl) in the flue gas is greater than 1.0, then formation of dioxins/furans is inhibited.[154] [155] The vast majority of the coal analyses provided through the 1999 ICR effort indicated S:Cl values greater than 1.0. As a result, EPA expected that additional data gathering efforts would continue the trend of data being at or below the MDL. Even so, EPA believed it necessary to collect some additional data so that the trend could be affirmed or rejected for EGUs. If the trend were rejected, then EPA would be able to establish an emission limit for dioxin/furan; however, if the trend were affirmed, then EPA would need to seek alternatives to an emissions limit, such as a work practice standard. The latter approach might become necessary because measurements made at or below MDL generally indicate the presence, but not the exact quantity, of a substance. In addition, measurements made at or below the MDL have an accuracy on the order of plus or minus 50 percent, whereas other environmental measurements used by EPA in other rulemakings exhibit accuracies of plus or minus up to 15 percent. Sampling and analytical methods for dioxins/furans have improved since the 1990's work, so their MDLs are expected to have decreased. Moreover, for this sampling effort, we required sampling periods to be extended up to eight times longer than normal to collect more sample volume, thus, hopefully improving detection capability. Note that although longer sampling periods can be obtained during short term emissions testing, maintaining such longer sampling times

[152] Although the combination of extended sampling times and stack chemistry for many units in this source category rendered the test method for HCN unreliable, yielding suspect HCN results, we still consider SO_2 or HCl emissions to be adequate surrogates for HCN emissions.

[153] Gullett, BK, *et al.* Effect of Cofiring Coal on Formation of Polychlorinated Dibenzo-*p*-Dioxins and Dibenzofurans during Waste Combustion. *Environmental Science and Technology.* Vol. 34, No. 2:282–290. 2000.

[154] Raghunathan, K, and Gullett, BK. Role of Sulfur in Reducing PCDD and PCDF Formation. *Environmental Science and Technology.* Vol. 30, No. 6:1827–1834. 1996.

[155] Li., H, *et al.* Chlorinated Organic Compounds Evolved During the combustion of Blends of Refuse-derived Fuels and Coals. *Journal of Thermal Analysis.* Vol. 49:1417–1422. 1997.

becomes impractical, if not infeasible, for continuous monitoring.

For these reasons, we selected 50 units at random from the entire coal-fired EGU population to conduct emission testing for dioxins/furans. EPA has identified AC as a potential control technology for dioxin/furan control based on results of previous work done on MWC units, and several of the units that were selected for testing have ACI systems that had been installed for Hg control. Specifics of the required testing may be found in Docket entry EPA–HQ–OAR–2009–0234–0062.

Emissions of CO, VOC, and/or THC have, in the past, been used as surrogates for the non-dioxin/furan organic HAP based on the theory that efficient combustion leads to lower organic emissions (Portland Cement NESHAP—THC (75 FR 54970; September 9, 2010); Boiler NESHAP—CO (75 FR 32005, June 4, 2010; 75 FR 31895, June 4, 2010 (proposed rules; the final rules were signed on February 21, 2011)); Hazardous Waste Combustor NESHAP—CO (64 FR 52828; September 30, 1999)). Although indications are that organic HAP emissions are low (and perhaps below the MDL), there were very few emissions data available for these compounds from coal-fired EGUs and we determined that it was necessary to obtain additional information on which to establish standards for these HAP. EPA identified the newest units as being representative of the most modern, and, thus, presumed most efficient units. The 170 newest units were selected and were required to test for CO, VOC, and THC; specifics of the required testing may be found in Docket entry EPA–HQ–OAR–2009–0234–0062.

Emissions of certain non-Hg metallic HAP (*i.e.,* Sb, Be, Cd, Cr, Co, Pb, Mn, and Ni) have been assumed to be well controlled by PM control devices. However, Hg and other non-Hg metallic HAP (*i.e.,* As and Se), have the potential to exist in both the particulate and vapor phases, and, therefore, may not be well controlled by PM control devices alone. Also, it has been shown through recent stack testing that certain of these HAP (*i.e.,* As and Se) may condense on (or as) very fine PM in the emissions from coal-fired units. There are very few recent emissions test data available showing the potential control of these metallic HAP from coal-fired EGUs.

EPA identified the units with the newest PM controls installed as the units to test for non-Hg metal HAP. EPA believed that these units represent those units having to comply with the most recent, and, therefore, likely most stringent, emission limits for PM. EPA believes units complying with stringent PM limits represent the top performers with regard to non-Hg metallic HAP emissions, even for those HAP that may at times form in other than the particulate phase. The units selected also included a number with ACI installed. The 170 units with the newest PM controls installed were selected and were required to test after that specific PM control (or at the stack if the PM control device is not shared with one or more other units); specifics of the required testing may be found in Docket entry EPA–HQ–OAR–2009–0234–0062.

The capture of Hg is dependent on several factors including the chloride content of the coal, the sulfur content of the coal, the amount of unburned carbon present in the fly ash, and the flue gas temperature profile. All of these factors affect the chemical form (the speciation) of Hg in the flue gas. Mercury may exist as Hg^0, as Hg^{+2} (or reactive gaseous Hg, RGM) or as Hg_p. Based on available data, EPA believes that sorbent injection (including ACI) has the potential to be a very effective technology for controlling Hg emissions in coal-fired plants, and some units using ACI for Hg control were among those selected for testing. EPA had no direct stack test results showing how effectively these ACI-equipped plants reduce their Hg emissions. The effectiveness of ACI is highly dependent upon the type of sorbent used (*i.e.,* chemically treated versus conventional AC) and on the amount injected. Further, previous data-gathering efforts had shown that FFs are capable of providing highly effective control of certain species of Hg and, in some cases, as high or higher than that achieved by ACI (ACI is not always used to achieve maximum reductions in Hg but, rather, to achieve permit requirements). Thus, testing for Hg was included with the testing for the non-Hg metallic HAP.

To be able to assess the impact of the standards (*e.g.,* reduction in HAP emissions over current conditions), EPA selected at random 50 units from the population of coal-fired units not selected in any of the above groups to test; specifics of the required testing may be found in Docket entry EPA–HQ–OAR–2009–0234–0062. We did not use the data gathered for the Utility Study because those data are outdated and lack sufficient detail. Thus, EPA believed that gathering these data was necessary to assess the emissions of this important source category.

All IGCC units were also required to test; specifics of the required testing may be found in Docket entry EPA–HQ–OAR–2009–0234–0062.

EPA was able to identify the best performing coal-fired units for the three HAP surrogate groups but the data obtained in support of the Utility Study and the December 2000 Finding do not indicate that any oil-fired units control beyond some ESP use and the data do not show any correlation between the PM control at oil-fired units and emissions of non-Hg metallic HAP from those units. Further, no oil-fired EGU has been constructed in decades and no oil-fired EGU has a FGD system installed, eliminating the potential basis for the use of compliance with an SO_2 emissions limit that resulted in the installation of an FGD system as a basis for selecting best performers for the acid-gas HAP from such units. Thus, EPA had no basis for determining which oil-fired units may be the "best performers." Therefore, EPA required that 66 units selected at random from the population of known oil-fired units test their stack emissions; specifics of the required testing may be found in Docket entry EPA–HQ–OAR–2009–0234–0062.

All petroleum coke-fired units identified were required to test; specifics of the required testing may be found in Docket entry EPA–HQ–OAR–2009–0234–0062.

Pursuant to CAA section 112(q)(3), CAA section 112 as in effect prior to the 1990 CAA amendments remains in effect for radionuclide emissions from coal-fired EGUs at the Administrator's discretion. For this reason, we did not require testing for radionuclides. We are also not proposing standards for radionuclides in this action.

F. What is the relationship between this proposed rule and other combustion rules?

1. CAA Section 111

Revised NSPS for SO_2, NO_X, and PM were promulgated under CAA section 111 for EGUs (40 CFR part 60, subpart Da) and industrial boilers (IB) (40 CFR part 60, subparts Db and Dc) on February 27, 2006 (71 FR 9866). As noted elsewhere, we are proposing certain amendments to 40 CFR part 60, subpart Da. In developing this proposed rule, we considered the monitoring requirements, testing requirements, and recordkeeping requirements of the existing NSPS to avoid duplicating requirements to the extent possible.

2. CAA Section 112

EPA has previously developed other non-EGU combustion-related NESHAP under CAA section 112(d) in addition to today's proposed rule for coal- and oil-fired EGUs. EPA signed final NESHAP for major and area source Boiler NESHAP on February 21, 2011 (to be

codified at 40 CFR part 63, subpart DDDDD and subpart JJJJJJ, respectively) and promulgated standards for stationary combustion turbines (CT) on March 5, 2004 (69 FR 10512; 40 CFR part 63 subpart YYYY). In addition to these two NESHAP, on February 21, 2011, EPA also signed final CAA section 129 standards for commercial and institutional solid waste incinerator (CISWI) units, including energy recovery units (to be codified at 40 CFR part 60, subparts CCCC (NSPS) and DDDD (emission guidelines) and a definition of non-hazardous secondary materials that are solid waste (Non-hazardous Solid Waste Definition Rule, to be codified at 40 CFR part 241, subpart B). EGUs and IB that combust fossil fuel and solid waste, as that term is defined by the Administrator pursuant to the Resource Conservation and Recovery Act (RCRA), will be subject to section 129 (*e.g.,* CISWI energy recovery units), unless they meet one of the exemptions in CAA section 129(g). CAA section 129 standards are discussed in more detail below.

The two IB NESHAP, CT NESHAP, and this proposed rule will regulate HAP emissions from sources that combust fossil fuels for electrical power, process operations, or heating. The differences among these rules are due to the size of the units (MWe or Btu/hr), the boiler/furnace technology, or the portion of their electrical output (if any) for sale to any utility power distribution systems. *See* CAA section 112(a)(8) (defining EGU) earlier.

All of the MWe ratings quoted in the proposed rule are considered to be the original nameplate rated capacity of the unit. Cogeneration is defined as the simultaneous production of power (electricity) and another form of useful thermal energy (usually steam or hot water) from a single fuel-consuming process.

The CT rule regulates HAP emissions from all simple-cycle and combined-cycle stationary CTs producing electricity or steam for any purpose. Because of their combustion technology, simple-cycle and combined-cycle stationary CTs (with the exception of IGCC units that burn gasified coal or petroleum coke syngas) are not considered EGUs for purposes of this proposed rule.

Any combustion unit, regardless of size, that produces steam to serve a generator that produces electricity exclusively for industrial, commercial, or institutional purposes (*i.e.,* no sales are made to the national electrical distribution grid) is considered an IB unit. A fossil fuel-fired combustion unit that serves a generator that produces electricity for sale is not considered to be an EGU under the proposed rule if the size of the combustion unit is less than or equal to 25 MWe. Units under that size would be subject to one of appropriate Boiler NESHAP. Further, EPA interprets the CAA section 112(a)(8) definition such that a non-cogeneration unit must both have a combustion unit of more than 25 MWe and supply more than 25 MWe to any utility power distribution system for sale to be considered an EGU pursuant to this proposed rule so as to be consistent with the cogeneration definition in CAA section 112(a)(8). Such units that sell less than 25 MWe of their power generation to the grid would be subject to the appropriate Boiler NESHAP.

As noted earlier, natural gas-fired EGU's were not included in the December 2000 listing. Thus, this proposed rule would not regulate a unit that otherwise meets the CAA section 112(a)(8) definition of an EGU but combusts natural gas exclusively or natural gas in combination with another fuel where the natural gas constitutes 90 percent or more of the average annual heat input during the previous 3 calendar years or 85.0 percent or more of the annual heat input during any one of those calendar years. Such units are considered to be natural gas-fired EGUs and would not be subject to this proposed rule.

The CAA does not define the terms "fossil fuel" and "fossil fuel fired;" therefore, we are proposing definitions for both terms. The definition of "fossil fuel fired" will determine the applicability of the proposed rule to combustion units that sell electricity to the utility power distribution system. A number of units that may otherwise meet the CAA section 112(a)(8) EGU definition fire primarily non-fossil fuels (*e.g.,* biomass). However, these units generally startup using either natural gas or oil and may use these fuels (or coal) during normal operation for flame stabilization. We have included a definition that will establish the scope of applicability based in part on the amount of fossil fuel combustion necessary to make a unit become "fossil fuel fired," and the units that combust primarily non-fossil fuel will be subject to this proposed rule should they fire more than that amount of coal or oil. Specifically, EPA is proposing that an EGU must be capable of combusting more than 73 MWe (250 MMBtu/hr) heat input [156] (equivalent to 25 MWe output) of coal or oil to be considered an EGU subject to this proposed rule. To be "capable of combusting" coal or oil, a unit would need to have fossil fuels allowed in their permits and have the appropriate fuel handling facilities on-site (*e.g.,* coal handling equipment, including for purposes of example, but not limited to, coal storage area, belts and conveyers, pulverizers, *etc.;* oil storage facilities). In addition, EPA is proposing that an EGU must have fired coal or oil for more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years to be considered a fossil fuel-fired EGU subject to this proposed rule. Units that do not meet these definitions would, in most cases, be considered IB units subject to one of the Boiler NESHAP. Thus, for example, a biomass-fired EGU, regardless of size, that utilizes fossil fuels for startup and flame stabilization purposes only (*i.e.,* less than or equal to 250 MMBtu/hr and used less than 10.0 percent of the average annual heat input during the previous 3 calendar years or less than 15.0 percent of the annual heat input during any one of those calendar years) is not considered to be a fossil fuel-fired EGU under this proposed rule. EPA has based its threshold value on the definition of "oil-fired" in the ARP found at 40 CFR 72.2. As EPA has no data on such use for (*e.g.*) biomass co-fired EGUs because their use has not yet become commonplace, we believe this definition also accounts for the use of fossil fuels for flame stabilization use without inappropriately subjecting such units to this proposed rule. EPA solicits comment on the use of these definitions. Commenters suggesting alternate definitions (including thresholds) should provide detailed information in support of their comment (*e.g.,* 3- to 5-year average fossil fuel use under conditions of startup and flame stabilization).

Also, a cogeneration facility that sells electricity to any utility power distribution system equal to more than one-third of their potential electric output capacity and more than 25 MWe is considered to be an EGU if it is fossil fuel fired as that term is defined above. For such units, EPA is proposing that the unit must be capable of combusting sufficient coal or oil to generate 25 MWe from the fossil fuel alone, and must provide for sale to any utility power distribution system electricity equal to

[156] Heat input means heat derived from combustion of fuel in an EGU and does not include the heat derived from preheated combustion air, recirculated flue gases or exhaust gases from other sources (such as stationary gas turbines, internal combustion engines, and IB).

more than one-third of their potential electric output capacity and greater than 25 MWe electrical output. However, a cogeneration facility that meets the above definition of an EGU during any portion of a month would be subject to the proposed EGU rule for the succeeding 6 calendar months (combustion units that begin combusting solid waste must immediately comply with an applicable CAA section 129 standard (*e.g.,* CISWI standards applicable to energy recovery units)).

We recognize that different section 112 rules may impact a particular unit at different times. For example there will likely be some cogeneration units that are determined to be covered under the Boiler NESHAP. Such unit may make a decision to increase/decrease the proportion of production output being supplied to the electric utility grid, thus causing the unit to meet the EGU cogeneration criteria (i.e., greater than one-third of its potential output capacity and greater than 25 MWe). A unit subject to one of the Boiler NESHAP that increases its electricity output and meets the definition of an EGU would be subject to the proposed EGU NESHAP for the 6-month period after the unit meets the EGU definition. Assuming the unit did not meet the definition of an EGU following that initial occurrence, at the end of the 6-month period it would revert back to being subject to the Boiler NESHAP. This approach is consistent with that taken on the CISWI rulemaking.

EPA solicits comment on the extent to which this situation might occur and whether the 6-month period is appropriate. Given the differences between the rules, should EPA address reclassification of the sources between the rules, particularly with regard to initial and ongoing compliance requirements and schedules? (As noted above, EPA is proposing to consider as an EGU any cogeneration unit that meets the definition noted earlier during any month in a year.) We specifically solicit comments as to how to address sources that may meet the definition of an EGU for only parts of a year. We also solicit comment on whether we should include provisions similar to those included in the final CISWI rule to address units that combust different fuels at different times. See Final CISWI Rule, 40 CFR 60.2145, *http://www.epa.gov/airquality/combustion/docs/20110221ciswi.pdf.*

Another situation may occur where one or more coal- or oil-fired EGU(s) share an air pollution control device (APCD) and/or an exhaust stack with one or more similarly-fueled IB unit(s). To demonstrate compliance with two different rules, the emissions have to either be apportioned to the appropriate source or the more stringent emission limit must be met. Data needed to apportion emissions are not currently required by this proposed rule or the final Boiler NESHAP. Therefore, EPA is proposing that compliance with the more stringent emission limit be demonstrated.

EPA solicits comment on the extent to which this situation might occur. Given potential differences between the rules, how should EPA address apportionment of the emissions to the individual sources with regard to initial and ongoing compliance requirements? EPA specifically requests comment on the appropriateness of a mass balance-type methodology to determine pollutant apportionment between sources both pre-APCD and post-APCD.

3. CAA Section 129

Units that combust "non-hazardous solid waste" as defined by the Administrator under RCRA are regulated under the provisions of CAA section 129. On February 21, 2011, EPA signed the final Non-Hazardous Solid Waste Definition Rule. Any EGU that combusts any solid waste as defined in that final rule is a solid waste incineration unit subject to CAA section 129.

In the Non-Hazardous Solid Waste Definition Rule, EPA determined that coal refuse from current mining operations is not considered to be a "solid waste" if it is not discarded. Coal refuse that is in legacy coal refuse piles is considered a "solid waste" because it has been discarded. However, if the discarded coal refuse is processed in the same manner as currently mined coal refuse, the coal refuse would not be a solid waste and, therefore, the combustion of such material would not subject the unit to regulation under CAA section 129. By contrast, the unit would be subject to this rule if it meets the definition of EGU. If the unit combusts solid waste, it would be subject to emission standards under CAA section 129. *See, e.g.,* CISWI rule. Coal refuse properly processed is a product fossil fuel (*i.e.,* not a solid waste) if it is not a solid waste; thus, combustion units that otherwise meet the CAA section 112(a)(8) EGU definition that combust coal refuse that is product fuel not a solid waste are EGUs subject to this proposed rule. For this proposed rule, we assumed that all units that combust coal refuse and otherwise meet the definition of a coal-fired EGU combust newly mined coal refuse or coal refuse from legacy piles that has been processed such that it is not a solid waste. We request comment on this assumption and whether there are any units combusting coal refuse that is a solid waste such that the units would be solid waste incineration units instead of EGUs.

Further, CAA section 129(g)(1)(B) exempts from regulation under CAA section 129

> "* * * qualifying small power production facilities, as defined in section 796(17)(C) of Title 16, or qualifying cogeneration facilities, as defined in section 796(18)(B) of Title 16, which burn homogeneous waste * * * for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or other forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes * * *"

Thus, qualifying small power production facilities and cogeneration facilities that burn a homogeneous waste would be exempt from regulation under CAA section 129. If the "homogeneous waste" material combusted is a fossil fuel, then the units that are exempt from regulation under CAA section 129 and that otherwise meet the definition of an EGU under CAA section 112(a)(8) would be covered under this proposed rule. For example, a unit that combusts only coal refuse that is a solid waste would be subject to this proposed rule if the unit met the definition of EGU and the coal refuse was determined to be a "homogenous waste" as that term is defined in the final CAA section 129 CISWI standards (the final rule was signed on February 21, 2011, but has not yet been published in the **Federal Register**).

G. What emission limitations and work practice standards must I meet?

We are proposing the emission limitations presented in Tables 10 and 11 of this preamble. Within the two major subcategories of "coal" and "oil," emission limitations were developed for new and existing sources for five subcategories, two for coal-fired EGUs, one for coal- and solid oil-derived IGCC EGUs, and two for oil-fired EGUs, which we developed based on unit type.

We are proposing that new or existing EGUs are "coal-fired" if they combust coal and meet the proposed definition of "fossil fuel fired." We are proposing that an EGU is considered to be a "coal-fired unit designed for coal greater than or equal to 8,300 Btu/lb" if the EGU: (1) Combusts coal; (2) meets the proposed definition of "fossil fuel fired;" and (3) burns any coal in an EGU designed to burn a coal having a calorific value (moist, mineral matter-free basis) of

greater than or equal to 19,305 kilojoules per kilogram (kJ/kg) (8,300 British thermal units per pound (Btu/lb)) in an EGU with a height-to-depth ratio of less than 3.82. We are proposing that the EGU is considered to be a "coal-fired unit designed for coal less than 8,300 Btu/lb" if the EGU: (1) Combusts coal; (2) meets the proposed definition of "fossil fuel fired;" and (3) burns any virgin coal in an EGU designed to burn a nonagglomerating fuel having a calorific value (moist, mineral matter-free basis) of less than 19,305 kJ/kg (8,300 Btu/lb) in an EGU with a height-to-depth ratio of 3.82 or greater.

We are proposing that the EGU is considered to be an IGCC unit if the EGU: (1) Combusts gasified coal or solid oil-derived (*e.g.,* petroleum coke); (2) meets the proposed definition of "fossil fuel fired;" and (3) is classified as an IGCC unit. We are not proposing to subcategorize IGCC EGUs based on the source of the syngas used (*i.e.,* coal, petroleum coke). Based on information available to the Agency, although the fuel characteristics of coal and petcoke are quite different, the syngas products are very similar from both feedstocks.[157]

We are proposing that the EGU is considered to be "liquid oil" fired if the EGU burns liquid oil and meets the proposed definition of "fossil fuel fired." We are proposing that the EGU is considered to be "solid oil-derived fuel-fired" if the EGU burns any solid oil-derived fuel (*e.g.,* petroleum coke) and meets the proposed definition of "fossil fuel fired." EPA is also considering a limited-use subcategory to account for liquid oil-fired units that only operate a limited amount of time per year on oil and are inoperative the remainder of the year. Such units could have specific emission limitations, reduced monitoring requirements (limited operation may preclude the ability to conduct stack testing), or be held to the same emission limitations (which could be met through fuel sampling) as other liquid oil-fired units. EPA solicits comment on all of these proposed subcategorization approaches.

TABLE 10—EMISSION LIMITATIONS FOR COAL-FIRED AND SOLID OIL-DERIVED FUEL-FIRED EGUS

Subcategory	Total particulate matter	Hydrogen chloride	Mercury
Existing coal-fired unit designed for coal ≥ 8,300 Btu/lb.	0.030 lb/MMBtu (0.30 lb/MWh)	0.0020 lb/MMBtu (0.020 lb/MWh).	1.0 lb/TBtu (0.0.008 lb/GWh).
Existing coal-fired unit designed for coal < 8,300 Btu/lb.	0.030 lb/MMBtu (0.30 lb/MWh)	0.0020 lb/MMBtu (0.020 lb/MWh).	11.0 lb/TBtu (0.20 lb/GWh) 4.0 lb/TBtu * (0.040 lb/GWh *).
Existing—IGCC	0.050 lb/MMBtu (0.30 lb/MWh)	0.00050 lb/MMBtu (0.0030 lb/MWh).	3.0 lb/TBtu (0.020 lb/GWh).
Existing—Solid oil-derived	0.20 lb/MMBtu (2.0 lb/MWh)	0.0050 lb/MMBtu (0.080 lb/MWh).	0.20 lb/TBtu (0.0020 lb/GWh).
New coal-fired unit designed for coal ≥8,300 Btu/lb.	0.050 lb/MWh	0.30 lb/GWh	0.000010 lb/GWh.
New coal-fired unit designed for coal <8,300 Btu/lb.	0.050 lb/MWh	0.30 lb/GWh	0.040 lb/GWh.
New—IGCC	0.050 lb/MWh *	0.30 lb/GWh *	0.000010 lb/GWh *.
New—Solid oil-derived	0.050 lb/MWh	0.00030 lb/MWh	0.0020 lb/GWh.

Note: lb/MMBtu = pounds pollutant per million British thermal units fuel input.
lb/TBtu = pounds pollutant per trillion British thermal units fuel input.
lb/MWh = pounds pollutant per megawatt-electric output (gross).
lb/GWh = pounds pollutant per gigawatt-electric output (gross).
* Beyond-the-floor limit as discussed elsewhere.

TABLE 11—EMISSION LIMITATIONS FOR LIQUID OIL-FIRED EGUS

Subcategory	Total HAP metals *	Hydrogen chloride	Hydrogen fluoride
Existing—Liquid oil	0.000030 lb/MMBtu (0.00030 lb/MWh)	0.00030 lb/MMBtu (0.0030 lb/MWh)	0.00020 lb/MMBtu. (0.0020 lb/MWh).
New—Liquid oil	0.00040 lb/MWh	0.00050 lb/MWh	0.00050 lb/MWh.

* Includes Hg.

Pursuant to CAA section 112(h), we are proposing a work practice standard for organic HAP, including emissions of dioxins and furans, from all subcategories of EGU. The work practice standard being proposed for these EGUs would require the implementation of an annual performance (compliance) test program as described elsewhere in this preamble. We are proposing work practice standards because the data confirm that the significant majority of the measured organic HAP emissions from EGUs are below the detection levels of the EPA test methods, and, as such, EPA considers it impracticable to reliably measure emissions from these units. As discussed later in this preamble, EPA believes the inaccuracy of a majority of measurements coupled with the extended sampling times used, fulfill the criteria for these HAP to be subject to a work practice standard under CAA section 112(h).

We are proposing a beyond-the-floor standard for Hg only for all existing coal-fired units designed for coal less than 8,300 Btu/lb based on the use of ACI for Hg control, as described elsewhere in this preamble. We are proposing a beyond-the-floor standard for all pollutants for new IGCC units based on the new-source limits for coal-fired units designed for coal greater than or equal to 8,300 Btu/lb as described elsewhere in this preamble.

As noted elsewhere in this preamble, we are proposing to use total PM as a surrogate for the non-Hg metallic HAP and HCl as a surrogate for the acid gas HAP for all subcategories of coal-fired EGUs and for the solid oil derived fuel-fired EGUs. For liquid oil-fired EGUs, we are proposing total HAP metal, HCl, and HF emission limitations.

[157] U.S. Department of Energy, Wabash River Coal Gasification Repowering Project. Project Performance Summary; Clean Coal Technology Demonstration Program. DOE/FE–0448. July 2002.

In addition, we are proposing three alternative standards for certain subcategories: (1) SO_2 (as an alternative equivalent to HCl for all subcategories with add-on FGD systems); (2) individual non-Hg metallic HAP (as an alternate to PM for all subcategories except liquid oil-fired); (3) total non-Hg metallic HAP (as an alternate to PM for all subcategories except liquid oil-fired); and (4) individual metallic HAP (as an alternate to total metal HAP) for the liquid oil-fired subcategory. These alternative proposed standards are discussed elsewhere in this preamble.

H. What are the startup, shutdown, and malfunction (SSM) requirements?

The DC Circuit Court vacated portions of two provisions in EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. S*ierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), cert. denied, 130 S. Ct. 1735 (U.S. 2010). Specifically, the DC Circuit Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), that are part of a regulation, commonly referred to as the "General Provisions Rule," that EPA promulgated under CAA section 112. 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.

Consistent with *Sierra Club,* EPA is proposing standards in this rule that apply at all times. In proposing the standards in this rule, EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed different standards for those periods. The standards that we are proposing are 30 boiler operating day averages. EGUs, especially solid fuel-fired EGUs, do not normally startup and shutdown frequently and typically use cleaner fuels (*e.g.,* natural gas or oil) during the startup period. Based on the data before the Agency, we are not establishing different emissions standards for startup and shutdown.

To appropriately determine emissions during startup and shutdown and account for those emissions in assessing compliance with the proposed emission standards, we propose use of a default diluent value of 10.0 percent O_2 or the corresponding fuel specific CO_2 concentration for calculating emissions in units of lb/MMBtu or lb/TBtu during startup or shutdown periods. For calculating emissions in units of lb/MWh or lb/GWh, we propose source owners use an electrical production rate of 5 percent of rated capacity during periods of startup or shutdown. We recognize that there are other approaches for determining emissions during periods of startup and shutdown, and we request comment on those approaches. We further solicit comment on the proposed approach described above and whether the values we are proposing are appropriate.

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. 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 (DC Cir. 2004), the DC Circuit 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 EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. *See, Weyerhaeuser* v. *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.")

Further, it is reasonable to interpret CAA section 112(d) as not requiring 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 EGUs. 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 unlikely event that a source fails to comply with the applicable CAA section 112(d) standards as a result of a malfunction event, EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to reduce the likelihood that malfunctions would occur, minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. EPA would also consider whether the source's failure to comply with the CAA section 112(d) standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation." *See* 40 CFR 63.2 (definition of malfunction).

Finally, EPA recognizes that even equipment that is properly designed and maintained can sometimes fail and that 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)). EPA is, therefore, proposing an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions. *See* 40 CFR 63.10042 (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 section 63.10001. *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 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 63.10000(b) and to prevent future malfunctions. For example, the source must 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 its 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.

I. What are the testing requirements?

We are proposing that the owner or operator of a new or existing coal- or oil-fired EGU must conduct performance tests to demonstrate compliance with all applicable emission limits. For units using certified continuous emissions monitoring systems (CEMS) that directly measure the concentration of a regulated pollutant under proposed 40 CFR part 63, subpart UUUUU (*e.g.,* Hg CEMS, SO_2 CEMS, or HCl CEMS) or sorbent trap monitoring systems, the initial performance test would consist of all valid data recorded with the certified monitoring system in the first 30 operating days after the compliance date. For units using CEMS to measure a surrogate for a regulated pollutant (*i.e.,* PM CEMS), initial stack testing of the surrogate and the regulated pollutant conducted during the same compliance test period and under the same process (*e.g.,* fuel) and control device operating conditions would be required, and an operating limit would be established. Affected units would be required to conduct the following compliance tests where applicable:

(1) For coal-fired units, IGCC units, and solid oil-derived fuel-fired units, if you elect to comply with the total PM emission limit, then you would conduct HAP metals and PM emissions testing during the same compliance test period and under the same process (*e.g.,* fuel) and control device operating conditions initially and every 5 years using EPA Methods 29, 5, and 202. Continuous compliance would be determined using a PM CEMS with an operating limit established based on the filterable PM values measured using Method 5. If you elect to comply with the total HAP metals emission limit or the individual HAP metals emissions limits, then you would conduct total PM and HAP metals testing during the same compliance test period and under the same process (*e.g.,* fuel) and control device operating conditions at least once every 5 years and, to demonstrate continuous compliance, you would conduct total or individual HAP metals emissions testing every 2 months (or every month if you have no PM control device) using EPA Method 29. Note that the filter temperature for each Method 29 or 5 emissions test is to be maintained at 160 ± 14 °C (320 ± 25 °F) and that the material in Method 29 impingers is to be analyzed for metals content.

(2) Coal-fired, IGCC, and solid oil-derived fuel-fired units would be required to use a Hg CEMS or sorbent trap monitoring system for continuous compliance using the continuous Hg monitoring provisions of proposed Appendix A to proposed 40 CFR part 63, subpart UUUUU. The initial performance test would consist of all valid data recorded with the certified Hg monitoring system in the first 30 boiler operating days after the compliance date.

(3) For coal-fired and solid oil-derived fuel-fired units and new or reconstructed IGCC units that have SO_2 emission controls and elect to use SO_2 CEMS for continuous compliance, an initial stack test for SO_2 would not be required. Instead the first 30 days of SO_2 CEMS data would be used to determine initial compliance. For units with or without SO_2 or HCl emission controls that elect to use HCl CEMS, an initial stack test for HCl would not be required. Instead the first 30 days of HCl CEMS data would be used to determine initial compliance. For units without HCl CEMS and without SO_2 or HCl emissions control devices, you would be required to conduct HCl emissions testing every month using EPA Method 26 if no entrained water droplets exist in the exhaust gas or Method 26A if entrained water droplets exist in the exhaust gas. For units without SO_2 or HCl CEMS but with SO_2 emissions control devices, you would conduct HCl testing at least every 2 months using EPA Method 26 or 26A. For units without SO_2 or HCl CEMS and without SO_2 emissions control devices, you would conduct HCl emissions testing every month using EPA Method 26A if entrained water droplets exist in the exhaust gas or Method 26A or 26 if no entrained water droplets exist in the exhaust gas.

(4) For all required performance stack tests, you would conduct concurrent oxygen (O_2) or carbon dioxide (CO_2) emission testing using EPA Method 3A and then, use an appropriate equation, selected from among Equations 19–1 through 19–9 in EPA Method 19 to convert measured pollutant concentrations to lb/MMBtu values. Multiply the lb/MMBtu value by one million to get the lb/TBtu value (if applicable).

(5) For liquid oil-fired units, initial performance testing would be conducted as follows. For non-Hg HAP metals, use EPA Method 29. For Hg, conduct emissions testing using EPA Method 29 or Method 30B. For acid gases, conduct HCl and HF testing using EPA Methods 26A or 26. Conduct additional performance testing for Hg at least annually; conduct additional performance tests for HAP metals and acid gases every 2 months if the EGU has emission controls for metals or acid gases, and every month if the EGU does not have these controls.

(6) For existing units that qualify as low emitting EGUs (LEEs), conduct subsequent performance tests for the LEE qualified pollutants every 5 years and perform fuel analysis monthly.

Except for liquid oil-fired units, those EGUs with PM emissions control devices, without HCl CEMS but with HCl control devices, or for LEE, we are proposing that you monitor during initial performance testing specified operating parameters that you would use to demonstrate ongoing compliance. You would calculate the minimum (or maximum, depending on the parameter measured) hourly parameter values measured during each run of a 3-run performance test. The average of the three minimum (or maximum) values from the three runs for each applicable parameter would establish a site-specific operating limit. The applicable operating parameters for which operating limits would be required to be established are based on the emissions limits applicable to your unit as well as the types of add-on controls on the unit. The following is a summary of the operating limits that we are proposing to be established for the various types of the following units:

(1) For units without wet or dry FGD scrubbers that must comply with an HCl emission limit, you must measure the average chlorine content level in the input fuel(s) during the HCl performance test. This is your maximum chlorine input operating limit.

(2) For units with wet FGD scrubbers, you must measure pressure drop and liquid flow rate of the scrubber during the performance test, and determine the maximum value for each test run. The average of the minimum hourly value for the three test runs establishes your minimum site-specific pressure drop and liquid flow rate operating levels. If different average parameter levels are measured during the Hg and HCl tests, the highest of the average values becomes your site-specific operating limit. If you are complying with an HCl emission limit, you must measure pH of the scrubber effluent during the performance test for HCl and determine the minimum hourly value for each test run. The average of the three minimum hourly values from the three test runs establishes your minimum pH operating limit.

(3) For units with dry scrubbers or DSI (including ACI), you would be required to measure the sorbent injection rate for each sorbent used during the performance tests for HCl and Hg and determine the minimum hourly rate of injected sorbent for each test run. The average of the three test run minimum values established during the performance tests would be your site-specific minimum sorbent injection rate operating limit. If different sorbents and/or injection rates are used during the Hg and HCl performance testing, the highest value for each sorbent becomes your site-specific operating limit for the respective HAP. If the same sorbent is used during the Hg and HCl performance testing, but at different injection rates, the highest average value for each sorbent becomes your site-specific operating limit. The type of sorbent used (*e.g.,* conventional AC, brominated AC, trona, hydrated lime, sodium carbonate, etc.) must be specified.

(4) For units with FFs in combination with wet scrubbers, you must measure the pH, pressure drop, and liquid flow rate of the wet scrubber during the performance test and calculate the minimum hourly value for each test run. The average of the minimum hourly values from the three test runs establishes your site-specific pH, pressure drop, and liquid flow rate operating limits for the wet scrubber.

(5) For units with an ESP in combination with wet scrubbers, you must measure the pH, pressure drop, and liquid flow rate of the wet scrubber during the HCl performance test and you must measure the voltage and current of each ESP collection field during the Hg and PM performance test. You would then be required to calculate the minimum hourly value of these parameters for each of the three test runs. The average of the three minimum hourly values would establish your site-specific minimum pH, pressure drop, and liquid flow rate operating limit for the wet scrubber and the minimum voltage and current operating limits for the ESP.

(6) For liquid oil-fired or LEEs, you would be required to measure the Hg, Cl, and HAP metal content of the inlet fuel that was burned during the Hg, HCl and HF, and HAP metal emissions performance testing. The fuel content value for each of these compounds is your maximum fuel inlet operating limit for each of these compounds.

(7) For units with FFs, you must measure the output of the bag leak detection system (BLDS) sensor (whether in terms of relative or absolute PM loading) during each Hg, PM, and metals performance test. You would then be required to calculate the minimum hourly value of this output for each test run. The average of the minimum hourly BLDS values would establish your site-specific maximum BLDS sensor output and current operating limit for the BLDS.

(8) For units with an ESP, you must measure the voltage and current of each ESP collection field during each Hg, PM, and metals performance test. You would then be required to calculate the minimum hourly value of these parameters for each test run. The average of the three minimum hourly values would establish your site-specific minimum voltage and current operating limits for the ESP.

(9) Note that you establish the minimum (or maximum) hourly average operating limits based on measurements done during performance testing; should you desire to have differing operating limits which correspond to other loads, you should conduct testing at those other loads to determine those other operating limits.

Instead of operating limits for dioxins and furans and non-dioxin/furan organic HAP, we are proposing that owners or operators of units submit documentation that a "tune up" meeting the requirements of the proposed rule was conducted. Such a "tune-up" would require the owner or operator of a unit to:

(1) As applicable, inspect the burner, and clean or replace any components of the burner as necessary (you may delay the burner inspection until the next scheduled unit shutdown, but you must inspect each burner at least once every 18 months);

(2) Inspect the flame pattern, as applicable, and make any adjustments to the burner necessary to optimize the flame pattern. The adjustment should be consistent with the manufacturer's specifications, if available;

(3) Inspect the system controlling the air-to-fuel ratio, as applicable, and ensure that it is correctly calibrated and functioning properly;

(4) Optimize total emissions of CO and NO_X. This optimization should be consistent with the manufacturer's specifications, if available;

(5) Measure the concentration in the effluent stream of CO and NO_X in ppm, by volume, and oxygen in volume percent, before and after the adjustments are made (measurements may be either on a dry or wet basis, as long as it is the same basis before and after the adjustments are made); and

(6) Maintain on-site and submit, if requested by the Administrator, an annual report containing:

(i) The concentrations of CO and NO_X in the effluent stream in ppm by volume, and oxygen in volume percent, measured before and after the adjustments of the EGU;

(ii) A description of any corrective actions taken as a part of the combustion adjustment; and

(iii) The type and amount of fuel used over the 12 months prior to the adjustment, but only if the unit was physically and legally capable of using more than one type of fuel during that period.

Many, if not most, EGUs have planned annual outages, and the inspection and tune up procedure was designed to occur during this normal occurrence. Nonetheless, we are proposing a maximum period of up to 18 months between inspections and tune ups to account for those EGUs with unusual planned outage schedules. We seek comment on the appropriateness of this period.

J. What are the continuous compliance requirements?

1. Continuous Compliance Requirements

To demonstrate continuous compliance with the emission limitations, we are proposing the following requirements:

(1) For IGCC units or units combusting coal or solid oil-derived fuel and electing to use PM as a surrogate for non-Hg HAP metals, you would install, certify, and operate PM CEMS in

accordance with Performance Specification (PS) 11 in Appendix B to 40 CFR part 60, and to perform periodic, on-going quality assurance (QA) testing of the CEMS according to QA Procedure 2 in Appendix F to 40 CFR part 60. An operating limit (PM concentration) would be set during performance testing for initial compliance; the hourly average PM concentrations would be averaged on a rolling 30 boiler operating day basis. Each 30 boiler operating day average would have to meet the PM operating limit.

IGCC units or units combusting coal or solid oil-derived fuel and electing to comply with the total non-Hg HAP metals emissions limit, would demonstrate continuous compliance by conducting Method 29 testing every two months if PM controls are installed or every month if no PM controls are installed. As an option, PM CEMS could be used to demonstrate continuous compliance as described above. IGCC units or units combusting coal or solid oil-derived fuel and electing to comply with the individual non-Hg HAP metals emissions limits, would have the option to demonstrate continuous compliance only by conducting Method 29; again, testing would be conducted every two months if PM controls are installed or every month if no PM controls are installed. IGCC units or units combusting coal or solid oil-derived fuel with PM controls but not using PM CEMS to demonstrate continuous compliance would also be required to conduct parameter monitoring and meet operating limits established during performance testing. Units using FFs would be required to install and operate BLDS. As mentioned earlier, the BLDS output would be required to be less than or equivalent with the average BLDS output determined during performance testing. Moreover, a source owner or operator would be required to operate the FFs such that the sum duration of alarms from the BLDS would not exceed 5 percent of the process operating time during any 6-month period. Units using an ESP would be required to install and operate sensors to detect and measure current and voltage for each field in the ESP. As mentioned earlier, the current and voltage values for each field in the ESP would need to be greater than or equivalent with the maximum test run averages determined during performance testing.

(2) For IGCC units or units combusting coal or solid oil-derived fuel, we are proposing that Hg CEMS or sorbent trap monitoring systems be installed, certified, maintained, operated, and quality-assured in accordance with proposed Appendix A to 40 CFR part 63, subpart UUUUU, and that Hg levels (averaged on a rolling 30 boiler operating day basis) be maintained at or below the applicable Hg emissions limit. Given that the proposed Appendix A QA procedures for Hg CEMS are based on a Hg emissions trading rule (CAMR), and this proposal is for a not-to-exceed NESHAP, EPA solicits comments on whether these Hg CEMS QA procedures should be adjusted. Further, we are proposing that each pair of sorbent traps be used to collect Hg samples for no more than 14 operating days, and that the traps be replaced in a timely manner to ensure that Hg emissions are sampled continuously. In requiring continuous Hg monitoring, we assumed that most, if not all, of the units that were subject to CAMR purchased Hg CEMS and/or sorbent trap systems prior to the rule vacatur, and that many of these monitoring systems are currently installed and in operation. The Agency's conclusion regarding Hg CEMS purchases and installation is based in part on the significant number of units (over 100) that voluntarily opted to submit Hg CEMS data for the 2010 ICR. We also considered the steps taken by the industry to prepare for CAMR, and the fact that many state regulations currently require the installation and operation of Hg CEMS in order to demonstrate compliance with various SIP and consent decrees.

(3) For new or reconstructed IGCC units or coal-fired or solid oil-derived fuel-fired units with SO_2 emissions control devices, we are proposing two compliance options for acid gases. First, an SO_2 or an HCl CEMS could be installed and certified. We are proposing that the SO_2 monitor be certified and quality-assured according to 40 CFR part 75 or PS 2 or 6 and Procedure 1 in Appendices B and F, respectively, of 40 CFR part 60. We believe this is reasonable, because nearly all utility units are subject to the ARP, and coal-fired ARP units already have certified SO_2 monitors in place that meet Part 75 requirements. For HCl monitors, PS 15 or 6 in Appendix B to 40 CFR part 60 would be used for certification and, tentatively, Procedure 1 of Appendix F to 40 CFR part 60 would be followed for on-going QA.

Note that a PS specific to HCl CEMS has not been promulgated yet, but we expect to publish one prior to the compliance date of this proposed rule and to make it available to source owners and operators. In the meantime, the FTIR CEMS (PS 15) may be an appropriate choice for measuring continuous HCl concentrations. Hourly data from the SO_2 or HCl monitor would be converted to the units of the emission standard and averaged on a rolling 30 boiler operating day basis. Each 30 boiler operating day average would have to meet the applicable SO_2 or HCl limit.

The second option that we are proposing would be for units without SO_2 or HCl CEMS but with SO_2 emissions control devices. For these units, parameter operating limits, established during performance testing, would be monitored continuously, along with the already-mentioned frequent (every 2 months) HCl emissions testing. For units with wet FGD scrubbers, we are proposing that you monitor pressure drop and liquid flow rate of the scrubber continuously and maintain 12-hour block averages at or above the operating limits established during the performance test. You must monitor the pH of the scrubber and maintain the 12-hour block average at or above the operating limit established during the performance test to demonstrate continuous compliance with the HCl emission limits.

For units with dry scrubbers or DSI systems, we are proposing that you continuously monitor the sorbent injection rate and maintain it at or above the operating limits established during the performance tests.

(4) For liquid oil-fired units, we are proposing to require testing as follows. HAP metals testing would be performed every other month if a unit has a non-Hg HAP metals control device, and every month if the unit does not have a non-Hg metals control device. We propose to require HCl and HF testing every other month if a unit has HCl and HF control devices, and monthly if the unit does not have these emissions controls.

(5) For each unit using PM, HCl, SO_2, or Hg CEMS for continuous compliance, we are proposing that you install, certify, maintain, operate and quality-assure the additional CEMS (*e.g.,* CEMS that measure oxygen or CO_2 concentration, stack gas flow rate, and moisture content) needed to convert pollutant concentrations to units of the emission standards or operating limits. Where appropriate, we have proposed that these additional CEMS may be certified and quality-assured according to 40 CFR part 75. Once again, we believe this is reasonable because almost all coal-fired utility units already have these monitors in place, under the ARP.

(6) For limited-use liquid oil combustion units, we are proposing that those units be allowed to demonstrate compliance with the Hg emission limit, the HAP metals, or the HCl and HF emissions limits separately or in

combination based on fuel analysis rather than performance stack testing, upon request by you and approval by the Administrator. Such a request would require the owner/operator to follow the requirements in 40 CFR 63.8(f), which presents the procedure for submitting a request to the Administrator to use alternative monitoring, and, among other things, explain why a unit should be considered for eligibility, including, but not limited to, use over the previous 5 years and projected use over the next 5 years. Approval from the Administrator would be required before you could use this alternative monitoring procedure. If approval were granted by the Administrator, we are proposing that you would maintain fuel records that demonstrate that you burned no new fuels or fuels from a new supplier such that the Hg, the non-Hg HAP metal, the fluorine, or the chlorine content of the inlet fuel was maintained at or below your maximum fuel Hg, non-Hg HAP metal, fluorine, or chlorine content operating limit set during the performance stack tests. If you plan to burn a new fuel, a fuel from a new mixture, or a new supplier's fuel that differs from what was burned during the initial performance tests, then you must recalculate the maximum Hg, HAP metal, fluorine, and/or chlorine input anticipated from the new fuels based on supplier data or own fuel analysis, using the methodology specified in Table 6 of this proposed rule. If the results of recalculating the inputs exceed the average content levels established during the initial test then, you must conduct a new performance test(s) to demonstrate continuous compliance with the applicable emission limit.

(7) For existing LEEs, we are proposing that those units that qualify be allowed to demonstrate continuous compliance with the Hg emission limit, the non-Hg HAP metals, or the HCl emissions limits separately or in combination based on fuel analysis rather than performance stack testing. LEE would be those units where performance testing demonstrates that emissions are less than 50 percent of the PM or HCl emissions limits, less than 10 percent of the Hg emissions limits, or less than 22.0 pounds per year (lb/yr) of Hg. Note that for LEE emissions testing for total PM, total HAP metals, individual HAP metals, HCl, and HF, the required minimum sampling volumes shown in Table 2 or this proposed rule must be increased nominally by a factor of two. The LEE cutoff of 22.0 lb/yr represents about 5 percent of the nationwide Hg mass emissions from the coal-fired units represented in the 2010 ICR. Most of the units that emit less than 22.0 lb/yr would be smaller units with relatively low heat input capacities. The 22.0 lb/yr threshold was determined by summing the total Hg emissions from the 1,091 units in operation and determining the 5th percentile of the total mass. The units were then ranked by their annual Hg mass emissions. At the point in the rankings where the cumulative mass was equivalent to the 5th percentile value calculated, the annual mass emissions of that unit (22.0 lb/yr) was selected as the threshold. Five percent of the total mass was chosen as a cut point because comments received on CAMR indicated that 5 percent of the total mass was a reasonable cut point. At this 5th percentile threshold, approximately 394 smaller units out of the 1,091 total units would have the option of using this Hg monitoring methodology.

Under the proposed alternative compliance option, you would maintain fuel records that demonstrate that you burned no new fuels or fuels from a new supplier such that the Hg, non-Hg HAP metal, or the chlorine content of the inlet fuel was maintained at or below your maximum fuel Hg, non-Hg HAP metal, fluorine, or chlorine content operating limit set during the performance stack tests. If you plan to burn a new fuel, a fuel from a new mixture, or a new supplier's fuel that differs from what was burned during the initial performance tests, then you must recalculate the maximum Hg, non-Hg HAP metal, and/or the maximum chlorine input anticipated from the new fuels based on supplier data or own fuel analysis, using the methodology specified in Table 6 of this proposed rule. If the results of recalculating the inputs exceed the average content levels established during the initial test then, you must conduct a new performance test(s) to demonstrate continuous compliance with the applicable emission limit.

(8) For all EGUs, we are proposing that you maintain daily records of fuel use that demonstrate that you have burned no materials that are considered solid waste.

If an owner or operator would like to use a control device other than the ones specified in this section to comply with this proposed rule, the owner/operator should follow the requirements in 40 CFR 63.8(f), which establishes the procedure for submitting a request to the Administrator to use alternative monitoring.

2. Streamlined Approach to Continuous Compliance

EPA is proposing to simplify compliance with the proposed rule by harmonizing its monitoring and reporting requirements, to the extent possible, with those of 40 CFR part 75. With a few exceptions, the utility industry is already required to monitor and report hourly emissions data according to Part 75 under the Title IV ARP and other emissions trading programs. The Agency is, therefore, proposing Hg monitoring requirements that are consistent with Part 75 and similar to those that had been promulgated for the vacated CAMR regulation. We are proposing that hourly Hg emission data be reported to EPA electronically, on a quarterly basis. At this time, we are proposing not to apply the same electronic reporting for certification and QA test data from HCl or PM CEMS but are instead relying on the existing provisions in Parts 60 and 63.

Our rationale for this is as follows. We considered two possible Hg monitoring and reporting options to demonstrate continuous compliance. The first option would be for Hg CEMS and sorbent trap systems to be certified and quality-assured according to PS 12A and 12B in Appendix B to 40 CFR part 60. Procedure 5 in Appendix F to Part 60 would be followed for on-going QA. Semiannual hard copy reporting of "deviations" would be required, along with data assessment reports (DARs). Even though this option would not require electronic reporting of either hourly Hg emissions data or QA test results, it still would require affected sources to have a data handling system (DAHS) that: (1) Is programmed to capture data from the Hg CEMS; (2) uses the criteria in Appendix F to Part 60 to validate or invalidate the Hg data; (3) calculates hourly averages for Hg concentration and for the auxiliary parameters (*e.g.,* flow rate, O_2 or CO_2 concentration) that are needed to convert Hg concentrations to the units of the emission standard; (4) calculates 30 boiler operating day rolling average Hg emission rates; and (5) identifies any deviations that must be reported to the Agency.

The second option would simply integrate Hg emissions data and QA test results into the existing Part 75-compliant DAHS that is installed at the vast majority of the coal-fired EGUs. We obtained feedback from several DAHS vendors indicating that the cost of modifying the existing Part 75 DAHS systems to accommodate hourly reporting of Hg CEMS and sorbent trap

data would be similar, and in some cases, less than the cost of the first option. Also, there would be little or no cost to industry for the flow rate, CO_2, or O_2, and moisture monitors needed to convert Hg concentration to the units of the standard, because, as previously noted, almost all of the EGUs already have these monitors in place. In view of these considerations, we have decided in favor of this second option for Hg.

Requiring the reporting of hourly Hg emissions data from EGUs would be advantageous, both to EPA and industry. The DAHS could be automated to demonstrate compliance with the standard on a continuous basis. The data could then be submitted to the Agency electronically, thereby eliminating the need for the Agency to request additional information for compliance determinations and program implementation.

Today's proposed rule would also require quarterly electronic reporting of hourly SO_2 CEMS data, PM CEMS data, and HCl CEMS data (for sources electing to demonstrate continuous compliance using certified CEMS), as well as electronic summaries of emission test results (for sources demonstrating continuous compliance by periodic stack testing), and semiannual electronic "deviation" reports (for sources that monitor parameters or assess compliance in other ways). As discussed in detail in the paragraphs below, requiring electronic reporting in lieu of traditional hard copy reports would enable utility sources to demonstrate continuous compliance with the applicable emissions limitations of this proposed rule, using a process that is familiar to them and consistent with the procedures that they currently follow to comply with ARP and other mass-based emissions trading programs.

Currently, utility sources that are subject to the ARP and other EPA emissions trading programs use the Emissions Collection and Monitoring Plan System (ECMPS) to process and evaluate continuous monitoring data and other information in an electronic format for submittal to the Agency. In addition to receiving hourly emissions data, this system supports the maintenance of an electronic "monitoring plan" and is designed to receive the results of monitoring system certification test data and ongoing QA test data. Emissions data are submitted quarterly through ECMPS, and users are given feedback on the quality of their reports before the data are submitted. This allows them to make corrections or otherwise address issues with the reports prior to making their official submittals. Despite the stringency and thoroughness of the data validation checks performed by the ECMPS software, the implementation of this process has resulted in very few errant reports being submitted each quarter. This has saved both industry and the Agency countless hours of valuable time, which in years past, was spent troubleshooting errors in the quarterly reports. EPA is proposing to apply the same basic quarterly data collection process to Hg, HCl, and PM CEMS data, and to modify ECMPS to be able to accommodate summarized stack test data and semiannual deviation reports.

The ECMPS process divides electronic data into three categories, the first of which is monitoring plan data. The electronic monitoring plan is maintained as a separate entity, and can be updated at any time, if necessary. The monitoring plan documents the characteristics of the affected units (*e.g.,* unit type, rated heat input capacity, *etc.*) and the monitoring methodology that is used for each parameter (*e.g.,* CEMS). The monitoring plan also describes the type of monitoring equipment used (hardware and software components), includes analyzer span and range settings, and provides other useful information. Nearly all coal-fired EGUs are subject to the ARP and have established electronic monitoring plans that describe their required SO_2, flow rate, CO_2 or O_2, and, in some cases, moisture monitoring systems. The ECMPS monitoring plan format could easily accommodate this same type of information for Hg, HCl, and PM CEMS, with the addition of a few codes for the new parameters.

The second type of data collected through ECMPS is certification and QA test data. This includes data from linearity checks, relative accuracy test audits (RATAs), cycle time tests, 7-day calibration error tests, and a number of other QA tests that are required to validate the emissions data. The results of these tests can be submitted to EPA as soon as the results are received, with one notable exception. Daily calibration error tests are not treated as individual QA tests, due to the large number of records generated each quarter. Rather, these tests are included in the quarterly electronic reports, along with the hourly emissions data.

The ECMPS system is already set up to receive and process certification and QA data from SO_2, CO_2, O_2, flow rate, and moisture monitoring systems that are installed, certified, maintained, operated, and quality-assured according to Part 75. EGUs routinely submit these data to EPA under the ARP and other emissions trading programs.

To accommodate the certification and QA tests for Hg CEMS and sorbent trap monitoring systems, relatively few changes would have to be made to the structure and functionality of ECMPS, because most of the tests are the same ones that are required for other gas monitors. More substantive changes to the system would be required to receive and process the certification and QA tests required for HCl and PM CEMS, and to receive summarized stack test results, and the types of data provided in semiannual compliance reports; however, we believe these changes are implementable. Another modification that could be made to ECMPS would be to disable the Part 75 bias test (which is required for certain types of monitors under EPA's emissions trading programs) for Hg, HCl, and PM CEMS, if bias adjustment of the data from these monitors is believed to be unnecessary or inappropriate for compliance with the proposed rule. We are proposing to make this modification and solicit comment on it.

The third type of data collected through ECMPS is the emissions data, which, as previously noted, is reported on a quarterly schedule. The reports must be submitted within 30 days after the end of each calendar quarter. The emissions data format requires hourly reporting of all measured and calculated emissions values, in a standardized electronic format. Direct measurements made with CEMS, such as gas concentrations, are reported in a Monitor Hourly Value (MHV) record. A typical MHV record for gas concentration includes data fields for: (1) The parameter monitored (*e.g.,* SO_2); (2) the unadjusted and bias-adjusted hourly concentration values (note that if bias adjustment is not required, only the unadjusted hourly value is reported); (3) the source of the data, *i.e.,* a code indicating either that each reported hourly concentration is a quality-assured value from a primary or backup monitor, or that quality-assured data were not obtained for the hour; and (4) the percent monitor availability (PMA), which is updated hour-by-hour. This generic record structure could easily accommodate hourly average measurements from Hg, HCl, and PM CEMS.

The ECMPS reporting structure is quite flexible, which makes it useful for assessing compliance with various emission limits. The Derived Hourly Value (DHV) record provides the means whereby a wide variety of quantities that can be calculated from the hourly emissions data can be reported. For instance, if an emission limit is expressed in units of lb/MMBtu, the

DHV record can be used to report hourly pollutant concentration values in these units of measure, since the lb/MMBtu values can be derived from the hourly pollutant and diluent gas (CO_2 or O_2) concentrations reported in the MHV records. ECMPS can also accommodate multiple DHV records for a given hour in which more than one derived value is required to be reported. Therefore, if hourly Hg, HCl, and PM concentration data are reported through ECMPS, the DHV record, in conjunction with the appropriate equations and auxiliary information such as heat input and electrical load (all of which are reported hourly in the emissions reports), could be used to report hourly data in the units of the emission standards (*e.g.,* lb/MMBtu, lb/TBtu, lb/GWh, *etc.*).

The ARP and other emissions trading programs that report emissions data to EPA using Part 75 are required to provide a complete data record. Emissions data are required to be reported for every unit operating hour. When CEMS are out of service, substitute data must be reported to fill in the gaps. However, for the purposes of compliance with a NESHAP, reporting substitute data during monitor outages may not be appropriate. Today's proposed rule would not require the use of missing data substitution for Hg monitoring systems. We intend to extend this concept to HCl and PM CEMS, if we receive data from those types of monitors. Hours when a monitoring system is out of service would simply be counted as hours of monitor down time, to be counted against the percent monitor availability. We solicit comment on this proposed approach.

As previously stated, EPA is proposing to add Hg monitoring provisions as Appendix A to 40 CFR part 63, subpart UUUUU, and to require these provisions to be used to document continuous compliance with the proposed rule, for units that cannot qualify as LEEs. Proposed Appendix A would consolidate all of the Hg monitoring provisions in one place. Today's proposed rule would provide two basic Hg continuous monitoring options: Hg CEMS and sorbent trap monitoring systems.

Proposed Appendix A would require the Hg CEMS and sorbent trap monitoring systems to be initially certified and then to undergo periodic QA testing. The certification tests required for the Hg CEMS would be a 7-day calibration error test, a linearity check, using NIST-traceable elemental Hg standards, a 3-level system integrity check (similar to a linearity check), using NIST-traceable oxidized Hg standards, a cycle time test, and a RATA. A bias test would not be required. The performance specifications for the required certification tests, which are summarized in Table A–1 of proposed Appendix A, would be the same as those that were published in support of CAMR. For ongoing QA of the Hg CEMS, proposed Appendix A would require daily calibrations, weekly single-point system integrity checks, quarterly linearity checks (or 3-level system integrity checks) and annual RATAs. These QA test requirements and the applicable performance criteria, which, once again, are the same as the ones we had published in support of CAMR, are summarized in Table A–3 in proposed Appendix A. For sorbent trap monitoring systems, a RATA would be required for initial certification, and annual RATAs would be required for ongoing QA. The performance specification for these RATAs would be the same as for the RATAs of the Hg CEMS. Bias adjustment of the measured Hg concentration data would not be required. However, for routine, day-to-day operation of the sorbent trap system, proposed Appendix A provides the owner or operator the option to follow the procedures and QA/QC criteria in PS 12B in Appendix B to 40 CFR part 60. Performance Specification 12B is nearly identical to the vacated Appendix K to Part 75. The Part 75 concepts of: (1) Determining the due dates for certain QA tests on the basis of "QA operating quarters"; and (2) grace periods for certain QA tests, would apply to both Hg CEMS and sorbent trap monitoring systems.

Mercury concentrations measured by Hg CEMS or sorbent trap systems would be used together with hourly flow rate, diluent gas, moisture, and electrical load data, to express the Hg emissions in units of the proposed rule, on an hourly basis (*i.e.,* lb/TBtu or lb/GWh). Proposed section 6 of Appendix A provides the necessary equations for these unit conversions. These hourly values could then be "rolled up" within the DAHS into the proper 30 boiler operating day averaging period, to assess compliance. A report function could be added to ECMPS to show the results of these calculations, and to highlight any values in excess of the standard.

The proposed rule would specify record keeping and reporting requirements for the two Hg monitoring methodologies. Essential information pertaining to each methodology would be represented in the electronic monitoring plan. Hourly Hg concentration data would be reported in all cases. However, for the sorbent trap option, a single Hg concentration value would be reported for extended periods of time, since a sorbent trap monitoring system does not provide hour-by-hour measurements of Hg concentration. The results of all required certification and QA tests would also be reported. Missing data substitution for Hg concentration would not be required for hours in which quality-assured data are not obtained. Special codes would be reported to identify these hours.

Of all the types of NESHAP compliance data that could be brought into ECMPS (*i.e.,* CEMS data, stack test summaries, and semiannual compliance reports), the easiest to implement would be the Hg monitoring data, because, as noted above, we had published specific Hg monitoring and reporting provisions in Part 75 prior to the vacatur of CAMR, and had made considerable progress in modifying ECMPS to receive these data. Today's proposed rule provides detailed regulatory language in proposed Appendix A to 40 CFR part 63, subpart UUUUU, pertaining to the monitoring of Hg emissions and reporting the data electronically.

We are requesting comment on these proposed compliance approaches and on whether our proposed "one stop shopping" approach to reporting MACT compliance information electronically is desirable. In your comments, we ask you to consider the merits of requiring reporting of results from PM CEMS and HCl CEMS to ECMPS and consequent development of a monitoring and reporting scheme for these CEMS that is compatible with ECMPS. If you favor our proposed streamlined continuous compliance approach, we request input on how to make the reporting process user-friendly and efficient. EPA believes that if the essential data that are reported under the Agency's emissions trading programs and the proposed rule are all sent to the same place, this could significantly reduce the burden on industry and bring about national consistency in assessing compliance.

K. What are the notification, recordkeeping, and reporting requirements?

All new and existing sources would be required to comply with certain requirements of the General Provisions (40 CFR part 63, subpart A), which are identified in Table 10 of this proposed rule. The General Provisions include specific requirements for notifications, recordkeeping, and reporting.

Each owner or operator would be required to submit a notification of compliance status report, as required by § 63.9(h) of the General Provisions. This

proposed rule would require the owner or operator to include in the notification of compliance status report certifications of compliance with rule requirements.

Except for units that use CEMS for continuous compliance, semiannual compliance reports, as required by § 63.10(e)(3) of subpart A, would be required for semiannual reporting periods, indicating whether or not a deviation from any of the requirements in the rule occurred, and whether or not any process changes occurred and compliance certifications were reevaluated. As previously discussed, we are proposing to use the ECMPS system to receive the essential information contained in these semiannual compliance reports electronically. For units using CEMS, quarterly electronic reporting of hourly Hg and associated (O_2, CO_2, flow rate, and/or moisture) monitoring data, as well as electronic reporting of monitoring plan data and certification and QA test results, would be required, also through ECMPS.

This proposed rule would require records to demonstrate compliance with each emission limit and work practice standard. These recordkeeping requirements are specified directly in the General Provisions to 40 CFR part 63, and are identified in Table 9 of this proposed rule.

Records of continuously monitored parameter data for a control device if a device is used to control the emissions or CEMS data would be required.

We are proposing that you must keep the following records:

(1) All reports and notifications submitted to comply with this proposed rule.

(2) Continuous monitoring data as required in this proposed rule.

(3) Each instance in which you did not meet each emission limit and each operating limit (*i.e.,* deviations from this proposed rule).

(4) Daily hours of operation by each source.

(5) Total fuel use by each affected liquid oil-fired source electing to comply with an emission limit based on fuel analysis for each 30 boiler operating day period along with a description of the fuel, the total fuel usage amounts and units of measure, and information on the supplier and original source of the fuel.

(6) Calculations and supporting information of chlorine fuel input, as required in this proposed rule, for each affected liquid oil-fired source with an applicable HCl emission limit.

(7) Calculations and supporting information of Hg and HAP metal fuel input, as required in this proposed rule, for each affected source with an applicable Hg and HAP metal (or PM) emission limit.

(8) A signed statement, as required in this proposed rule, indicating that you burned no new fuel type and no new fuel mixture or that the recalculation of chlorine input demonstrated that the new fuel or new mixture still meets chlorine fuel input levels, for each affected source with an applicable HCl emission limit.

(9) A signed statement, as required in this proposed rule, indicating that you burned no new fuels and no new fuel mixture or that the recalculation of Hg and/or HAP metal fuel input demonstrated that the new fuel or new fuel mixture still meets the Hg and/or HAP metal fuel input levels, for each affected source with an applicable Hg and/or HAP metal emission limit.

(10) A copy of the results of all performance tests, fuel analyses, performance evaluations, or other compliance demonstrations conducted to demonstrate initial or continuous compliance with this proposed rule.

(11) A copy of your site-specific monitoring plan developed for this proposed rule as specified in 63 CFR 63.8(e), if applicable.

We are also proposing to require that you submit the following additional notifications:

(1) Notifications required by the General Provisions.

(2) Initial Notification no later than 120 calendar days after you become subject to this subpart.

(3) Notification of Intent to conduct performance tests and/or compliance demonstration at least 60 calendar days before the performance test and/or compliance demonstration is scheduled.

(4) Notification of Compliance Status 60 calendar days following completion of the performance test and/or compliance demonstration.

L. Submission of Emissions Test Results to EPA

EPA must have performance test data to conduct effective reviews of CAA sections 112 and 129 standards, as well as for many other purposes including compliance determinations, emission factor development, and annual emission rate determinations. In conducting these required reviews, EPA has found it ineffective and time consuming, not only for us, but also for regulatory agencies and source owners and operators, 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, EPA is presenting a step to increase the ease and efficiency of data submittal and improve data accessibility. Specifically, EPA is proposing that owners and operators of EGUs submit electronic copies of required performance test reports to 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 would be able to transmit the electronic report through EPA's Central Data Exchange (CDX) 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 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, 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 what testing information would be required. Another important proposed benefit of submitting these data to 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 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 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, 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 EPA significant time, money, and effort while also improving the quality of emission inventories and, as a result, air quality regulations. In this action, as previously stated, EPA is proposing a step to improve data accessibility. Specifically, we are proposing that you submit, to an EPA database, electronic copies of reports of certain performance tests required under the proposed rule through our ERT; however, we request comment on the feasibility of using a modified version of ECMPS, which the utility industry already is familiar with and uses for reporting under the Title IV ARP and other emissions trading programs, to provide this information.

ECPMS could be modified to allow electronic submission of periodic data, including, but not limited to, 30 day averages of parametric data, 30 day average fuel content data, stack test results, and performance of tune up records. These data will need to be submitted and reviewed, and we believe electronic submission via a specific format already in use for other submissions eases understanding, affords transparency, ensures consistency, and saves time and money.

We seek comment on alternatives to the use of a modified ECMPS for electronic data submission. Commenters should describe alternate means for supplying these data and information on associated reliability, the cost, the ease of implementation, and the transparency to the public of the information.

V. Rationale for This Proposed NESHAP

A. How did EPA determine which subcategories and sources would be regulated under this proposed NESHAP?

As stated above, EPA added coal- and oil-fired EGUs to the CAA section 112(c) list on December 20, 2000. This proposed rule proposes standards for the subcategories of coal- and oil-fired EGUs as defined in this preamble. Sources in these subcategories may potentially include combustion units that are at times IB units or solid waste incineration units subject to other standards under CAA section 112 or to standards under CAA section 129. We request comment on whether the proposed rule should address how sources that change fuel input (*e.g.,* burn solid waste or biomass), or otherwise take action that would change the source's applicability (*e.g.,* stop or start selling electricity to the utility power distribution system), must demonstrate continuous compliance with all applicable standards. Note that units subject to another CAA section 112 standard or to solid waste incineration unit standards established under CAA section 129 are not subject to this proposed rule during the period of time they are subject to the other CAA section 112 or 129 standards.

The scope of the EGU source category is limited to coal- and oil-fired units meeting the CAA section 112(a)(8) definition and the proposed definition of "fossil fuel fired" discussed above.

Under CAA section 112(d)(1), the Administrator has the discretion to "* * * distinguish among classes, types, and sizes of sources within a category or subcategory in establishing * * *" standards. For example, differences between given types of units can lead to corresponding differences in the nature of emissions and the technical feasibility of applying emission control techniques. In the December 2000 listing, EPA initially established and listed two subcategories of fossil fuel-fired EGUs: Coal-fired and oil-fired. The design, operating, and emissions information that EPA has reviewed indicates that there are significant design and operational differences in unit design that distinguish different types of EGUs within these two subcategories, and, because of these differences, we have proposed to establish two subcategories for coal-fired EGUs, two subcategories for oil-fired EGUs, and an IGCC subcategory for gasified coal and solid oil-derived fuel (*e.g.,* petroleum coke), as stated above and discussed further below.

EGU systems are designed for specific fuel types and will encounter problems if a fuel with characteristics other than those originally specified is fired. Changes to the fuel type would generally require extensive changes to the fuel handling and feeding system (*e.g.,* liquid oil-fired EGUs cannot fire solid fuel without extensive modification). Additionally, the burners and combustion chamber would need to be redesigned and modified to handle different fuel types and account for increases or decreases in the fuel volume. In some cases, the changes may reduce the capacity and efficiency of the EGU. An additional effect of these changes would be extensive retrofitting needed to operate using a different fuel. These effects must be considered whether one is discussing two fuel types (*e.g.,* coal vs. oil) or two ranks or forms of fuel within a given fuel type (*e.g.,* gasified vs. solid coal or solid oil-derived fuel).

The design of the EGU, which is dependent in part on the type of fuel being burned, impacts the degree of combustion, and may impact the level and kind of HAP emissions. EGUs emit a number of different types of HAP emissions. Organic HAP are formed from incomplete combustion and are primarily influenced by the design and operation of the unit. The degree of combustion may be greatly influenced by three general factors: Time, turbulence, and temperature. On the other hand, the amount of fuel-borne HAP (non-Hg metals, Hg, and acid gases) is primarily dependent upon the composition of the fuel. These fuel-borne HAP emissions generally can be controlled by either changing the fuel property before combustion or by removing the HAP from the flue gas after combustion.

We first examined the HAP emissions results to determine if subcategorization by unit design type was warranted. Normally, any basis for subcategorizing (*e.g.,* type of unit) must be related to an effect on emissions, rather than some difference which does not affect emissions performance. We concluded that the data were sufficient for one or

more HAP for determining that a distinguishable difference in performance exists based on the following five unit design types: coal-fired units designed to burn coal with greater than or equal to 8,300 Btu/lb (for Hg emissions only); coal-fired units designed to burn coal with less than 8,300 Btu/lb (for Hg emissions only); IGCC units; liquid oil units; and solid oil-derived units. For other types of units noted above (*e.g.,* FBC, stoker, wall-fired, tangential (T)-fired), there was no significant difference in emissions that would justify subcategorization. Because in the five cases different types of units have different emission characteristics for one or more HAP, we have determined that these types of units should be subcategorized. Accordingly, we propose to subcategorize EGUs based on the five unit types.

For Hg emissions from coal-fired units, we have determined that different emission limits for the two subcategories are warranted. There were no EGUs designed to burn a nonagglomerating virgin coal having a calorific value (moist, mineral matter-free basis) of 19,305 kJ/kg (8,300 Btu/lb) or less in an EGU with a height-to-depth ratio of 3.82 or greater among the top performing 12 percent of sources for Hg emissions, indicating a difference in the emissions for this HAP from these types of units. The boiler of a coal-fired EGU designed to burn coal with that heat value is bigger than a boiler designed to burn coals with higher heat values to account for the larger volume of coal that must be combusted to generate the desired level of electricity. Because the emissions of Hg are different between these two subcategories, we are proposing to establish different Hg emission limits for the two coal-fired subcategories. For all other HAP from these two subcategories of coal-fired units, the data did not show any difference in the level of the HAP emissions and, therefore, we have determined that it is not reasonable to establish separate emissions limits for the other HAP.

For all HAP emissions from oil-fired units, we have determined that two subcategories are warranted. EGUs designed to burn a solid fuel (*e.g.,* petroleum coke) derived from the refining of petroleum (oil) are of a different design, and have different emissions, than those designed to burn liquid oil. In addition, EGUs designed to burn liquid oil cannot, in fact, accommodate the solid fuel derived from the refining of oil. Thus, we are proposing to subcategorize oil-fired EGUs into two subcategories based on the type of units designed to burn oil in its different physical states.

EGUs employing IGCC technology combust a synthetic gas derived from solid coal or solid oil-derived fuel. No solid fuel is directly combusted in the unit during operation (although a coal- or solid oil-derived fuel is fired), and both the process and the emissions from IGCC units are different from units that combust solid coal or petroleum coke. Thus, we are proposing to subcategorize IGCC units as a distinct type of EGU for this proposed rule. EPA solicits comment on these subcategorization approaches.

Additional subcategories have been evaluated, including those suggested by the SERs serving on the SBAR established under the SBREFA. These suggestions include subcategorization of lignite coal vs. other coal ranks; subcategorization of Fort Union lignite coal vs. Gulf Coast lignite coal vs. other coal ranks; subcategorization by EGU size (*i.e.,* MWe); subcategorization of base load vs. peaking units (*e.g.,* low capacity utilization units); subcategorization of wall-fired vs. T-fired units; and subcategorization of small, non-profit-owned units vs. other units.

EPA has reviewed the available data and does not believe that these suggested approaches merit subcategorization. For example, there are both large and small units among the EGUs comprising the top performing 12 percent of sources and small entities may own minor portions of large EGUs and/or individual EGUs themselves. In addition, because the proposed format of the standards is lb/MMBtu (or TBtu for Hg), the size should only affect the rate at which a unit generates electricity and, with a lower electricity generation rate, there is less fuel consumption and, therefore, less emissions of fuel-borne HAP (i.e., acid gas and metal HAP). Further, with the exception of IGCC and as noted elsewhere regarding boiler height-to-depth ratio, there is no indication that EGU type (*e.g.,* wall-fired, T-fired, FBC, stoker-fired), has any impact on HAP emission levels as all of these types are within the top performing 12 percent of sources. There is also little indication that operating load has any significant impact on HAP emissions or on the type of control demonstrated on the unit.

EPA solicits comment on whether we should further subcategorize the source category. In commenting, commenters should provide a definition or threshold that would distinguish the proposed subcategory from the remainder of the EGU population and, to support this distinction, an estimate of how many EGUs would be impacted by the subcategorization approach, the amount of time such impacted units operate, the extent to which such impacted units would move out of and back into the subcategory in a given year (or other period of time), and any other information the commenter believes is pertinent. For example, if a commenter were to suggest subcategorizing low capacity factor or peaking units from the remainder of the EGU population, in addition to the suggested threshold capacity factor, information on the number of such units that would be impacted, the amount of time such units are running (capacity utilization), the extent to which such units are low capacity factor units in a given year vs. operating at a higher capacity factor, and data from the units when operating both as peaking units and as baseload units (among other information) would need to be provided to support the comment. Commenters should further explain how their suggested subcategorizations constitute a "size," "type," or "class," as those terms are used in CAA section 112(d)(1).

B. How did EPA select the format for this proposed rule?

This proposed rule includes numerical emission limitations for PM, Hg, and HCl (as well as for other alternate constituents or groups). Numerical emission limitations provide flexibility for the regulated community, because they allow a regulated source to choose any control technology, approach, or technique to meet the emission limitations, rather than requiring each unit to use a prescribed control method that may not be appropriate in each case.

We are proposing numerical emission rate limitations as a mass of pollutant emitted per heat energy input to the EGU for the fuel-borne HAP for existing sources. The most typical units for the limitations are lb/MMBtu of heat input (or, in the case of Hg, lb/TBtu). The mass per heat input units are consistent with other Federal and many state EGU regulations and allows easy comparison between such requirements. Additionally, this proposed rule contains an option to monitor inlet chlorine, fluorine, non-Hg metal, and Hg content in the liquid oil to meet outlet emission rate limitations. This is reasonable because oil-fired units may choose to remove these fuel-borne HAP from the oil before combustion in lieu of installing air pollution control devices. This option can only be done on a mass basis by liquid oil-fired EGUs. We request comment on the viability of this approach for IGCC units.

We are proposing numerical emission rate limitations as a mass of pollutant emitted per megawatt- or gigawatt-hour (MWh or GWh) gross output from the EGU for the fuel-borne HAP for new sources and as an alternate format for existing sources. An outlet numerical emission limit is also consistent with the format of other regulations (*e.g.,* the EGU NSPS, 40 CFR part 60, subpart Da).

EGUs can emit a wide variety of compounds, depending on the fuel burned. Because of the large number of HAP potentially present and the disparity in the quantity and quality of the emissions information available, EPA grouped the HAP into five categories based on available information about the pollutants and on experiences gained on other NESHAP: Hg, non-Hg metallic HAP, inorganic (i.e., acid gas) HAP, non-dioxin/furan organic HAP, and dioxin/furan organic HAP. The pollutants within each group have similar characteristics and can be controlled with the same techniques. For example, non-Hg metallic HAP can be controlled with PM controls. We chose to look at Hg separately from other metallic HAP due to its different chemical characteristics and its different control technology feasibility.

Next, EPA identified compounds that could be used as surrogates for all the compounds in each pollutant category. Existing technologies that have been installed to control emissions of other (*e.g.,* criteria) pollutants are expected to provide coincidental or "co-benefit" control of some of the HAP. For example, technologies for PM control (*e.g.,* ESP, FF) can effectively remove Hg that is bound to particulate such as injected sorbents, unburned carbon, or other fly ash particles. Similarly, PM control technologies are effective at reducing emissions of the non-Hg metal HAP that are present in the fly ash as solid particulate. Flue gas desulfurization technologies typically remove SO_2 using acid-base neutralization reactions (usually via contact with alkaline solids or slurries). This approach is also effective for other acid gases as well, including the acid gas HAP (HCl, HF, Cl_2, and HCN).

EGUs routinely measure operating parameters (flow rates, temperatures, pH, pressure drop, etc.) and flue gas composition for process control and monitoring and for emission compliance and verification. Some of these routinely or more easily-measured parameters or components may serve as surrogates or indicators of the level of control of one or more of the HAP that may not be easily or routinely measured or monitored. The use of more easily-measured components or process conditions as surrogates or predictors of HAP emissions can greatly simplify monitoring requirements under this proposed rule and, in some cases, provide more reliable results.

In order to evaluate potential surrogacy relationships, the EPA Office of Research and Development (ORD), in collaboration with OAR, conducted a series of tests in the Agency's Multipollutant Control Research Facility (MPCRF), a pilot-scale combustion and control technology research facility located at EPA's Research Triangle Park campus in North Carolina. The combustor is rated at 4 MMBtu/hr (approximately 1.2 megawatt-thermal (MW_t)). It is capable of firing all ranks of pulverized coal, natural gas, and fuel oil. The facility is equipped with low NO_X burners and an SCR unit for NO_X control. The system can be configured to allow the flue gas to flow through either an ESP or a FF for PM control. The facility also uses a wet lime-based FGD scrubber for control of SO_2 emissions. The system is well equipped with CEMS for on-line measurement of O_2, CO_2, NO_X (nitrogen oxide, NO, and nitrogen dioxide, NO_2), SO_2, CO, Hg, and THC. There are multiple sampling ports throughout the flue gas flow path. The facility is designed for ease of modification so that various control technologies and configurations can be tested. The facility has a series of heat exchangers to remove heat such that the flow path of the flue gas has a similar time-temperature profile to that seen in a typical full-scale coal-fired EGU.

Eleven independent tests were performed in the MPCRF in order to examine potential surrogacy relationships. Three types of coal (eastern bituminous, subbituminous, and Gulf Coast lignite) were tested. The PM control was also varied; in some tests, the ESP was used whereas the FF was used in others. Three potential surrogacy relationships were examined during the testing program. The potential for use of PM control as a surrogate for the control of the non-Hg metal HAP (Be, As, Cd, Co, Cr, Mn, Ni, Pb, Sb, and Se) was examined. The potential for use of HCl or SO_2 control as a surrogate for other acid gases (HCl, HF, Cl_2) was studied. In addition, several potential surrogate relationships were examined for the non-dioxin/furan organic HAP. No surrogate studies were conducted for Hg; we have not identified any surrogates for Hg and, thus, are regulating Hg directly. No surrogacy studies were conducted for dioxin/furan organic HAP because we believed the S:Cl ratio in the flue gas would be greater than 1.0, meaning that the formation of dioxins/furans would be inhibited. Moreover, it was anticipated that levels of these compounds would be very low, and, as mentioned earlier in the preamble, the approved 2010 ICR sampling methods for dioxin/furan organic HAP required 8-hour sampling periods; such a long sampling period was not practical in our pilot system and would not be practical on a continuous basis.

The results of the program indicated that the control of all non-Hg metal HAP (except Se) was consistently similar to the control of the bulk total PM (PM_{total}). The average PM_{total} control during the tests was 99.5 percent. All of the non-Hg metal HAP were controlled along with the PM_{total} at levels greater than 95 percent for measurements taken for particulate control using both the ESP and the FF. Average control for the test series for each of the metals was (for all coals and all configurations): Sb—95.3 percent; As—98.0 percent; Be—98.5 percent; Cd—98.7 percent; Cr—98.0 percent; Co—99.3 percent; Pb—99.2 percent; Mn—99.5 percent; and Ni—97.6 percent.

The results for Se control were less consistent. When subbituminous coal was fired, the control of Se was consistently very good (average 98.9 percent), regardless of the PM control device being used. When using the FF as the primary PM control device, the Se control was consistently very good (average 99.2 percent) regardless of the coal being fired. Control of Se when the ESP was the primary PM control device was variable. When subbituminous coal was fired, the control of Se through the ESP was greater than 99 percent. When lignite was fired, the control through the ESP was about 80 percent. However, when the eastern bituminous coal was fired, the Se control through the ESP ranged from zero to 73 percent.

The variability in the performance of Se control with coal rank and PM control device can be explained by the known behavior and chemistry of Se in the combustion and flue gas environments. Selenium is a metalloid that sits just below sulfur on the periodic table and is, chemically, very similar to sulfur. In the high temperature combustion environment, Se is likely to be present as gas phase SeO_2 (as, similarly, sulfur is likely to be present as gaseous SO_2). Much like SO_2, SeO_2 is a weak acid gas. The testing in the pilot-scale combustion facility showed that Se in the flue gas entering the PM control device tended to be predominantly in the gas phase (55 to 90 percent) when firing eastern bituminous coal and predominantly in the solid phase when firing subbituminous coal (greater than 95

percent) and Gulf Coast lignite (80 percent). This is explained by the large difference in calcium (Ca) content of those fuels. The ash from the bituminous coal contained 1.4 weight percent Ca, whereas the ashes from the subbituminous coal and Gulf Coast lignite contained Ca at 10.0 weight percent and 9.0 weight percent, respectively. The alkaline Ca in the fly ash effectively neutralized the SeO_2 acid gas, forming a particulate that is easily removed in the PM control device. The bituminous fuel contained insufficient free Ca to completely neutralize the SeO_2 and the much increased levels of SO_2 in that flue gas. The good performance through the FF (regardless of the fuel being fired) can be attributed to the increased contact between the gas stream and the filter cake on the FF. This allows more of the SeO_2 to adsorb or condense on fly ash particles—either alkaline particles or unburned carbon. Because SeO_2 behaves very similarly to its sulfur analog, SO_2, it can be expected to also be removed effectively in standard FGD technologies (wet scrubbers, dry scrubbers, DSI, etc.). Therefore, Se will either fall in to the category of "non-Hg metal HAP" and be effectively removed in a PM control device, or it will fall into the category of "acid gas HAP" as gaseous SeO_2 and be effectively removed using FGD technologies.

Two of the 11 tests were specifically designated for testing of surrogacy relationships relating to the acid gas HAP. Eastern bituminous coal was fired and duct samples were taken upstream and downstream of the lime-based wet FGD scrubber. Those tests showed, as expected, very high levels of control for HCl (greater than 99.9 percent control). The control of HF was greater than 92 percent for the first run and greater than 76 percent for the second run. The control of Cl_2 was greater than 76 percent for the first run and greater than 92 percent for the second run. (Note that both of these control efficiencies were likely much higher than the reported values because the outlet measurements were below the MDL for both HF and Cl_2. The control efficiencies were calculated using the MDL value.) The control efficiency for SO_2 for the runs was greater than 98 percent.

Tests were also conducted to examine potential surrogacy relationships for the non-dioxin/furan organic HAP. The amounts of Hg, non-Hg metals, HCl, HF, and Cl_2 in the flue gas are directly related to the amounts of Hg, non-Hg metals, chlorine, and fluorine in the coal. Control of these components generally requires downstream control technology. However, the presence of the organics in the flue gas is not related to the composition of the fuel but rather they are a result of incomplete or poor combustion. Control of the organics is often achieved by improving combustion conditions to minimize formation or to maximize destruction of the organics in the combustion environment.

During the pilot-scale tests, sampling was conducted for semi-volatile and volatile organic HAP and aldehydes. On-line monitors also collected data on THC, CO, O_2, and other processing conditions. Total hydrocarbons and CO have been used previously as surrogates for the presence of non-dioxin/furan organics. Carbon monoxide has often been used as an indicator of combustion conditions. Under conditions of ideal combustion, a carbon-based or hydrocarbon fuel will completely oxidize to produce only CO_2 and water. Under conditions of incomplete or non-ideal combustion, a greater amount of CO will be formed.

With complex carbon-based fuels, combustion is rarely ideal and some CO and concomitant organic compounds are expected to be formed. Because CO and organics are both products of poor combustion, it is logical to expect that limiting the concentration of CO would also limit the production of organics. However, it is very difficult to develop direct correlations between the average concentration of CO and the amount of organics produced during the prescribed sampling period in the MPCRF (which was 4 hours for the pilot-scale tests described here). This is especially true for low values of CO as one would expect corresponding low quantities of organics to be produced. Samples of coal combustion flue gas have mostly shown very low quantities of the organic compounds of interest. Some of the flue gas organics may also be destroyed in the high temperature post combustion zone (whereas the CO would remain stable). Semi-volatile organics may also condense on PM and be removed in the PM control device.

The average CO from the pilot-scale tests ranged from 23 to 137 ppm for the bituminous coals tests, from 43 to 48 ppm for the subbituminous coal tests and from 93 to 129 ppm for the Gulf Coast lignite tests. However, it was difficult to correlate that concentration to the quantity of organics produced for several reasons. The most difficult problems are associated with the large number of potential organics that can be produced (both those on the HAP list and those that are not on the HAP list). This is further complicated by the organic compounds tending to be at or below the MDL in coal combustion flue gas samples. Further, there are complications associated with the CO concentration values. Some of the runs with very similar average concentrations of CO had very different maximum concentrations of CO (*i.e.,* some of the runs had much more stable emissions of CO whereas others had some excursions, or "spikes," in CO concentration). For example, one of the bituminous runs had an average CO concentration of 69 ppm but a maximum concentration of 1,260 ppm (due to a single "spike" of CO during a short upset). Comparatively, another bituminous run had a higher average CO concentration at 137 ppm but a much lower maximum CO value at 360 ppm.

In the pilot tests, the THC measurement was inadequate as the detection limit of the instrument was much too high to detect changes in the very low concentrations of hydrocarbons in the flue gas.

Based on the testing described above and the emissions data received under the 2010 ICR, we are proposing surrogate standards for the non-Hg metallic HAP and the non-metallic inorganic (acid gas) HAP. For the non-Hg metallic HAP, we chose to use PM as a surrogate. Most, if not all, non-Hg metallic HAP emitted from combustion sources will appear on the flue gas fly-ash. Therefore, the same control techniques that would be used to control the fly-ash PM will control non-Hg metallic HAP. PM was also chosen instead of specific metallic HAP because all fuels do not emit the same type and amount of metallic HAP but most generally emit PM that includes some amount and combination of all the metallic HAP. The use of PM as a surrogate will also eliminate the cost of performance testing to comply with numerous standards for individual non-Hg metals. Because non-Hg metallic HAP may preferentially partition to the small size particles (i.e., fine particle enrichment), we considered using $PM_{2.5}$ as the surrogate, but we determined that total PM (filterable (*i.e.,* $PM_{2.5}$) plus condensable) was the more appropriate surrogate for two reasons. The test method (201A) for measuring $PM_{2.5}$ is only applicable for use in exhaust stacks without entrained water droplets. Therefore, the test method for measuring $PM_{2.5}$ is not applicable for units equipped with wet scrubbers which are in use at many EGUs today and may be necessary at some additional units to achieve the proposed HCl emission limitations. Thus, we are proposing to use total PM, instead of $PM_{2.5}$, as the surrogate for non-Hg metals. However, as discussed elsewhere, we are also proposing

alternative individual non-Hg metallic HAP emission limitations as well as total non-Hg metallic HAP emission limitations for all subcategories (total metal HAP emission limitation for the liquid oil-fired subcategory).

For non-metallic inorganic (acid gas) HAP, EPA is proposing setting an HCl standard and using HCl as a surrogate for the other non-metallic inorganic HAP for all subcategories except the liquid oil-fired subcategory. The emissions test information available to EPA indicate that the primary non-metallic inorganic HAP emitted from EGUs are acid gases, with HCl present in the largest amounts. Other inorganic compounds emitted are found in smaller quantities. As discussed earlier, control technologies that reduce HCl indiscriminately control other inorganic compounds such as Cl_2 and other acid gases (*e.g.,* HF, HCN, SeO_2). Thus, the best controls for HCl are also the best controls for other inorganic acid gas HAP. Therefore, HCl is a good surrogate for inorganic HAP because controlling HCl will result in control of other inorganic HAP emissions (as no liquid oil-fired EGU has an FGD system installed, there is no effective control in use and the surrogacy argument is invalid). As discussed elsewhere, EPA is also proposing to set an alternative equivalent SO_2 emission limit for coal-fired EGUs with some form of FGD system installed as: (1) The controls for SO_2 are also effective controls for HCl and the other acid gas-HAP; and (2) most, if not all, EGUs already have SO_2 CEMS in-place. Thus, SO_2 CEMS could serve as the compliance monitoring mechanism for such units. EGUs without an FGD system installed would not be able to use the alternate SO_2 emission limit, and EGUs must operate their FGD at all times to use the alternate SO_2 emission limit.

EPA is proposing work practice standards for non-dioxin/furan organic and dioxin/furan organic HAP. The significant majority of measured emissions from EGUs of these HAP were below the detection levels of the EPA test methods, and, as such, EPA considers it impracticable to reliably measure emissions from these units. As the majority of measurements are so low, doubt is cast on the true levels of emissions that were measured during the tests. Overall, 1,552 out of 2,334, total test runs for dioxin/furan organic HAP contained data below the detection level for one or more congeners, or 67 percent of the entire data set. In several cases, all of the data for a given run were below the detection level; in few cases were the data for a given run all above the detection level. For the non-dioxin/furan organic HAP, for the individual HAP or constituent, between 57 and 89 percent of the run data were comprised of values below the detection level. Overall, the available test methods are technically challenged, to the point of providing results that are questionable for all of the organic HAP. For example, for the 2010 ICR testing, EPA extended the sampling time to 8 hours in an attempt to obtain data above the MDL. However, even with this extended sampling time, such data were not obtained making it questionable that any amount of effort, and, thus, expense, would make the tests viable. Based on the difficulties with accurate measurements at the levels of organic HAP encountered from EGUs and the economics associated with units trying to apply measurement methodology to test for compliance with numerical limits, we are proposing a work practice standard under CAA section 112(h).

We do not believe that this approach is inconsistent with that taken on other NESHAP where we also had issues with data at or below the MDL (*e.g.,* Portland Cement NESHAP; Boiler NESHAP). In the case of the Portland Cement NESHAP, the MDL issue was with HCl (a single compound HAP as opposed to the oftentimes multi-congener organic HAP), and in data from only 3 of 21 facilities. As noted elsewhere in this preamble, we dealt with similar MDL issues with HCl in establishing the limits in this proposed rule. In the case of the Boiler NESHAP, the MDL issue was with the organic HAP. For that rulemaking, the required sampling time during conducting of the associated ICR was 4 hours, as opposed to the 8 hours required in the 2010 ICR. Further, a review of the data indicates that the dioxin/furan HAP levels (a component of the organic HAP) were at least 7 times greater, on average, for coal-fired IB units and 3 times greater, on average, for oil-fired IB units than from similar EGUs. We think this difference is significant from a testing feasibility perspective.

For all the other HAP, as stated above, we are proposing to establish numerical emission rate limitations; however, we did consider using a percent reduction format for Hg (*e.g.,* the percent efficiency of the control device, the percent reduction over some input amount, *etc.*). We determined not to propose a percent reduction standard for several reasons. The percent reduction format for Hg and other HAP emissions would not have addressed EPA's desire to promote, and give credit for, coal preparation practices that remove Hg and other HAP before firing (*i.e.,* coal washing or beneficiation, actions that may be taken at the mine site rather than at the site of the EGU). Also, to account for the coal preparation practices, sources would be required to track the HAP concentrations in coal from the mine to the stack, and not just before and after the control device(s), and such an approach would be difficult to implement and enforce. In addition, we do not have the data necessary to establish percent reduction standards for HAP at this time. Depending on what was considered to be the "inlet" and the degree to which precombustion removal of HAP was desired to be included in the calculation, EPA would need (*e.g.*) the HAP content of the coal as it left the mine face, as it entered the coal preparation facility, as it left the coal preparation facility, as it entered the EGU, as it entered the control devices, and as it left the stack to be able to establish percent reduction standards. EPA believes, however, that an emission rate format allows for, and promotes, the use of precombustion HAP removal processes because such practices will help sources assure they will comply with the proposed standard. Furthermore, a percent reduction requirement would limit the flexibility of the regulated community by requiring the use of a control device. In addition, as discussed in the Portland Cement NESHAP (75 FR 55,002; September 9, 2010), EPA believes that a percent reduction format negates the contribution of HAP inputs to EGU performance and, thus, may be inconsistent with the DC Circuit Court's rulings as restated in *Brick MACT* (479 F.3d at 880) that say, in effect, that it is the emissions achieved in practice (*i.e.,* emissions to the atmosphere) that matter, not how one achieves those emissions. The 2010 ICR data confirm the point relating to plant inputs likely playing a role in emissions in that they indicate that some EGUs are achieving lower Hg emissions to the atmosphere at a lower Hg percent reduction (*e.g.,* 75 to 85 percent) than are other EGUs with higher percent reductions (*e.g.,* 90 percent or greater). For all of these reasons, we are proposing to establish numerical emission standards for HAP emissions from EGUs with the exception of the organic HAP standard which is in the form of work practices.

C. How did EPA determine the proposed emission limitations for existing EGUs?

All standards established pursuant to CAA section 112(d)(2) must reflect MACT, the maximum degree of reduction in emissions of air pollutants that the Administrator, taking into consideration the cost of achieving such emissions reductions, and any nonair

quality health and environmental impacts and energy requirements, determines is achievable for each category. For existing sources, MACT cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources (for which the Administrator has emissions information) for categories and subcategories with 30 or more sources or the best performing 5 sources for subcategories with less than 30 sources. This requirement determines the MACT floor for existing EGUs. However, EPA may not consider costs or other impacts in determining the MACT floor. EPA must consider cost, nonair quality health and environmental impacts, and energy requirements in connection with any standards that are more stringent than the MACT floor (beyond-the-floor controls).

D. How did EPA determine the MACT floors for existing EGUs?

EPA must consider available emissions information to determine the MACT floors. For each pollutant, we calculated the MACT floor for a subcategory of sources by ranking all the available emissions data obtained through the 2010 ICR[158] from units within the subcategory from lowest emissions to highest emissions (on a lb/MMBtu basis), and then taking the numerical average of the test results from the best performing (lowest emitting) 12 percent of sources.

Therefore, the MACT floor limits for each of the HAP and HAP surrogates are calculated based on the performance of the lowest emitting (best performing) sources in each of the subcategories.

As discussed above, for coal-fired EGUs, EPA established the MACT floors for non-Hg metallic HAP and non-metallic inorganic (acid gas) HAP based on sources representing 12 percent of the number of sources in the subcategory. For Hg from coal-fired units and all HAP from oil-fired units, EPA established the MACT floors based on sources representing 12 percent of the sources for which the Agency had emissions information. The IGCC and solid oil-fired EGU subcategories each have less than 30 units so the MACT floors were determined using the 5 best performing sources (or 2 sources for IGCC because there are only 2 such sources in the subcategory). The MACT floor limitations for each of the HAP and HAP surrogates (PM, Hg, and HCl) are calculated based on the performance of the lowest emitting (best performing) sources in each of the subcategories. The initial sort of the respective data to determine the MACT floor pool for analysis was made on the "lb/MMBtu" formatted data; this same pool of EGUs was then used for the "lb/MWh" analysis and all analyses were based on the data provided through the 2010 ICR.

We used the emissions data for those best performing affected sources to determine the emission limitations to be proposed, with an accounting for variability. EPA must exercise its judgment, based on an evaluation of the available data, to determine the level of emissions control that has been achieved by the best performing sources under variable conditions. The DC Circuit Court has recognized that EPA may consider variability in estimating the degree of emission reduction achieved by best-performing sources in setting MACT floors. *See Mossville Envt'l Action Now* v. *EPA,* 370 F.3d 1232, 1241–42 (DC Cir 2004) (holding EPA may consider emission variability in estimating performance achieved by best-performing sources and may set the floor at a level that best-performing source can expect to meet "every day and under all operating conditions").

In determining the MACT floor limitations, we first determine the floor, which is the level achieved in practice by the average of the top 12 percent of similar sources for subcategories with more than 30 sources. We then assess variability of the best performers by using a statistical formula designed to estimate a MACT floor level that is achieved by the average of the best performing sources with some confidence (*e.g.,* 99 percent confidence) if the best performing sources were able to replicate the compliance tests in our data base. Specifically, the MACT floor limit is an upper prediction limit (UPL) calculated with the Student's t-test using the TINV function in Microsoft Excel. The Student's t-test has also been used in other EPA rulemakings (*e.g.,* NSPS for Hospital/Medical/Infectious Waste Incinerators; NESHAP for IB and Portland Cement) in accounting for variability. A prediction interval for a future observation, or an average of future observations, is an interval that will, with a specified degree of confidence, contain the next (or the average of some other pre-specified number of) randomly selected observation(s) from a population. In other words, the prediction interval estimates what the range of future values, or average of future values, will be, based upon present or past background samples taken. Given this definition, the UPL represents the value which we can expect the mean of three future observations (3-run average) to fall below, based upon the results of an independent sample from the same population. In other words, if we were to randomly select a future test condition from any of these sources (*i.e.,* average of 3 runs), we can be 99 percent confident that the reported level will fall at or below the UPL value. To calculate the UPL, we used the average (or sample mean) and an estimate of the standard deviation, which are two statistical measures calculated from the available data. The average is a measure of centrality of the distribution. Symmetric distributions such as the normal are centered around the average. The standard deviation is a common measure of the dispersion of the data set around the average.

We first determined the distribution of the emissions data for the best-performing 12 percent of units within each subcategory prior to calculating UPL values. When the sample size is 15 or larger, one can assume based on the Central Limit theorem, that the sampling distribution of the average or sampling mean of emission data is approximately normal, regardless of the parent distribution of the data. This assumption justifies selecting the normal-distribution based UPL equation for calculating the floor.

When the sample size is smaller than 15 and the distribution of the data is unknown, the Central Limit Theorem can't be used to support the normality assumption. Statistical tests of the kurtosis, skewness, and goodness of fit are then used to evaluate the normality assumption. To determine the distribution of the best performing dataset, we first computed the skewness and kurtosis statistics and then conducted the appropriate small-sample hypothesis tests. The skewness statistic (S) characterizes the degree of asymmetry of a given data distribution. Normally distributed data have a skewness of zero (0). A skewness statistic that is greater (less) than 0 indicates that the data are asymmetrically distributed with a right (left) tail extending towards positive (negative) values. Further, the standard error of the skewness statistic (SES) can be approximated by SES = SQRT(6/N) where N is the sample size. According to the small sample skewness hypothesis test, if S is greater than two times the SES, the data distribution can be considered non-normal. The kurtosis statistic (K) characterizes the degree of peakedness or flatness of a given data distribution in comparison to a normal distribution. Normally distributed data have a kurtosis of 0. A kurtosis statistic that is greater (less) than 0 indicates a

[158] Earlier data were not used due to concerns related to changes in test and analytical methods.

relatively peaked (flat) distribution. Further, the standard error of the kurtosis statistic (SEK) can be approximated by SEK = SQRT(24/N) where N is the sample size. According to the small sample kurtosis hypothesis test, if K is greater than two times the SEK, the data distribution is typically considered to be non-normal.

The skewness and kurtosis hypothesis tests were applied to both the reported test values and the lognormal values (using the LN() function in Excel) of the reported test values. If S and K of the reported data set were both less than twice the SES and SEK, respectively, the dataset was classified as normally distributed. If neither S nor K, or only one of these statistics, were less than twice the SES or SEK, respectively, then we looked at the skewness and kurtosis hypothesis test results conducted for the natural log-transformed data. Then, the distribution most similar to a normal distribution was selected as the basis for calculating the UPL. If the results of the skewness and kurtosis hypothesis tests were mixed for the reported values and the natural log-transformed reported values, we chose the normal distribution to be conservative. We believe this approach is more accurate and obtained more representative results than a more simplistic normal distribution assumption.

Because some of the MACT floor emission limitations are based on the average of a 3-run test, and compliance with these limitations will be based on the same, the UPL for data considered to be normally distributed is calculated by:

$$UPL = \overline{x} + t(0.99, n-1) \times \sqrt{s^2 \times \left(\frac{1}{n} + \frac{1}{m}\right)}$$

Where:

n = the number of test runs

m = the number of test runs in the compliance average

□ = mean of the data from top performing sources calculated as

$$\overline{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

t(0.99, n–1) is the 99th percentile of the T-Student distribution with n–1 degrees of freedom

s^2 = variance of the data from top performing sources calculated as

$$s^2 = \frac{1}{n-1}\left\{\sum_{i=1}^{N}\left(x_i - \overline{x}\right)^2\right\}$$

This calculation was performed using the following Excel function:

Normal distribution: 99% UPL = AVERAGE(Test Runs in Top 12%) + [STDEV(Test Runs in Top 12%) × TINV(2 × probability, n–1 degrees of freedom)*SQRT((1/n)+(1/3))], for a one-tailed t-value (with 2 × probability), probability of 0.01, and sample size of n.

Data from only a single unit was used in establishing the new-source floor. Analysis based solely in these single-data-point-per-unit observations does not capture any within source variability. When additional information (*e.g.,* stack averages) from the past 5 years (from the 2010 ICR) was available, we combined the current and past data and calculated an estimate of the variance term, s^2, that intends to include the within and between source variability. The most recent data (*e.g.,* single floor average) were used to calculate the average in the UPL equation. The UPL equation for this case was calculated as:

$$\overline{x} + t_{df,.99}\sqrt{s^2\left(\frac{1}{N} + \frac{1}{m}\right)}$$

UPL =

Where:

m = the number of test runs in the compliance average

N = the number of units involved in calculating the average (a single measurement (*e.g.,* floor average) per unit)

n_i = number of data points (*e.g.,* stack averages) collected in the past for the i^{th} source

$$n = N + \sum_{i=1}^{N} n_i$$

number of data points (floor average plus stack averages) available to calculate the variance

df = n − 1

x_i = current information (*e.g.,* single floor average) for the i^{th} source

y_i = past information (*e.g.,* stack average) for the i^{th} source

m = the number of future test runs in the compliance average

□ = mean of the data from top performing sources calculated as

$$\overline{x} = \frac{1}{N}\sum_{i=1}^{N} x_i$$

$\bar{\bar{x}}$ is the grand mean (mean of the current and past information from the top performing sources) calculated as

$$\bar{\bar{x}} = \frac{1}{n}\left(\sum_{i=1}^{N} x_i + \sum_{i=1}^{N}\sum_{j=1}^{n_i} y_i\right)$$

s^2 = variance calculated as

$$s^2 = \frac{1}{n-1}\left\{\sum_{i=1}^{N}\left(x_i - \bar{\bar{x}}\right)^2 + \sum_{i=1}^{N}\sum_{j=1}^{n_i}\left(y_{ij} - \bar{\bar{x}}\right)^2\right\}$$

$t_{df,.99}$ = quantile t-distribution with *df* degrees of freedom at 99 percent confidence level *df* = degrees of freedom = n − 1

The calculation of this UPL was performed using the following Excel function:

Normal distribution: 99% UPL = AVERAGE(Test Runs in Top 12%) + [STDEV(Test Runs in Top 12%, stack averages) × TINV(2 × probability, (n–1) degrees of freedom)*SQRT((1/N)+(⅓))], for a one-tailed t-value (with 2 × probability), probability of 0.01, and sample size of n.

The UPL, to test compliance based on a 3-run average and assuming log-normal data, is calculated by (Bhaumik and Gibbons, 2004):

$$UPL = e^{\hat{\mu}+\frac{\hat{\sigma}^2}{2}} + \frac{z_{.99}}{m}\sqrt{me^{2\hat{\mu}+\hat{\sigma}^2}\left(e^{\hat{\sigma}^2}-1\right) + m^2 e^{2\hat{\mu}+\hat{\sigma}^2}\left(\frac{\hat{\sigma}^2}{n} + \frac{\hat{\sigma}^4}{2(n-1)}\right)}$$

Where:

m = the number of test runs in the compliance average

n = the number of test runs

$\hat{\mu}$ = the average of the log transformed data from the top performing sources calculated as

$$\hat{\mu} = \frac{\sum_{i=1}^{n}\log\left(y_i\right)}{n}$$

$\hat{\sigma}$ = the variance estimate of the log transformed data from the top performing sources calculated as:

$$\hat{\sigma}^2 = \frac{\sum_{i=1}^{n}\left(\log\left(y_i\right) - \hat{\mu}\right)^2}{n-1}$$

z_{99} = the 99th-percentile of the log-normal distribution estimated using the trapezoidal rule approach from the following equation

$$\int_0^{z_{.99}}\left(1 - \frac{\sqrt{\beta_{1z}}}{6}\left(3z - z^3\right) + \frac{\left(\beta_{2z}-3\right)\left(3 - 6z^2 + z^4\right)}{24}\right)\phi(z) = .99$$

The calculation of the log-normal based UPL was performed using the following Excel function:

Normal distribution: 99% UPL = EXP(AVERAGE(LN(Test Runs in Top 12%)) + VAR(LN(Test Runs in Top 12%))/2) + (99TH-PERCENTILE LOGNORMAL DISTRIBUTION/m)*

SQRT(m*EXP(2* AVERAGE(LN(Test Runs in Top 12%))+ VAR(LN(Test Runs in Top 12%)))*(EXP(VAR(LN(Test Runs in Top 12%)))-1)+m∧2* EXP(2* AVERAGE(LN(Test Runs in Top 12%))+ VAR(LN(Test Runs in Top 12%)))*(VAR(LN(Test Runs in Top 12%))/n+ VAR(LN(Test Runs in Top 12%))∧2/(2*(n–1)))).

The 99th percentile of the log-normal distribution, $z_{.99}$, was calculated following Bhaumik and Gibbons (2004).

Test method measurement imprecision can also be a component of data variability. At very low emissions levels, as encountered in some of the data used to support this proposed rule, the inherent imprecision in the pollutant measurement method has a large influence on the reliability of the data underlying the regulatory floor or beyond-the-floor emissions limit. Of particular concern are those data that are reported near or below a test method's pollutant detection capability. In our guidance for reporting pollutant emissions used to support this proposed rule, we specified the criteria for determining test-specific MDL. Those criteria ensure that there is about a 1 percent probability of an error in deciding that the pollutant measured at the MDL is present when in fact it was absent. Such a probability is also called a false positive or the alpha, Type I, error. Another view of this probability is that one is 99 percent certain of the presence of the pollutant measured at the MDL. Because of matrix effects, laboratory techniques, sample size, and other factors, MDLs normally vary from test to test. We requested sources to identify (*i.e.,* flag) data which were measured below the MDL and to report those values as equal to the test-specific MDL.

Variability of data due to measurement imprecision is inherently and reasonably addressed in calculating the floor emissions limit when the data distribution, which would include the results of all tests, is significantly above the MDL. Should the data distribution shift such that some or many test results are below the MDL but are reported as MDL values, as is the case for some of our database, then other techniques need to be used to account for data variability. Indeed, under such a shift, the distribution becomes truncated on the lower end, leading to an artificial overabundance of values occurring at the MDL. Such an artificial overabundance of values could, if not adjusted, lead to erroneous floor calculations; those unadjusted floor calculations may be higher than otherwise expected, because no values reported below the MDL are included in the calculation. There is a concern that a floor emissions limit based on a truncated data base may not account adequately for data measurement variability and that a floor emissions limit calculated using values at or near the MDL may not account adequately for data measurement variability, because the measurement error associated with those values provides a large degree of uncertainty—up to 100 percent.

Despite our concern that accounting for measurement imprecision should be an important consideration in calculating the floor emissions limit, we did not adjust the calculated floor for the data used for this proposed rule because we do not know how to develop such an adjustment. We remain open to considering approaches for making such an adjustment, particularly when those approaches acknowledge our inability to detect with certainty those values below the MDL. We request comment on approaches suitable to account for measurement variability in establishing the floor emissions limit when based on measurements at or near the MDL.

As noted above, the confidence level that a value measured at the detection level is greater than 0 is about 99 percent. The expected measurement imprecision for an emissions value occurring at or near the MDL is about 40 to 50 percent. Pollutant measurement imprecision decreases to a consistent relative 10 to 15 percent for values measured at a level about three times the MDL.[159] One approach that we believe could be applied to account for measurement variability would require defining a MDL that is representative of the data used in establishing the floor emissions limitations and also minimizes the influence of an outlier test-specific MDL value. The first step in this approach would be to identify the highest test-specific MDL reported in a data set that is also equal to or less than the floor emissions limit calculated for the data set. This approach has the advantage of relying on the data collected to develop the floor emissions limit while to some degree minimizing the effect of a test(s) with an inordinately high MDL (*e.g.,* the sample volume was too small, the laboratory technique was insufficiently sensitive, or the procedure for determining the detection level was other than that specified).

The second step would be to determine the value equal to three times the representative MDL and compare it to the calculated floor emissions limit. If three times the representative MDL were less than the calculated floor emissions limit, we would conclude that measurement variability is adequately addressed and we would not adjust the calculated floor emissions limit. If, on the other hand, the value equal to three times the representative MDL were greater than the calculated floor emissions limit, we would conclude that the calculated floor emissions limit does not account entirely for measurement variability. We then would use the value equal to three times the MDL in place of the calculated floor emissions limit to ensure that the floor emissions limit accounts for measurement variability. This adjusted value would ensure measurement variability is adequately addressed in the floor or the emissions limit. This check was part of the variability analysis for all new MACT floors that had below detection level (BDL) or detection level limited (DLL) run data present in the best controlled data set and resulted in the MACT floors being three times the MDL rather than the UPL in a limited number of instances (see "MACT Floor Analysis (2011) for the Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-fired Electric Utility Steam Generating Units" (MACT Floor Memo) in the docket). We request comment on this approach.

As previously discussed, we account for variability in setting floors, not only because variability is an element of performance, but because it is reasonable to assess best performance over time. For example, we know that the HAP emission data from the best performing units are, for the most part, short-term averages, and that the actual HAP emissions from those sources will vary over time. If we do not account for this variability, we would expect that even the units that perform better than the floor on average could potentially exceed the floor emission levels a part of the time which would mean that variability was not properly taken into account. This variability may include the day-to-day variability in the total fuel-borne HAP input to each unit; variability of the sampling and analysis methods; and variability resulting from site-to-site differences for the best

[159] American Society of Mechanical Engineers, *Reference Method Accuracy and Precision (ReMAP): Phase 1, Precision of Manual Stack Emission Measurements,* CRTD Vol. 60, February 2001.

performing units. EPA's consideration of variability accounted for that variability exhibited by the data representing multiple units and multiple data values for a given unit (where available). We calculated the MACT floor based on the UPL (upper 99th percentile) as described earlier from the average performance of the best performing units, Student's t-factor, and the variability of the best performing units.

We believe this approach reasonably ensures that the emission limits selected as the MACT floors adequately represent the level of emissions actually achieved by the average of the units in the top 12 percent, considering operational variability of those units. Both the analysis of the measured emissions from units representative of the top 12 percent, and the variability analysis, are reasonably designed to provide a meaningful estimate of the average performance, or central tendency, of the best controlled 12 percent of units in a given subcategory.

A detailed discussion of the MACT floor methodology is presented in the MACT Floor Memo in the docket.

1. Determination of MACT for the Fuel-borne HAP for Existing Sources

In developing the proposed MACT floor for the fuel-borne HAP (non-Hg metals, acid gases, and Hg), as described earlier, we are using PM as a surrogate for non-Hg metallic HAP (except for the liquid oil-fired subcategory) and HCl as a surrogate for the acid gases (except for the liquid oil-fired subcategory). Table 12 of this preamble presents the number of units in each of the subcategories, along with the number of units comprising the best performing units (top 12 percent). Table 12 of this preamble also shows the average emission level of the top 12 percent, and the MACT floor including consideration of variability (99 percent UPL of top 12 percent).

TABLE 12—SUMMARY OF MACT FLOOR RESULTS FOR EXISTING SOURCES

Subcategory	Parameter	PM	HCl	Mercury
Coal-fired unit designed for coal ≥ 8,300 Btu/lb.	No. of sources in subcategory ...	1,091	1,091	1,061.
	No. in MACT floor	131	131	40.
	Avg. of top 12%	0.02 lb/MMBtu	0.0003 lb/MMBtu	0.01 lb/TBtu.
	99% UPL of top 12%	0.030 lb/MMBtu	0.0020 lb/MMBtu	1.0 lb/TBtu.
Coal-fired unit designed for coal < 8,300 Btu/lb.	No. of sources in subcategory ...	1,091	1,091	30.
	No. in MACT floor	131	131.	2. 1.*
	Avg. of top 12%	0.02 lb/MMBtu	0.0003 lb/MMBtu	1 lb/TBtu. (1 lb/TBtu *).
	99% UPL of top 12%	0.030 lb/MMBtu	0.0020 lb/MMBtu	11.0 lb/TBtu. (4.0 lb/TBtu *).
IGCC	No. of sources in subcategory ...	2	2	2.
	No. in MACT floor	2	2	2.
	Avg.	0.03 lb/MMBtu	0.0002 lb/MMBtu	0.9 lb/TBtu.
	99% UPL	0.050 lb/MMBtu	0.00050 lb/MMBtu	3.0 lb/TBtu.
Solid oil-derived	No. of sources in subcategory ...	10	10	10.
	No. in MACT floor	5	5	5.
	Avg. of top 5	0.04 lb/MMBtu	0.002 lb/MMBtu	0.09 lb/TBtu.
	99% UPL of top 5	0.20 lb/MMBtu	0.0050 lb/MMBtu	0.20 lb/TBtu.
		Total metals **	HCl	Mercury.
Liquid oil	No. of sources in subcategory ...	154	154	154.
	No. in MACT floor	7	7	7.
	Avg. of top 12%	0.00002 lb/MMBtu	0.0001 lb/MMBtu	NA.
	99% UPL of top 12%	0.000030 lb/MMBtu	0.00030 lb/MMBtu	NA.

* Beyond-the-floor limit as discussed elsewhere.
** Includes Hg.
NA = Not applicable.

For the "Coal-fired unit designed for coal < 8,300 Btu/lb" subcategory, we used 12 percent of the available data (11 data points), or 2 units, in setting the existing source floor for Hg. For the IGCC subcategory, we used data from both units in setting the existing source floor. For the oil-fired subcategory, we did not include data obtained from EGUs co-firing natural gas in the existing-source MACT floor analysis because those emissions are not representative of EGUs firing 100 percent fuel oil.

We believe that chlorine may not be a compound generally expected to be present in oil. The ICR data that we have received suggests that in at least some oil, it is in fact present. EPA requests comment on whether chlorine would be expected to be a contaminant in oil and if not, why it is appearing in the ICR data. To the extent it would not be expected, we are taking comment on the appropriateness of an HCl limit. Further, we are proposing a total metals limit for oil-fired EGUs that includes Hg, in lieu of a PM limit, based on compliance through fuel analysis. We solicit comment on whether a PM limit or a total metals limit based on stack testing is an appropriate alternative. We recognize that PM is not an appropriate surrogate for Hg because Hg is not controlled to the same extent by the technologies which control emissions of other HAP metals, but we are soliciting comment as to whether there is anything unique as to oil-fired EGUs that would allow us to conclude that PM is an appropriate surrogate for all HAP metal emissions from such units. We further solicit comment on whether we should be setting a separate standard for Hg if we require end-of-stack testing for a total metals limit. Based on the data we have, that Hg limit would be 0.050 lb/MMBtu (0.000070 lb/GWh) for existing oil-fired units and 0.00010 lb/GWh for new oil-fired units. In this regard, we request additional Hg emissions data from oil-fired EGUs. Although we have some data, additional

data would aid in our development of the standards for such units.

2. Determination of the Work Practice Standard

CAA section 112(h)(1) states that the Administrator may prescribe a work practice standard or other requirements, consistent with the provisions of CAA sections 112(d) or (f), in those cases where, in the judgment of the Administrator, it is not feasible to enforce an emission standard. CAA section 112(h)(2)(B) further defines the term "not feasible" in this context to apply when "the application of measurement technology to a particular class of sources is not practicable due to technological and economic limitations."

As noted earlier, the significant majority of the measured emissions from EGUs of dioxin/furan and non-dioxin/furan organic HAP are at or below the MDL of the EPA test methods even though we required 8 hour test runs. As such, EPA considers it impracticable to reliably measure emissions from these units. As mentioned earlier, because the expected measurement imprecision for an emissions value occurring at or near the MDL is about 40 to 50 percent, we are uncertain of the true levels of organic HAP emissions that would be obtained during any test program. Overall, the fact that the organic HAP emission levels found at EGUs are so near the MDL achievable by the available test methods indicates that the results obtained are questionable for all of the organic HAP.

Because the levels of organic HAP emissions from EGUs are so low (at or below the MDL of the available test methods), there is no indication that expending additional cost (*i.e.,* extending the sampling time) would provide the regulated community the ability to test for these HAP that would provide reliable, technically viable results. In fact, the 2010 ICR testing required a longer testing period than normally used and the results were still predominantly below the MDL. Because of the technical infeasibility, the economic infeasibility is that sources do not have a way to demonstrate compliance that is legitimate and we conclude no additional cost will improve the results.

Based on this analysis, and considering the fact that regardless of the cost, the resulting emissions data would be suspect due to the detection level issues, the Administrator is proposing under CAA section 112(h) that it is not feasible to enforce emission standards for dioxin/furan and non-dioxin/furan organic HAP because of the technological and economic infeasibility described above. Thus, a work practice, as discussed below, is being proposed to limit the emission of these HAP for existing EGUs.

For existing units, the only work practice we identified that would potentially control these HAP emissions is an annual performance test. Organic HAP are formed from incomplete combustion of the fuel. The objective of good combustion is to release all the energy in the fuel while minimizing losses from combustion imperfections and excess air. The combination of the fuel with the O_2 requires temperature (high enough to ignite the fuel constituents), mixing or turbulence (to provide intimate O_2-fuel contact), and sufficient time (to complete the process), sometimes referred to the three Ts of combustion. Good combustion practice (GCP), in terms of combustion units, could be defined as the system design and work practices expected to minimize the formation and maximize the destruction of organic HAP emissions. We maintain that the proposed work practice standards will promote good combustion and thereby minimize the organic HAP emissions we are proposing to regulate in this manner.

E. How did EPA consider beyond-the-floor options for existing EGUs?

Once the MACT floors were established for each subcategory, we considered various regulatory options more stringent than the MACT floor level of control (*i.e.,* technologies or other work practices that could result in lower emissions) for the different subcategories.

Except for one subcategory, we could not identify better HAP emissions reduction approaches that could achieve greater emissions reductions of HAP than the control technology combination(s) (*e.g.,* FF, carbon injection, scrubber, and GCP) that we expect will be used to meet the MACT floor levels of control (and that are already in use on EGUs comprising the top performing 12 percent of sources), though we did consider duplicate controls (*e.g.,* multiple scrubbers) in series and found the cost of that option unreasonable.

Fuel switching to natural gas is an option that would reduce HAP emissions. We determined that fuel switching was not an appropriate beyond-the-floor option. First, natural gas supplies are not available in some areas. Natural gas pipelines are not available in all regions of the U.S., and natural gas may not be available as a fuel for many EGUs. Moreover, even where pipelines provide access to natural gas, supplies of natural gas may not be adequate, especially during peak demand (*e.g.,* the heating season). Under such circumstances, there would be some units that could not comply with a requirement to switch to natural gas. While the combined capital cost and O&M costs for a coal-to-gas retrofit could be less than that of a combined retrofit with ACI and either DSI or FGD, the increased fuel costs of coal-to-gas cause its total incremental COE at a typical EGU is likely to be significantly larger than the incremental COE of the other retrofit options available. For example, an EPA analysis detailed in an accompanying TSD found that the incremental COE of coal-to-gas was 4 to 22 times the cost of alternatives, although the magnitude of the difference would change with alternative fuel price assumptions. EPA, therefore, concludes that the coal-to-gas option is not a cost-effective means of achieving HAP reductions for the purposes of this proposed rule.

Additional detail on the economics of coal-to-gas conversion and illustrative calculations of additional emission reductions versus cost impacts are provided in the "Coal-to-Gas Conversion" TSD in the docket.

As noted earlier, no EGU designed to burn a nonagglomerating virgin coal having a calorific value (moist, mineral matter-free basis) of 19,305 kJ/kg (8,300 Btu/lb) or less in a EGU with a height-to-depth ratio of 3.82 or greater was found among the top performing 12 percent of sources for Hg emissions, even though some of these units employed ACI. EPA has learned that the units of this design that were using ACI during the testing were using ACI to meet their permitted Hg emission levels. However, EPA believes that the control level being achieved is still not that which could be achieved if ACI were used to its fullest extent. Therefore, EPA is proposing to establish a beyond-the-floor emission limit for existing EGUs designed to burn a nonagglomerating virgin coal having a calorific value (moist, mineral matter-free basis) of 19,305 kJ/kg (8,300 Btu/lb) or less in a EGU with a height-to-depth ratio of 3.82 or greater. The proposed emission limit is 4 lb/TBtu for existing EGUs in this class. This proposed emission limit is based on use of the data from the top performing unit in the subcategory made available to the Agency through the 2010 ICR; the same statistical analyses were conducted as were done to establish the MACT floor values for the other HAP. EPA notes that our analysis shows that the technology installed to achieve the MACT floor

limit would be the same technology used to achieve the beyond-the-floor MACT limit and, thus, proposing to go beyond-the-floor is reasonable. EPA solicits comment on whether it is appropriate to propose a beyond-the-floor limit for existing EGUs in this subcategory.

To assess the impacts on the existing EGUs in this subcategory to implement the proposed beyond-the-floor limit, EPA conducted analyses using approaches as discussed in the memoranda "Beyond-the-Floor Analysis (2011) for the Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-fired Electric Utility Steam Generating Units" and "Emission Reduction Costs for the Beyond-the-Floor Mercury Rate in the Toxics Rule" in the docket. The cost effectiveness of the beyond-the-floor option ranged from $17,375 to $21,393/lb Hg removed in the two approaches. The total costs of the non-air environmental impacts for the proposed beyond-the-floor limit for this subcategory are estimated as $12,310. Non-air quality health impacts were evaluated, but no incremental health impacts were attributable to installation of FF and ACI, because these technologies do not expose electric utility employees or the public to any additional health risks above the risks attributable to current utility operations involving compressed air systems, confined spaces, and exposure to fly ash.

EPA is aware that there may be other means of enhancing the removal of Hg from the flue gas stream (*e.g.,* spraying a halogen such as chlorine or bromine on the coal as it is fed to the EGU). EPA has information that indicates that such means were employed by an unknown number of EGUs during the period of time they were testing to provide data in compliance with the 2010 ICR (*see* McMeekin memo in the docket). Thus, we believe that the performance of such means is reflected in the MACT floor analysis. However, EPA has no data upon which to assess whether any other technology would provide additional control to that already shown by the use of ACI and, thus, we are not proposing to use such technologies as the basis for a beyond-the-floor analysis. EPA solicits comment on this approach.

EPA believes the best potential way of reducing Hg emissions from existing IGCC units is to remove Hg from the syngas before combustion. For example, an existing industrial coal gasification unit has demonstrated a process, using a sulfur-impregnated AC bed, which has proven to yield over 90 percent Hg removal from the coal syngas. (Rutkowski 2002.) We considered using carbon bed technology as beyond-the-floor for existing IGCC units. However, we have no detailed data to support this position at this time and, thus, are not proposing a beyond-the-floor limit for existing IGCC units. EPA requests comments on whether the use of this or other control techniques have been demonstrated to consistently achieve emission levels that are lower than levels from similar sources achieving the proposed existing MACT floor level of control. Comments should include information on emissions, control efficiencies, reliability, current demonstrated applications, and costs, including retrofit costs.

We considered proposing beyond-the-floor requirements for Hg in the other subcategories and for the other HAP in all of the subcategories. Activated carbon injection is used on EGUs designed for coal greater than or equal to 8,300 Btu/lb and, therefore, its effect on Hg removal has already been accounted for in the MACT floor. Further, EPA has no information that would indicate that ACI would provide significantly lower emission levels given the MACT floor Hg standard, and it is also possible that existing sources in this subcategory will utilize ACI to comply with the MACT floor limit. Activated carbon injection has not been demonstrated on liquid oil-fired EGUs. Similarly, ACI has not been demonstrated on solid oil-derived fuel-fired EGUs. EPA has no information that would indicate that ACI would provide significantly lower Hg emission levels on units operating at the level of the MACT floor. For the non-Hg metallic and acid gas HAP, there is no technology that would achieve additional control over that being shown by units making up the floor. Additional combinations of controls (*e.g.,* dual FGD systems in series) could be used but at a significant additional cost and, given the MACT floor level of control, a minimal additional reduction in HAP emissions. For the organic HAP, EPA is not aware of any measures beyond those proposed here that would result in lower emissions. Therefore, EPA is not proposing beyond-the-floor limitations other than as noted above.

F. Should EPA consider different subcategories?

EPA has attempted to identify subcategories that provide the most reasonable basis for grouping and estimating the performance of generally similar units using the available data. We believe that the subcategories we selected are appropriate.

EPA requests comments on whether additional or different subcategories should be considered. Comments should include detailed information regarding why a new or different subcategory is appropriate (based on the available data and on the statutory constraint of "class, type or size"), how EPA should define any additional and/or different subcategories, how EPA should account for varied or changing fuel mixtures, and how EPA should use the available data to determine the MACT floor for any new or different subcategories.

G. How did EPA determine the proposed emission limitations for new EGUs?

All standards established pursuant to CAA section 112 must reflect MACT, the maximum degree of reduction in emissions of air pollutants that the Administrator, taking into consideration the cost of achieving such emissions reductions, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for each category. The CAA specifies that MACT for new EGUs shall not be less stringent than the emission control that is achieved in practice by the best-controlled similar source. This minimum level of stringency is the MACT floor for new units. However, EPA may not consider costs or other impacts in determining the MACT floor. EPA must consider cost, nonair quality health and environmental impacts, and energy requirements in connection with any standards that are more stringent than the MACT floor (beyond-the-floor controls).

H. How did EPA determine the MACT floor for new EGUs?

Similar to the MACT floor process used for existing EGUs, the approach for determining the MACT floor must be based on available emissions test data. Using such an approach, we calculated the MACT floor for a subcategory of sources by ranking the 2010 ICR emissions data from EGUs within the subcategory from lowest to highest (on a lb/MMBtu basis) to identify the best controlled similar source. The MACT floor limitations for each of the HAP and HAP surrogates (PM, Hg, and HCl) are calculated based on the performance (numerical average) of the lowest emitting (best controlled) source for each pollutant in each of the subcategories.

The MACT floor limitations for new sources were calculated using the same formula as was used for existing sources with one exception. For the new source calculations, the results of the three individual emission test runs were used

instead of the 3-run average that was used in determining the existing-source MACT floor. This was done to be able to provide some measure of variability. As previously discussed, we account for variability of the best-controlled source in setting floors, not only because variability is an element of performance, but because it is reasonable to assess best performance over time. We calculated the MACT floor based on the UPL (upper 99th percentile) as described earlier from the average performance of the best controlled similar source, Student's t-factor, and the total variability of the best-controlled source.

This approach reasonably ensures that the emission limit selected as the MACT floor adequately represents the average level of control actually achieved by the best controlled similar source, considering ordinary operational variability.

A detailed discussion of the MACT floor methodology is presented in the MACT Floor Memo in the docket.

The approach that we use to calculate the MACT floors for new sources is somewhat different from the approach that we use to calculate the MACT floors for existing sources. Although the MACT floors for existing units are intended to reflect the performance achieved by the average of the best performing 12 percent of sources, the MACT floors for new units are meant to reflect the emission control that is achieved in practice by the best controlled similar source. Thus, for existing units, we are concerned about estimating the central tendency of a set of multiple units, whereas for new units, we are concerned about estimating the level of control that is representative of that achieved by a single best controlled source. As with the analysis for existing sources, the new EGU analysis must account for variability.

1. Determination of MACT for the Fuel-Borne HAP for New Sources

In developing the MACT floor for the fuel-borne HAP (PM, HCl, and Hg), as described earlier, we are using PM as a surrogate for non-Hg metallic HAP and HCl as a surrogate for the acid gases (except for the liquid oil-fired subcategory). Table 13 of this preamble presents for each subcategory and fuel-borne HAP the average emission level of the best controlled similar source and the MACT floor which accounts for variability (99 percent UPL).

TABLE 13—SUMMARY OF MACT FLOOR RESULTS FOR NEW SOURCES

Subcategory	Parameter	PM	HCl	Mercury
Coal-fired unit designed for coal ≥ 8,300 Btu/lb.	Avg. of top performer	0.03 lb/MWh	0.2 lb/GWh	0.00001 lb/GWh.
	99% UPL of top performer (test runs)	0.050 lb/MWh	0.30 lb/GWh	0.000010 lb/GWh.
Coal-fired unit designed for coal < 8,300 Btu/lb.	Avg. of top performer	0.03 lb/MWh	0.2 lb/GWh	0.02 lb/GWh.
	99% UPL of top performer (test runs)	0.050 lb/MWh	0.30 lb/GWh	0.040 lb/GWh.
IGCC	Avg. of top performer	N/A	N/A	N/A.
	99% UPL of top performer (test runs)	0.050 lb/MWh*	0.30 lb/GWh*	0.000010 lb/GWh.*
Solid oil-derived	Avg. of top performer	0.04 lb/MWh	0.0003 lb/MWh	0.0007 lb/GWh.
	99% UPL of top performer (test runs)	0.050 lb/MWh	0.00030 lb/MWh	0.0020 lb/GWh.
		Total metals**	HCl	Mercury
Liquid oil	Avg. of top performer	0.00009 lb/MMBtu.	0.0002 lb/MWh	NA.
	99% UPL of top performer (test runs)	0.00040 lb/MMBtu.	0.00050 lb/MWh	NA.

* Beyond-the-floor as discussed elsewhere.
** Includes Hg.
NA = Not applicable.

2. Determination of the Work Practice Standard

We are proposing a work practice standards for non-dioxin/furan organic and dioxin/furan organic HAP under CAA section 112(h) that would require the implementation of an annual performance test program for new EGUs. This proposal for new EGUs is based on the same reasons discussed previously for existing EGUs. That is, the measured emissions from EGUs of these HAP are routinely below the detection limits of the EPA test methods, and, as such, EPA considers it impracticable to reliably measure emissions from these units.

Thus, the work practice discussed above for existing EGUs is being proposed to limit the emissions of non-dioxin/furan organic and dioxin/furan organic HAP for new EGUs.

We request comments on this approach.

I. How did EPA consider beyond-the-floor for new units?

The MACT floor level of control for new EGUs is based on the emission control that is achieved in practice by the best controlled similar source within each of the subcategories. No technologies were identified that would achieve HAP reduction greater than the new source floors for the subcategories, except for multiple controls in series (*e.g.,* multiple FFs) which we consider to be unreasonable from a cost perspective.

Fuel switching to natural gas is a potential regulatory option beyond the new source floor level of control that would reduce HAP emissions. However, natural gas supplies are not available in some areas. Thus, this potential control option may be unavailable to many sources in practice. Limited emissions reductions in combination with the high cost of fuel switching and considerations about the availability and technical feasibility of fuel switching makes this an unreasonable regulatory option that was not considered further. As discussed above, the uncertainties associated with nonair quality health and environmental impacts also argue against determining that fuel switching is reasonable beyond-the-floor option. In addition,

even if we determined that natural gas supplies were available in all regions, we would still not adopt this fuel switching option because it would effectively prohibit new construction of coal-fired EGUs and we do not think that is a reasonable approach to regulating HAP emissions from EGUs.

Although, as discussed earlier for existing EGUs, EPA is proposing to establish a beyond-the-floor emission limit for Hg for existing EGUs designed to burn a nonagglomerating fuel having a calorific value (moist, mineral matter-free basis) of 19,305 kJ/kg (8,300 Btu/lb) or less in a EGU with a height-to-depth ratio of 3.82 or greater, EPA is not proposing to go beyond-the-floor for new EGUs in this subcategory. The proposed emission limit of 0.04 lb/GWh for new EGUs in this subcategory is based on use of ACI on a new unit and, we believe, reflects a level of performance achievable and, as noted above, no technologies were identified that would achieve HAP reduction greater than the new source floors for the subcategories, except for multiple controls in series (*e.g.,* multiple FFs) which we consider to be unreasonable from a cost perspective.

As discussed earlier, because of a lack of data, EPA is not proposing beyond-the-floor emission limits for existing IGCC units. However, EPA believes that the new-source limits derived from the data obtained from the two operating IGCC units are not representative of what a new IGCC unit could achieve. Therefore, EPA looked to the permit issued for the Duke Energy Edwardsport IGCC facility currently under construction.[160] The permitted limits for this unit are similar to the limits derived from the existing units. Because of advances in technology, EPA does not believe that even these permitted levels are representative of what a modern IGCC unit could achieve. The emissions from IGCC units are normally predicted to be similar to or lower than those from traditional pulverized coal (PC) boilers. For example, DOE projects that future IGCC units will be able to meet a PM (filterable) emissions limit of 0.0071 lb/MMBtu, a SO_2 emissions limit of 0.0127 lb/MMBtu, and a Hg emissions limit of 0.571 lb/TBtu.[161] Therefore, we are proposing that the new-source limits for new IGCC units be identical to those of new coal-fired units designed for coal greater than or equal to 8,300 Btu/lb. However, EPA has no information upon which to base the costs and non-air quality health, environmental, and energy impacts of this proposed approach. EPA solicits comment on this approach. Commenters should provide data that support their comment, including costs, emissions data, or engineering analyses.

Similarly, for the reasons discussed earlier for existing EGUs, EPA is not proposing any other beyond-the-floor emission limitations. EPA requests comments on whether the use of any control techniques have been demonstrated to consistently achieve emission levels that are lower than levels from similar sources achieving the proposed new-source MACT floor levels of control. Comments should include information on emissions, control efficiencies, reliability, current demonstrated applications, and costs, including retrofit costs.

J. Consideration of Whether To Set Standards for HCl and Other Acid Gas HAP Under CAA Section 112(d)(4)

We are proposing to set a conventional MACT standard for HCl and, for the reasons explained elsewhere, are proposing that the HCl limit also serve as a surrogate for other acid gas HAP. We also considered whether it was appropriate to exercise our discretionary authority to establish health-based emission standards under CAA section 112(d)(4) for HCl and each of the other relevant HAP acid gases: Cl_2, HF, SeO_2, and HCN[162] (because if it were regulated under CAA section 112(d)(4), HCl may no longer be the appropriate surrogate for these other HAP).[163] This section sets forth the requirements of CAA section 112(d)(4); our analysis of the information available to us that informed the decision on whether to exercise discretion; questions regarding the application of CAA section 112(d)(4); and our explanation of how this case relates to prior decisions EPA has made under CAA section 112(d)(4) with respect to HCl.

As a general matter, CAA section 112(d) requires MACT standards at least as stringent as the MACT floor to be set for all HAP emitted from major sources. However, CAA section 112(d)(4) provides that for HAP with established health thresholds, the Administrator has the discretionary authority to consider such health thresholds when establishing emission standards under CAA section 112(d). This provision is intended to allow EPA to establish emission standards other than conventional MACT standards, in cases where a less stringent emission standard will still ensure that the health threshold will not be exceeded, with an ample margin of safety. In order to exercise this discretion, EPA must first conclude that the HAP at issue has an established health threshold and must then provide for an ample margin of safety when considering the health threshold to set an emission standard.

It is clear the Administrator may exercise her discretionary authority under CAA section 112(d)(4) only with respect to pollutants with a health threshold. Where there is an established threshold, the Administrator interprets CAA section 112(d)(4) to allow her to weigh additional factors, beyond any established health threshold, in making a judgment whether to set a standard for a specific pollutant based on the threshold, or instead follow the traditional path of developing a MACT standard after determining a MACT floor. In deciding whether to exercise her discretion for a threshold pollutant for a given source category, the Administrator interprets CAA section 112(d)(4) to allow her to take into account factors such as the following: the potential for cumulative adverse health effects due to concurrent exposure to other HAP with similar biological endpoints, from either the same or other source categories, where the concentration of the threshold pollutant emitted from the given source category is below the threshold; the potential impacts on ecosystems of releases of the pollutant; and reductions in criteria pollutant emissions and other co-benefits that would be achieved by a MACT standard. Each of these factors is directly relevant to the health and environmental outcomes at which CAA section 112 is fundamentally aimed. If the Administrator does determine that it is appropriate to set a standard based on a health threshold, she must develop emission standards that will ensure the public will not be exposed to levels of the pertinent HAP in excess of the

[160] Letter from Matthew Stuckey, State of Indiana, to Mack Sims, Duke Energy Indiana. Operating permit fo Edwardsport Generating Station IGCC. Undated.

[161] DOE. Overview—Bituminous & Natural Gas to Electricity; Overview of Bituminous Baseline Study. From: Cost and Performance Baseline for Fossil Energy Plants, Vol. 1, DOE/NETL–2007/1281, May 2007.

[162] Before considering whether to exercise her discretion under CAA section 112(d)(4) for a particular pollutant, the Administrator must first conclude that a health threshold has been established for the pollutant.

[163] Hydrogen chloride can serve as a surrogate for the other acid gases in a technology-based MACT standard, because the control technology that would be used to control HCl would also reduce the other acid gases. By contrast, HCl would not be an appropriate surrogate for a health-based emission standard that is protective against the potential adverse health effects from the other acid gases, because these gases (*e.g.,* HF) can act on biological organisms in a different manner than HCl, and each of the acid gases affects human health with a different dose-response relationship.

health threshold, with an ample margin of safety.

EPA has exercised its discretionary authority under CAA section 112(d)(4) in a handful of prior rules setting emissions standards for other major source categories, including the Boiler NESHAP issued in 2004, which was vacated on other grounds by the DC Circuit Court. In the Pulp and Paper NESHAP (63 FR 18765; April 15, 1998), and Lime Manufacturing NESHAP (67 FR 78054; December 20, 2002), EPA invoked CAA section 112(d)(4) for HCl emissions for discrete units within the facility. In those rules, EPA concluded that HCl had an established health threshold (in those cases it was interpreted as the RfC for chronic effects) and HCl was not classified as a human carcinogen. In light of the absence of evidence of carcinogenic risk, the availability of information on non-carcinogenic effects, and the limited potential health risk associated with the discrete units being regulated, EPA concluded that it was appropriate to exercise its discretion under CAA section 112(d)(4) for HCl under the circumstances of those rules. EPA did not set an emission standard based on the health threshold; rather, the exercise of EPA's discretion in those cases in effect exempted HCl from the MACT requirement. In more recent rules, EPA decided not to propose a health-based emission standard for HCl emissions under CAA section 112(d)(4) for Portland Cement facilities (75 FR 54970 (September 9, 2010), and for Industrial, Commercial, and Institutional Boilers, (75 FR 32005; June 4, 2010 proposal(major); the final major source rule was signed on February 21, 2011 but has not yet been published). EPA has never implemented a NESHAP that used CAA section 112(d)(4) with respect to HF, Cl_2, SeO_2, or HCN.[164]

Because any emission standard under CAA section 112(d)(4) must consider the established health threshold level, with an ample margin of safety, in this rulemaking EPA has considered the adverse health effects of the HAP acid gases, beginning with HCl and including HF, Cl_2, SeO_2, and HCN. Research indicates that HCl is associated with chronic respiratory toxicity. In the case of HCl, this means that chronic inhalation of HCl can cause tissue damage in humans. Among other things, it is corrosive to mucous membranes and can cause damage to eyes, nose, throat, and the upper respiratory tract as well as pulmonary edema, bronchitis, gastritis, and dermatitis. Considering this respiratory toxicity, EPA has established a chronic RfC for the inhalation of HCl of 20 micrograms per cubic meter ($\mu g/m^3$). An RfC is defined as an estimate (with uncertainty spanning perhaps an order of magnitude) of a continuous inhalation exposure to the human population (including sensitive subgroups [165]) that is likely to be without an appreciable risk of deleterious effects during a lifetime. The development of the RfC for HCl reflected data only on its chronic respiratory toxicity. It did not take into account effects associated with acute exposure,[166] and, in this situation, the IRIS health assessment did not evaluate the potential carcinogenicity of HCl (on which there are very limited studies). As a reference value for a single pollutant, the RfC also did not reflect any potential cumulative or synergistic effects of an individual's exposure to multiple HAP or to a combination of HAP and criteria pollutants. As the RfC calculation focused on health effects, it did not take into account the potential environmental impacts of HCl.

With respect to the potential health effects of HCl, we note the following:

(1) Chronic exposure to concentrations at or below the RfC is not expected to cause chronic respiratory effects;

(2) Little research has been conducted on its carcinogenicity. The one occupational study of which we are aware found no evidence of carcinogenicity;

(3) There is a significant body of scientific literature addressing the health effects of acute exposure to HCl (for a summary, *see* California Office of Health Hazard Assessment, 2008. Acute Toxicity Summary for Hydrogen Chloride, *http://www.oehha.ca.gov/air/hot_spots/2008/AppendixD2_final.pdf#page=112 EPA,* 2001). In addition, we note that several researchers have shown associations between acid gases and reduced lung function and asthma in North American children.[167] However, we currently lack information on the peak short-term emissions of HCl from EGUs, which might allow us to determine whether a chronic health-based emission standard for HCl would ensure that acute exposures will not pose any health concerns, and;

(4) We are aware of no studies explicitly addressing the toxicity of mixtures of HCl with other respiratory irritants. However, many of the other HAP (and criteria pollutants) emitted by EGUs also are respiratory irritants, and in the absence of information on interactions, EPA assumes an additive cumulative effect (Supplementary Guidance for Conducting Health Risk Assessment of Chemical Mixtures. *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=20533*). The fact that EGUs can be located in close proximity to a wide variety of industrial facilities makes predicting and assessing all possible mixtures of HCl and other emitted air pollutants difficult, if not impossible.

In addition to potential health impacts, the Administrator also has evaluated the potential for environmental impacts when considering whether to exercise her discretion under CAA section 112(d)(4). When HCl gas encounters water in the atmosphere, it forms an acidic solution of hydrochloric acid. In areas where the deposition of acids derived from emissions of sulfur and NO_X are causing aquatic and/or terrestrial acidification, with accompanying ecological impacts, the deposition of hydrochloric acid could exacerbate these impacts. Recent research [168] has suggested that deposition of airborne HCl has had a greater impact on ecosystem acidification than previously thought, although direct quantification of these impacts remains an uncertain process. We maintain it is appropriate to consider potential adverse environmental effects in addition to adverse health effects when setting an emission standard for HCl under CAA section 112(d)(4).

Because the statute requires an ample margin of safety, it would be reasonable to set any CAA section 112(d)(4) emission standard for a pollutant with a health threshold at a level that at least

[164] EPA has not classified HF, Cl_2, SeO_2, or HCN with respect to carcinogenicity. However, at this time the Agency is not aware of any data that would suggest any of these HAP are carcinogens.

[165] "Sensitive subgroups" may refer to particular life stages, such as children or the elderly, or to those with particular medical conditions, such as asthmatics.

[166] California EPA considered acute toxicity and established a 1-hour reference exposure level (REL) of 2.1 milligrams per cubic meter (mg/m^3). An REL is the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration. RELs are designed to protect the most sensitive individuals in the population by the inclusion of margins of safety.

[167] Dockery DW, Cunningham J, Damokosh AI, Neas LM, Spengler JD, Koutrakis P, Ware JH, Raizenne M, Speizer FE. 1996. Health Effects of Acid Aerosols on North American Children: Respiratory Symptoms. Environmental Health Perspectives 104(5):500–504; Raizenne M, Neas LM, Damokosh AI, Dockery DW, Spengler JD, Koutrakis P, Ware JH, Speizer FE. 1996. Health Effects of Acid Aerosols on North American Children: Pulmonary Function. Environmental Health Perspectives 104(5):506–514.

[168] Evans, CD, Monteith, DT, Fowler, D, Cape, JN, and Brayshaw, S. *Hydrochloric Acid: an Overlooked Driver of Environmental Change,* Env. Sci. Technol., DOI: 10.1021/es10357u.

assures that persons exposed to emissions of the pollutant would not experience the adverse health effects on which the threshold is based due to sources in the controlled category or subcategory. In the case of this proposed rulemaking, we have concluded that we do not have sufficient information at this time to establish what the health-based emission standards would be for HCl or the other acid gases from EGUs alone, much less for EGUs and other sources of acid gas HAP located at or near facilities with EGUs.

Finally, we considered the fact that setting conventional MACT standards for HCl as well as PM (as a surrogate for HAP metals) would result in significant reductions in emissions of other pollutants, most notably SO_2, PM, and other non-HAP acid gases (*e.g.,* hydrogen bromide) and would likely also result in additional reductions in emissions of Hg and other HAP metals (*e.g.,* Se). The additional reductions of SO_2 alone attributable to the proposed limit for HCl are estimated to be 2.1 million tons in the third year following promulgation of the proposed HCl standard. These are substantial reductions with substantial public health benefits. Although NESHAP may directly address only HAP, not criteria pollutants, Congress did recognize, in the legislative history to CAA section 112(d)(4), that NESHAP would have the collateral benefit of controlling criteria pollutants as well and viewed this as an important benefit of the air toxics program.[169] Therefore, even where EPA concludes a HAP has a health threshold, the Agency may consider the collateral benefits of controlling criteria pollutants as a factor in determining whether to exercise its discretion under CAA section 112(d)(4).

Given the limitations of the currently available information (*e.g.,* the HAP mix where EGUs are located, and the cumulative impacts of respiratory irritants from nearby sources), the environmental effects of HCl and the other acid gas HAP, and the significant co-benefits of setting a conventional MACT standard for HCl and the other acid gas HAP, the Administrator is proposing not to exercise her discretion to use CAA section 112(d)(4).

This conclusion is not contrary to EPA's prior decisions noted earlier where we found it appropriate to exercise the discretion to invoke the authority in CAA section 112(d)(4) for HCl, because the circumstances in this case differ from previous considerations. EGUs differ from the other source categories for which EPA has exercised its authority under CAA section 112(d)(4) in ways that affect consideration of any health threshold for HCl. EGUs are much more likely to be significant emitters of acid gas HAP and non-HAP than are other source categories. In fact, they are the largest anthropogenic emitter of HCl and HF in the U.S, emitting roughly half of the estimated nationwide total HCl and HF emissions in 2010. Our case study analyses of the chronic impacts of EGUs did not indicate any significant potential for them to cause any exceedances of the chronic RfC for HCl due to their emissions alone.[170] However, we do not have adequate information on the other acid gas HAP to include them in our analysis, and did not consider their impacts in concert with other emitters of HCl (such as IB units) to develop estimates of cumulative exposures to HCl and other acid gas HAP in the vicinity of EGUs. In addition, EGUs may be located at facilities in heavily populated urban areas where many other sources of HAP exist. These factors make an analysis of the health impact of emissions from these sources on the exposed population significantly more complex than for many other source categories, and, therefore, make it more difficult to establish an ample margin of safety without significantly more information. Absent the information necessary to provide a credible basis for developing alternative health-based emission standards for all acid gases, and for all the other reasons discussed above, EPA is choosing not to exercise its discretion under CAA section 112(d)(4) for these pollutants from EGUs.

K. How did we select the compliance requirements?

We are proposing testing, monitoring, notification, and recordkeeping requirements that are adequate to assure continuous compliance with the requirements of this proposed rule. These requirements are described elsewhere in this preamble. We selected these requirements based upon our determination of the information necessary to ensure that the emission standards and work practices are being followed and that emission control devices and equipment are maintained and operated properly. These proposed requirements ensure compliance with this proposed rule without imposing a significant additional burden for units that must implement them.

We are proposing that units using continuous monitoring systems for PM, HCl, and Hg demonstrate initial compliance by performance testing for non-Hg HAP metals and the surrogate PM, for HCl and its surrogate SO_2, and for Hg, and then to perform subsequent performance testing every 5 years for non-Hg HAP metals and PM and for HCl and SO_2. To ensure continuous compliance with the proposed Hg emission limits in-between the performance tests, this proposed rule would require coal-fired units to use either CEMS or sorbent trap monitoring systems, with an option for very low emitters to use a less rigorous method based on periodic stack testing. These requirements are found in proposed Appendix A to 40 CFR part 63, subpart UUUUU. For PM and HCl, affected units that elect to install CEMS would use the CEMS to demonstrate continuous compliance. However, units equipped with devices that control PM and HCl emissions but do not elect to use CEMS, would determine suitable parameter operating limits, to monitor those parameters on a continuous basis, and to conduct emissions testing every other month. Units combusting liquid oil on a limited basis would, upon request and approval, be allowed to determine limits for metals, chlorine, and Hg concentrations in fuel and to measure subsequent fuel metals, chlorine, and Hg concentrations monthly; and low emitting units would be allowed to determine limits for metals, chlorine, and Hg concentrations in fuel and to measure subsequent fuel metals, chlorine, and Hg concentrations monthly.

Additionally, this proposed rule would require annual maintenance be performed so that good combustion continues. Such an annual check will serve to ensure that dioxins, furans, and other organic HAP emissions continue to be at or below MDLs.

We evaluated the feasibility and cost of applying PM CEMS to EGUs. Several electric utility companies in the U.S. have now installed or are planning to install PM CEMS. In recognition of the fact that PM CEMS are commercially available, EPA developed and promulgated PSs for PM CEMS (69 FR 1786, January 12, 2004). Performance Specifications for PM CEMS are established under PS 11 in appendix B to 40 CFR part 60 for evaluating the acceptability of a PM CEMS used for determining compliance with the emission standards on a continuous basis. For PM CEMS monitoring, initial costs were estimated to be $261,000 per

[169] *See* S. Rep. No. 101–228, 101st Cong. 1st sess. At 172.

[170] For those facilities modeled, the hazard index for HCl ranged from 0.05 to 0.005 (see Non-Hg Case Study Chronic Inhalation Risk Assessment for the Utility MACT "Appropriate and Necessary" Analysis in the docket).

unit and annualized costs were estimated to be $91,000 per unit. We determined that requiring PM CEMS for EGUs combusting coal or oil is a reasonable monitoring option. We are requesting comment on the application of PM CEMS to EGUs, and the use of data from such systems for compliance determinations under this proposed rule.

Table 14 holds preliminary cost information. Note that these costs are based on 2010 ICR emissions test estimates and on values in EPA's monitoring costs assessment tool. Particulate matter and metals and SO_2 and HCl testing includes surrogacy testing initially and every 5 years, parameter monitoring includes testing every two months, and fuel content monitoring includes annual testing.

TABLE 14—COST INFORMATION

	Initial costs, $K	Annual costs, $K	
Metals			
PM CEMS	261	91	
Fabric filter	61	109	
ESP	59	114	
Acid Gases			
SO_2 CEMS	232	66	None if existing CEMS used.
HCl CEMS	233	57	
Dry sorbent injection	10	144	Plus material costs.
Wet scrubber	9	143	
Mercury			
Hg CEMS	271	110	
Sorbent traps	23	128	Minimum of 52 traps and analysis per year.
Fuel analysis	10	49	
Dioxin/furan and non-dioxin/furan organic HAP			
Tune up	17	3	

The Agency is seeking comment on the cost information presented above. The commenters are encouraged to provide detailed information and data that will help the Agency refine its cost estimates for this rulemaking.

The majority of test methods that this proposed rule would require for the performance stack tests have been required under many other EPA standards. Three applicable voluntary consensus standards were identified: American Society of Mechanical Engineers (ASME) Performance Test Code (PTC) 19–10–1981–Part 10, "Flue and Exhaust Gas Analyses," a manual method for measuring the oxygen, CO_2, and CO content of exhaust gas; ASTM Z65907, "Standard Method for Both Speciated and Elemental Mercury Determination," a method for Hg measurement; and ASTM Method D6784–02 (Ontario Hydro), a method for measuring Hg. The majority of emissions tests upon which the proposed emission limitations are based were conducted using these test methods.

When a performance test is conducted, we are proposing that parameter operating limitations be determined during the tests. Performance tests to demonstrate compliance with any applicable emission limitations are either stack tests or fuel analysis or a combination of both.

To ensure continuous compliance with the proposed emission limitations and/or operating limits, this proposed rule would require continuous parameter monitoring of control devices and recordkeeping. We selected the following requirements based on reasonable cost, ease of execution, and usefulness of the resulting data to both the owners or operators and EPA for ensuring continuous compliance with the emission limitations and/or operating limits.

We are proposing that certain parameters be continuously monitored for the types of control devices commonly used in the industry. These parameters include pH, pressure drop and liquid flow rate for wet scrubbers; and sorbent injection rate for dry scrubbers and DSI systems. You must also install a BLDS for FFs. These monitoring parameters have been used in other standards for similar industries. The values of these parameters are established during the initial or most recent performance test that demonstrates compliance. These values are your operating limits for the control device.

You would be required to set parameters based on 4-hour block averages during the compliance test, and demonstrate continuous compliance by monitoring 12-hour block average values for most parameters. We selected this averaging period to reflect operating conditions during the performance test to ensure the control system is continuously operating at the same or better level as during a performance test demonstrating compliance with the emission limits.

To demonstrate continuous compliance with the emission and operating limits, you would also need daily records of the quantity, type, and origin of each fuel burned and hours of operation of the affected source. If you are complying with the chlorine fuel input option, you must keep records of the calculations supporting your determination of the chlorine content in the fuel.

If a liquid oil-fired EGU elected to demonstrate compliance with the HCl or individual or total HAP metal limit by using fuel which has a statistically lower pollutant content than the emission limit, we are proposing that the source's operating limit is the emission limit of the applicable pollutant. Under this option, a source is not required to conduct performance

stack tests. If a source demonstrates compliance with the HCl, individual or total PM, or Hg limit by using fuel with a statistically higher pollutant content than the applicable emission limit, but performance tests demonstrate that the source can meet the emission limitations, then the source's operating limits are the operating limits of the control device (if used) and the fuel pollutant content of the fuel type/mixture burned.

This proposed rule would specify the testing methodology and procedures and the initial and continuous compliance requirements to be used when complying with the fuel analysis options. Fuel analysis tests for total chloride, gross calorific value, Hg, individual and total HAP metal, sample collection, and sample preparation are included in this proposed rule.

If you are a liquid oil-fired EGU and elect to comply based on fuel analysis, you will be required to statistically analyze, using the z-test, the data to determine the 90th percentile confidence level. It is the 90th percentile confidence level that is required to be used to determine compliance with the applicable emission limit. The statistical approach is required to assist in ensuring continuous compliance by statistically accounting for the inherent variability in the fuel type.

We are proposing that a source be required to recalculate the fuel pollutant content only if it burns a new fuel type or fuel mixture and conduct another performance test if the results of recalculating the fuel pollutant content are higher than the level established during the initial performance test.

L. What alternative compliance provisions are being proposed?

We are proposing that owners and operators of existing affected sources may demonstrate compliance by emissions averaging for units at the affected source that are within a single subcategory.

As part of EPA's general policy of encouraging the use of flexible compliance approaches where they can be properly monitored and enforced, we are including emissions averaging in this proposed rule. Emissions averaging can provide sources the flexibility to comply in the least costly manner while still maintaining regulation that is workable and enforceable. Emissions averaging would not be applicable to new affected sources and could only be used between EGUs in the same subcategory at a particular affected source. Also, owners or operators of existing sources subject to the EGU NSPS (40 CFR part 60, subparts D and Da) would be required to continue to meet the PM emission standard of that NSPS regardless of whether or not they are using emissions averaging.

Emissions averaging would allow owners and operators of an affected source to demonstrate that the source complies with the proposed emission limits by averaging the emissions from an individual affected unit that is emitting above the proposed emission limits with other affected units at the same facility that are emitting below the proposed emission limits and that are within the same subcategory.

This proposed rule includes an emissions averaging compliance alternative because emissions averaging represents an equivalent, more flexible, and less costly alternative to controlling certain emission points to MACT levels. We have concluded that a limited form of averaging could be implemented that would not lessen the stringency of the MACT floor limits and would provide flexibility in compliance, cost and energy savings to owners and operators. We also recognize that we must ensure that any emissions averaging option can be implemented and enforced, will be clear to sources, and most importantly, will be no less stringent than unit by unit implementation of the MACT floor limits.

EPA has concluded that it is permissible to establish within a NESHAP a unified compliance regimen that permits averaging within an affected source across individual affected units subject to the standard under certain conditions. Averaging across affected units is permitted only if it can be demonstrated that the total quantity of any particular HAP that may be emitted by that portion of a contiguous major source that is subject to the NESHAP will not be greater under the averaging mechanism than it could be if each individual affected unit complied separately with the applicable standard. Under this test, the practical outcome of averaging is equivalent to compliance with the MACT floor limits by each discrete unit, and the statutory requirement that the MACT standard reflect the maximum achievable emissions reductions is, therefore, fully effectuated.

In past rulemakings, EPA has generally imposed certain limits on the scope and nature of emissions averaging programs. These limits include: (1) No averaging between different types of pollutants; (2) no averaging between sources that are not part of the same affected source; (3) no averaging between individual sources within a single major source if the individual sources are not subject to the same NESHAP; and (4) no averaging between existing sources and new sources.

This proposed rule would fully satisfy each of these criteria. First, emissions averaging would only be permitted between individual sources at a single existing affected source, and would only be permitted between individual sources subject to the proposed EGU NESHAP. Further, emissions averaging would not be permitted between two or more different affected sources. Finally, new affected sources could not use emissions averaging. Accordingly, we have concluded that the averaging of emissions across affected units is consistent with the CAA. In addition, this proposed rule would require each facility that intends to utilize emission averaging to submit an emission averaging plan, which provides additional assurance that the necessary criteria will be followed. In this emission averaging plan, the facility must include the identification of: (1) All units in the averaging group; (2) the control technology installed; (3) the process parameter that will be monitored; (4) the specific control technology or pollution prevention measure to be used; (5) the test plan for the measurement of the HAP being averaged; and (6) the operating parameters to be monitored for each control device. Upon receipt, the regulatory authority would not be able to approve an emission averaging plan containing averaging between emissions of different types of pollutants or between sources in different subcategories.

This proposed rule would also exclude new affected sources from the emissions averaging provision. EPA believes emissions averaging is not appropriate for new affected sources because it is most cost effective to integrate state-of-the-art controls into equipment design and to install the technology during construction of new sources. One reason we allow emissions averaging is to give existing sources flexibility to achieve compliance at diverse points with varying degrees of add-on control already in place in the most cost-effective and technically reasonable fashion. This flexibility is not needed for new affected sources because they can be designed and constructed with compliance in mind.

In addition, we seek comment on use of a discount factor when emissions averaging is used and on the appropriate value of a discount factor, if used. Such discount factors (*e.g.,* 10 percent) have been used in previous NESHAP, particularly where there was variation in the types of units within a common

source category to ensure that the environmental benefit was being achieved. In this situation, however, the affected sources are more homogeneous, making emissions averaging a more straight-forward analysis. Further, with the monitoring and compliance provisions that are being proposed, there is additional assurance that the environmental benefit will be realized. Further, the emissions averaging provision would not apply to individual units if the unit shares a common stack with units in other subcategories, because in that circumstance it is not possible to distinguish the emissions from each individual unit.

The emissions averaging provisions in this proposed rule are based in part on the emissions averaging provisions in the Hazardous Organic NESHAP (HON). The legal basis and rationale for the HON emissions averaging provisions were provided in the preamble to the final HON.[171]

M. How did EPA determine compliance times for this proposed rule?

CAA section 112 specifies the dates by which affected sources must comply with the emission standards. New or reconstructed units must be in compliance with this proposed rule immediately upon startup or [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], whichever is later. Existing sources may be provided up to 3 years to comply with the final rule; if an existing source is unable to comply within 3 years, a permitting authority has the discretion to grant such a source up to a 1-year extension, on a case-by-case basis, if such additional time is necessary for the installation of controls. *See* section 112(i)(3). We believe that 3 years for compliance is necessary to allow adequate time to design, install and test control systems that will be retrofitted onto existing EGUs, as well as obtain permits for the use of add-on controls.

We believe that the requirements of the proposed rule can be met without adversely impacting electric reliability. Our analysis shows that the expected number of retirements is less than many have predicted and that these can be managed effectively with existing tools and processes for ensuring continued grid reliability. Further, the industry has adequate resources to install the necessary controls and develop the modest new capacity required within the compliance schedule provided for in the CAA. Although there are a significant number of controls that need to be installed, with proper planning, we believe that the compliance schedule established by the CAA can be met. There are already tools in place (such as integrated resource planning, and in some cases, advanced auctions for capacity) that ensure that companies adequately plan for, and markets are responsive to, future requirements such as the proposed rule. In addition, EPA itself has already begun reaching out to key stakeholders including not only sources with direct compliance obligations, but also groups with responsibility to assure an affordable and reliable supply of electricity including state Public Utility Commissions (PUC), Regional Transmission Organizations (RTOs), the National Electric Reliability Council (NERC), the Federal Energy Regulatory Commission (FERC), and DOE. EPA intends to continue these efforts during both the development and implementation of this proposed rule. It is EPA's understanding that FERC and DOE will work with entities whose responsibility is to ensure an affordable, reliable supply of electricity, including state PUCs, RTOs, the NERC to share information and encourage them to begin planning for compliance and reliability as early as possible. This effort to identify and respond to any projected local and regional reliability concerns will inform decisions about the timing of retirements and other compliance strategies to ensure energy reliability. EPA believes that the ability of permitting authorities to provide an additional 1 year beyond the 3-year compliance time-frame as specified in CAA section 112, along with other compliance tools, ensures that the emission reductions and health benefits required by the CAA can be achieved while safeguarding completely against any risk of adverse impacts on electricity system reliability. Between proposal and final, EPA will work with DOE and FERC to identify any opportunities offered by the authorities and policy tools at the disposal of DOE and/or FERC that can be pursued to further ensure that the dual goals of substantially reducing the adverse public health impacts of power generation, as required by the CAA, while continuing to assure electric reliability is maintained. EPA also intends to continue to work with DOE, FERC, state PUCs, RTOs and power companies as this rule is implemented to identify and address any challenges to ensuring that both the requirements of the CAA and the need for a reliable electric system are met.

In developing this proposed rule, EPA has performed specific analysis to assess the feasibility (*e.g.,* ability of companies to install the required controls within the compliance time-frame) and potential impact of the proposed rule on reliability.

With regards to feasibility, EPA used IPM to project what types of controls would need to be installed to meet the requirements of this proposed rule. This includes technologies to control acid gases (wet and dry scrubber technology and the use of sorbent injection), the Hg requirements (co-benefits from other controls such as scrubbers and FFs and Hg-specific controls such as ACI), the non-Hg metal requirements (upgrades and or replacements of existing particulate control devices), and other HAP emissions (GCP).

Much of the power sector already has controls in place that remove significant amounts of acid gases. Today over 50 percent of the power generation fleet has scrubbing technology installed and the industry is already working on installations to bring that number to nearly two-thirds of the fleet by 2015. Many of the remaining coal-fired units are smaller, burn lower sulfur coals, and/or do not operate in a base-load mode. Units with these types of characteristics are candidates to use DSI technology which takes significantly less time to install. Units that choose to install dry or wet scrubbing technology should be able to do so within the compliance schedule required by the CAA as this technology can be installed within the 3-year window.[172] Notably, EPA does not project use of wet scrubbing technology to meet the requirements of this proposed rule and that is the technology that typically takes a longer time to install.

For Hg control, those units that do not meet the requirements with existing controls have several options. Companies with installed scrubbers may be able to make modifications (such as the use of scrubber additives to enhance Hg control). Other companies may use supplemental controls such as ACI. These types of options all take significantly less than 3 years to install.

Units that do not meet the non-Hg metal HAP requirements have several options such as upgrading existing particulate controls, installing

[171] Hazardous Organic NESHAP (59 FR 19425; April 22, 1994).

[172] In a letter to Senator Carper dated November 3, 2010 (*http://www.icac.com/files/public/ICAC_Carper_Response_110310.pdf*) David Foerter, the executive director of the Institute of Clean Air Companies (ICAC) explained that wet scrubber technology could be installed in 36 months, dry scrubber technology could be installed in 24 months and dry sorbent injection could be installed in 12 months. Page 3.

supplemental particulate controls, or replacing existing particulate controls. These options can also be implemented in significantly less than 3 years.

EPA projects that for acid gas control, companies will likely use dry scrubbing and sorbent injection technologies rather than wet scrubbing. For non-Hg metal HAP controls, EPA has assumed that companies with ESPs will likely upgrade them to FFs. As a number of units that were in the MACT floor for non-Hg HAP metals only had ESPs installed, this is likely a conservative assumption. For Hg, EPA projects that companies will comply through either the collateral reductions created by other controls (*e.g.,* scrubber/SCR combination) or ACI. EPA has assessed the feasibility of installing these controls within the compliance window (see TSD) and believes that the controls can be reasonably installed within that time. Although EPA assessed the ability to install the controls in 3 years (and determined that the controls could be installed in that time-frame), this would require the control technology industry to ramp up quickly. Therefore, EPA also assessed a time-frame that would allow some installations to take up to 4 years. This time-frame is consistent with the CAA which allows permitting authorities the discretion to grant extensions to the compliance time-line of up to 1 year. This time-frame also allows for staggered installation of controls at facilities that need to install technologies on multiple units. Staggered installation allows companies to address such issues as scheduling outages at different units so that reliable power can be provided during these outage periods or particularly complex retrofits (*e.g.,* when controls for one unit need to be located in an open area needed to construct controls on another unit). In other words, the additional 1-year extension would provide an additional two shoulder periods to schedule outages. It also provides additional opportunity to spread complex outages over multiple outage periods. EPA believes that while many units will be able to fully comply within 3 years, the 4th year that permitting authorities are allowed to grant for installation of controls is an important flexibility that will address situations where an extra year is necessary.

Permitting authorities are familiar with the operation of this provision because they have used it in implementing previous NESHAP. This extension can be used to address a range of reasons that installation schedules may take more than 3 years including: staggering installations for reliability or constructability purposes, or other site-specific challenges that may arise related to source-specific construction issues, permitting, or local manpower or resource challenges. EPA is proposing that States consider applying this extension both to the installation of add on controls (*e.g.,* a FF, or a dry scrubber) and the construction of on-site replacement power (*e.g.,* a case when a coal unit is being shut down and the capacity is being replaced on-site by another cleaner unit such as a combined cycle or simple cycle gas turbine and the replacement process requires more than 3 years to accomplish). EPA believes that it is reasonable to allow the extension to apply to the replacement because EPA believes that building of replacement power could be considered "installation of controls" at the facility. Because the phrase "installation of controls" could also be interpreted to apply only to changes made to an existing unit rather than the replacement of that existing unit with a new cleaner one, EPA takes comment on its proposal to allow the extension to apply to replacement power.

EPA has also considered the impact that potential retirements under this proposed rule will have on reliability. When considering the impact that one specific action has on power plant retirements, it is important to understand that the economics that drive retirements are based on multiple factors including: Expected electric demand, cost of alternative generation, and cost of continuing to generate using an existing unit. EPA's analysis shows that the lower cost of alternative generating sources (particularly the cost of natural gas), as well as reductions in demand, have a greater impact on the number of projected retirements than does the impact of the proposed rule. EPA's assessment looked at the reserve margins in each of 32 subregions in the continental U.S. It shows that with the addition of very little new capacity, average reserve margins are significantly higher than required (NERC assumes a default reserve margin of 15 percent while the average capacity margin seen after implementation of the policy is nearly 25 percent). Although such an analysis does not address the potential for more localized transmission constraints, the number of retirements projected suggests that the magnitude of any local retirements should be manageable with existing tools and processes. Demand forecasts used were based on EIA projected demand growth.

Reliability concerns caused by local transmission constraints can be addressed through a range of solutions including the development of new generation and/or demand side resources, and/or enhancements to the transmission system. On the supply side, there are a range of options including the development of more centralized power resources (either base-load or peaking), and/or the development of cogeneration, or distributed generation. Even with the large reserve margins, there are companies ready to implement supply side projects quickly. For instance, in the PJM Interconnection (an RTO) region, there are over 11,600 MW of capacity that have completed feasibility and impact studies and could be on-line by the third quarter of 2014.[173] Demand side options include energy efficiency as well as demand response programs. These types of resources can also be developed very quickly. In 2006, PJM Interconnection had less than 2,000 MWs of capacity in demand side resources. Within 4 years this capacity nearly quadrupled to almost 8,000 MW of capacity.[174] Recent experience also shows that transmission upgrades to address reliability issues from plant closures can also occur in less than 3 years. In addition to helping address reliability concerns, reducing demand through mechanisms such as energy efficiency and demand side management practices has many other benefits. It can reduce the cost of compliance and has collateral air quality benefits by reducing emissions in periods where there are peak air quality concerns.

EPA also examined the impact on reliability of unit outages to install control equipment. Because these outages usually occur in the shoulder months (outside summer or winter peaking periods) when demand is lower (and, thus, reserve margins are higher), the analysis showed that even with conservative estimates regarding the length of the outages and conservative estimates about how many outages occurred within a 1-year time-frame, reserve margins were maintained. With the potential for a 1-year compliance extension, outages can be further staggered, providing additional flexibility, even if some units require longer outages.

Although EPA's analysis shows that there is sufficient time and grid capacity to allow for compliance with the rule within the 3-year compliance window

[173] Paul M Sotkiewicz, PJM Interconnection, Presentation at the Bipartisan Policy Commission Workshop Series on Environmental Regulation and Electric System Reliability, Workshop 3: Local, State, Regional and Federal Solutions, January 19, 2011, Washington DC, *http://www.bipartisanpolicy.org/sites/default/files/Paul%20Sotkiewicz-%20Panel%202_0.pdf,* slide 6.

[174] Ibid—slide 5.

(with the possibility of a 1-year extension), to achieve compliance in a timely fashion, EPA expects that sources will begin promptly, based upon this proposed rule, to evaluate, select, and plan to implement, source-specific compliance options. In doing so, we would expect sources to consider the following factors: if retirement is the selected compliance option, notifying any relevant RTO/ISO in advance in order to develop an appropriate shutdown plan that identifies any necessary replacement power transmission upgrades or other actions necessary to ensure consistent electric supply to the grid; if installation of control technologies is necessary, any source-specific space limitations, such that installation can be staggered in a timely fashion; and source-specific electric supply requirements, such that outages can be appropriately scheduled. Starting assessments early and considering the full range of options is prudent because it will help ensure that the requirements of this proposed rule are met as economically as possible and that power companies are able to provide reliable electric power.

There is significant evidence that companies do in fact engage in such forward planning. For instance, in September of 2004 (approximately 6 months before the CAIR and CAMR requirements were finalized); Cinergy announced that it had already begun a construction program to comply. This program involved not only preliminary engineering, but actual construction of scrubbers.[175] Southern Company also began its engineering process well before those rules were finalized.[176] Although EPA understands that not every generating company may commit to actual capital projects in advance of finalization of the rule, the CAIR experience shows that some companies do. Even if companies do not take the step of committing to the capital projects, there are actions that companies can take that are much less costly. Companies can analyze their unit-by-unit compliance options based on the proposed rule. This will put them in a position to begin construction of projects with the longest lead times quickly and will ensure that the 3-year compliance window (or 4 with extension from the permitting authority) can be met.

It will also ensure that sufficient notification can be provided to RTOs/ISOs so that the full range of options for addressing any reliability concerns can be considered. Although most RTOs/ISOs only require 90-day notifications for retirements, construction schedules for all but the simplest retrofits will be longer, so sources should be able to notify their RTOs of their retirements earlier. This will also help as multiple sources work with their RTO/ISO to determine outage schedules. The RTOs/ISOs also have a very important role to play and it appears that a number of them are already engaged in preparing for these rules. For instance, PJM Interconnection considered the impact of these anticipated rules at its January 14, 2011, Regional Planning Process Task Force Meeting,[177] and Midwest Independent Transmission System Operator, Inc. (MISO) has also begun a planning process to consider the impact of EPA rules.[178]

As discussed above, given the large reserve margins that exist, even after consideration of requirements of the proposed rule, EPA believes that any reliability issues are likely to be primarily local in nature and be due to the retirement of a unit in a load constrained area. As demonstrated by the work that PJM Interconnection and MISO are doing, RTOs/ISOs are required to do long range (at least 10 years) capacity planning that includes consideration of future requirements such as EPA regulations. Furthermore, if companies within an RTO/ISO wish to retire a unit, they must first notify the RTO/ISO in advance so that any reliability concerns can be addressed. The RTOs/ISOs, have well established procedures to address such retirements.

Starting assessments early and considering the full range of options will help ensure that the requirements of this rule are met as economically as possible and that power companies are able to provide reliable electric power while significantly reducing their impact on public health. For power companies this includes considering the range of pollution control options available for their existing fleet as well as considering the range of options for replacement power, in the cases where shutting down a unit is the more economic choice. The RTOs/ISOs should consider the full range of options to provide any necessary replacement power including the development of both supply and demand side resources. Environmental regulators should work with their affected sources early to understand their compliance choices. In this way, those regulators will be able to accurately access when use of the 1-year compliance extension is appropriate. By working with regulators early, affected sources will be in a position to have assurance that the 1-year extension will be granted in those situations where it is appropriate.

Section X.c. describes the sensitivity analysis performed by EPA for an Energy Efficiency case, in which a combination of DOE appliance standards and State investments in demand-side efficiency come into place at the same time as compliance with the requirements of this rule. That analysis shows that even in the absence of this rule, moderate actions to promote energy efficiency would lead to retirement of an additional 11 GW in 2015, of 27 GW in 2020, and of 26 GW in 2030, beyond the capacity already projected to retire in the base case. In effect, the timely adoption and implementation of energy efficiency policies would augment currently projected reserve capacities that are instrumental to assuring system reliability.

As noted, instrumental to undertaking such actions are other Federal agencies such as DOE, ISOs and RTOs, and state agencies such as PUCs. Fortunately, in addition to helping to assure system reliability, timely implementation of energy efficiency policies offer these key decision-makers an additional incentive to take action. As the analysis shows, energy efficiency can reduce costs for ratepayers and customers.

First, with or without the proposed Toxic Rule, energy efficiency policies are shown by the analysis to reduce the overall costs of generating electricity, with the cost reductions increasing over time. *See* Table 22. Second, when comparing the Toxics Rule Case without energy efficiency to the Toxics Rule Case with energy efficiency, the analysis suggests that if these energy efficiency policies were to be put into place and maintained over time by system operators, states and DOE, the costs of the proposed Toxics Rule are mitigated by these cost reductions such that the overall system costs are reduced by $2 billion in 2015, $6 billion in 2020, and $11 billion in 2030.

The energy savings driven by these energy efficiency policies mean that consumers will pay less for electricity as well. EPA has modeled national average retail electricity prices, including the energy efficiency costs that are paid by the ratepayer. The Toxics Rule increases retail prices by 3.7 percent, 2.6 percent and 1.9 percent in 2015, 2020 and 2030

[175] Cinergy Press Release, September 2nd, 2004, "Cinergy Operating Companies to Reduce Power Plant Emissions, Improve Air Quality."

[176] ICAC.

[177] Paul M Sotkiewicz, PJM Interconnection, "Consideration of Forthcoming Environmental Regulations in the Planning Process," January 14, 2011.

[178] MISO Planning Advisory Committee, "Proposed EPA Regulatory Impact Analysis," November 23, 2010.

respectively relative to the base case. If energy efficiency policies are implemented along with the Toxics Rule, the average retail price of electricity increases by 3.3 percent in 2015 relative to the base case, but falls relative to the base case by about 1.6 percent in 2020 and about 2.3 percent in 2030. The effect on electricity bills however may fall more than these percentages suggest as energy efficiency means that less electricity will be used by consumers of electricity.

EPA believes that as it shares these results with PUCs, the commissions will respond in accordance with their ongoing imperative to ensure that electricity costs for ratepayers and consumers remains stable. Specifically, the opportunity created through the deployment of energy efficiency-promoting strategies and initiatives to safeguard system reliability and, especially, to curb cost increases that might otherwise result from implementation of the Toxics Rule should provide PUCs with both the motivation and the justification for providing utilities with the financial and regulatory support they need to begin planning as early as possible for compliance and to incorporate in their plans the kinds of energy efficiency investments needed to achieve both compliance and cost-minimization.

EPA recognizes that both utilities and their regulators often are hesitant to take early action to comply with environmental standards because they avoid incurring costs that they fear may not be required once the final regulation is promulgated. EPA urges utilities and regulators to begin planning and preparations for timely compliance. The same concerns about consumer cost in some cases also dissuade utilities from incurring, and commissions from authorizing, the upfront costs associated with energy efficiency programs. However, EPA also believes that if it takes steps to actively disseminate the results of the energy efficiency analysis, then utilities will be that much more likely to begin, and regulators that much more likely to support, comprehensive assessment and planning as early as possible since compliance approaches that encompass energy efficiency integrated with other actions needed to meet the Toxics Rule's requirements will result in lower costs for ratepayers and consumers. EPA encourages State environmental regulators to consider the extent to which a utility engages in early planning when making a decision regarding granting a 4th year for compliance with the Toxics Rule.

In summary, EPA believes that the large reserve margins, the range of control options, the range of flexibilities to address unit shutdowns, existing processes to assure that sufficient generation exists when and where it is needed, and the flexibilities within the CAA, provide sufficient assurance that the CAA section 112 requirements for the power sector can be met without adversely impacting electric reliability.

EGUs are the subject of several rulemaking efforts that either are or will soon be underway. In addition to this rulemaking proposal, concerning both hazardous air pollutants under section 112 and criteria pollutant NSPS standards under section 111, EGUs are the subject of other rulemakings, including ones under section 110(a)(2)(D) addressing the interstate transport of emissions contributing to ozone and PM air quality problems, coal combustion wastes, and the implementation of section 316(b) of the Clean Water Act (CWA). They will also soon be the subject of a rulemaking under CAA section 111 concerning emissions of greenhouse gases.

EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies. In addition, EO 13563 states that "[i]n developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation." Thus, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve.

The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. First, since that rulemaking will be finalized after a number of the other rulemakings that are currently underway are, the Agency will have an opportunity to take into account the effects of the earlier rulemakings in making decisions regarding potential GHG standards for EGUs.

Second, in that rulemaking, EPA will be addressing both CAA section 111(b) standards for emissions from new and modified EGUs and CAA section 111(d) emission guidelines for states to follow in establishing their plans regarding GHG emissions from existing EGUs. In evaluating potential emission standards and guidelines, EPA may consider the impacts of other rulemakings on both emissions of GHGs from EGUs and the costs borne by EGUs. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking.

As discussed elsewhere in this preamble, we invite comment on this proposed rule. EPA solicits comment on the ability of sources subject to this proposed rule to comply within the statutorily mandated 3-year compliance window and/or the 1-year discretionary extension, as well as comment on specific factors that could prevent a source from achieving, or could enable a source to achieve, compliance. In addition, EPA requests comment on the impact of this proposed rule on electric reliability, and ways to ensure compliance while maintaining the reliability of the grid.

A number of states (or localities) have proactively developed plans to address a suite of environmental issues, an aging generation fleet, and electric reliability (*e.g.,* plans requiring retirement of coal and pollution control devices such as the Colorado "Clean Air-Clean Jobs Act" or renewable portfolio standards that because of the states' current generation mix could result in significant changes to the composition of the fossil-fuel-fired portion of the fleet such as Hawaii's renewable portfolio standard (HB–1464)). In most cases, these plans were developed solely under State law with no underlying Federal requirement. Furthermore, as explained above, many of the technologies that were installed or that are planned to be installed in response to these state plans are likely to result in collateral reductions of many HAP required to be reduced in today's proposed rule. Although some of these state programs may have obtained some important emission reductions to date, they may also allow compliance time-frames for

some units that extend beyond those authorized under CAA section 112(i)(3).

The Agency has a program pursuant to 40 CFR subpart E, whereby states can take delegation of section 112 emission standards. Among other things, states can seek approval of state rules to the extent they can demonstrate that those rules are no less stringent that the applicable section 112(d) rule. Because overall, some of these state programs may result in greater emission reductions, EPA is taking comment on whether (and if so how) such state plans could be integrated with the proposed rule requirements consistent with the statute. EPA also intends to engage with states who believe that they have such plans to understand whether they believe that there are opportunities to integrate the two sets of requirements in a manner consistent with the requirements of the CAA.

EGUs are the subject of several rulemaking efforts that either are or will soon be underway. In addition to this rulemaking proposal, concerning both HAP under section 112 and criteria pollutant NSPS standards under section 111, EGUs are the subject of other rulemakings, including ones under section 110(a)(2)(D) addressing the interstate transport of emissions contributing to ozone and PM air quality problems, coal combustion wastes, and the implementation of section 316(b) of the CWA. They will also soon be the subject of a rulemaking under CAA section 111 concerning emissions of greenhouse gases (GHG).

EPA recognizes that it is important that each and all of these efforts achieve their intended environmental objectives in a common-sense manner that allows the industry to comply with its obligations under these rules as efficiently as possible and to do so by making coordinated investment decisions and, to the greatest extent possible, by adopting integrated compliance strategies. Thus, EPA recognizes that it needs to approach these rulemakings, to the extent that its legal obligations permit, in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that the rulemakings must achieve.

The upcoming rulemaking under section 111 regarding GHG emissions from EGUs may provide an opportunity to facilitate the industry's undertaking integrated compliance strategies in meeting the requirements of these rulemakings. First, since that rulemaking will be finalized after a number of the other rulemakings that are currently underway are, the agency will have an opportunity to take into account the effects of the earlier rulemakings in making decisions regarding potential GHG standards for EGUs.

Second, in that rulemaking, EPA will be addressing both CAA section 111(b) standards for emissions from new and modified EGUs and CAA section 111(d) emission guidelines for states to follow in establishing their plans regarding GHG emissions from existing EGUs. In evaluating potential emission standards and guidelines, EPA may consider the impacts of other rulemakings on both emissions of GHGs from EGUs and the costs borne by EGUs. The Agency expects to have ample latitude to set requirements and guidelines in ways that can support the states' and industry's efforts in pursuing practical, cost-effective and coordinated compliance strategies encompassing a broad suite of its pollution-control obligations. EPA will be taking public comment on such flexibilities in the context of that rulemaking.

N. How did EPA determine the required records and reports for this proposed rule?

You would be required to comply with the applicable requirements in the NESHAP General Provisions, subpart A of 40 CFR part 63, as described in Table 10 of the proposed 40 CFR part 63, subpart UUUUU. We evaluated the General Provisions requirements and included those we determined to be the minimum notification, recordkeeping, and reporting requirements necessary to ensure compliance with, and effective enforcement of, this proposed rule.

We would require additional recordkeeping if you chose to comply with the chlorine or Hg fuel input option. You would need to keep records of the calculations and supporting information used to develop the chlorine or Hg fuel input operating limit.

O. How does this proposed rule affect permits?

The CAA requires that sources subject to this proposed rule be operated pursuant to a permit issued under EPA-approved state operating permit program. The operating permit programs are developed under Title V of the CAA and the implementing regulations under 40 CFR parts 70 and 71. If you are operating in the first 2 years of the current term of your operating permit, you will need to obtain a revised permit to incorporate this proposed rule. If you are in the last 3 years of the current term of your operating permit, you will need to incorporate this proposed rule into the next renewal of your permit.

P. Alternative Standard for Consideration

As discussed above, we are proposing alternate equivalent emission standards (for certain subcategories) to the proposed surrogate standards in three areas: SO_2 (in addition to HCl), individual non-Hg metals (for PM), and total non-Hg metals (for PM). The proposed emission limitations are provided in Tables 16 and 17 of this preamble.

TABLE 15—ALTERNATE EMISSION LIMITATIONS FOR EXISTING COAL- AND OIL-FIRED EGUS

Subcategory	Coal-fired unit designed for coal ≥ 8,300 Btu/lb	Coal-fired unit designed for coal < 8,300 Btu/lb	IGCC, lb/TBtu (lb/GWh)	Liquid oil, lb/TBtu (lb/GWh)	Solid oil-derived
SO_2	0.20 lb/MMBtu (2.0 lb/MWh).	0.20 lb/MMBtu (2.0 lb/MWh).	NA	NA	0.40 lb/MMBtu (5.0 lb/MWh).
Total non-Hg metals	0.000040 lb/MMBtu (0.00040 lb/MWh).	0.000040 lb/MMBtu (0.00040 lb/MWh).	5.0 (0.050)	NA	0.000050 lb/MMBtu (0.001 lb/MWh).
Antimony, Sb	0.60 lb/TBtu (0.0060 lb/GWh).	0.60 lb/TBtu (0.0060 lb/GWh).	0.40 (0.0040)	0.20 (0.0030)	0.40 lb/TBtu (0.0070 lb/GWh).
Arsenic, As	2.0 lb/TBtu (0.020 lb/GWh).	2.0 lb/TBtu (0.020 lb/GWh).	2.0 (0.020)	0.60 (0.0070)	0.40 lb/TBtu (0.0040 lb/GWh).
Beryllium, Be	0.20 lb/TBtu (0.0020 lb/GWh).	0.20 lb/TBtu (0.0020 lb/GWh).	0.030 (0.0030)	0.060 (0.00070)	0.070 lb/TBtu (0.00070 lb/GWh).
Cadmium, Cd	0.30 lb/TBtu (0.0030 lb/GWh).	0.30 lb/TBtu (0.0030 lb/GWh).	0.20 (0.0020)	0.10 (0.0020)	0.40 lb/TBtu (0.0040 lb/GWh).

TABLE 15—ALTERNATE EMISSION LIMITATIONS FOR EXISTING COAL- AND OIL-FIRED EGUS—Continued

Subcategory	Coal-fired unit designed for coal ≥ 8,300 Btu/lb	Coal-fired unit designed for coal < 8,300 Btu/lb	IGCC, lb/TBtu (lb/GWh)	Liquid oil, lb/TBtu (lb/GWh)	Solid oil-derived
Chromium, Cr	3.0 lb/TBtu (0.030 lb/GWh).	3.0 lb/TBtu (0.030 lb/GWh).	3.0 (0.020)	2.0 (0.020)	2.0 lb/TBtu (0.020 lb/GWh).
Cobalt, Co	0.80 lb/TBtu (0.0080 lb/GWh).	0.80 lb/TBtu (0.0080 lb/GWh).	2.0 (0.0040)	3.0 (0.020)	2.0 lb/TBtu (0.020 lb/GWh).
Lead, Pb	2.0 lb/TBtu (0.020 lb/GWh).	2.0 lb/TBtu (0.020 lb/GWh).	0.0002 lb/MMBtu (0.003 lb/MWh).	2.0 (0.030)	11.0 lb/TBtu (0.020 lb/GWh).
Manganese, Mn	5.0 lb/TBtu (0.050 lb/GWh.	5.0 lb/TBtu (0.050 lb/GWh.	3.0 (0.020)	5.0 (0.060)	3.0 lb/TBtu (0.040 lb/GWh).
Mercury, Hg	NA	NA	NA	0.050 lb/TBtu (0.00070 lb/GWh).	NA.
Nickel, Ni	4.0 lb/TBtu (0.040 lb/GWh).	4.0 lb/TBtu (0.040 lb/GWh).	5.0 (0.050)	8.0 (0.080)	9.0 lb/TBtu (0.090 lb/GWh).
Selenium, Se	6.0 lb/TBtu (0.060 lb/GWh).	6.0 lb/TBtu (0.060 lb/GWh).	22.0 (0.20)	2.0 (0.020)	2.0 lb/TBtu (0.020 lb/GWh).

NA = Not applicable.

TABLE 16—ALTERNATE EMISSION LIMITATIONS FOR NEW COAL- AND OIL-FIRED EGUS

Subcategory	Coal-fired unit designed for coal ≥ 8,300 Btu/lb	Coal-fired unit designed for coal < 8,300 Btu/lb	IGCC *	Liquid oil, lb/GWh	Solid oil-derived
SO_2	0.40 lb/MWh	0.40 lb/MWh	0.40 lb/MWh	NA	0.40 lb/MWh.
Total metals	0.000040 lb/MWh	0.000040 lb/MWh	0.000040 lb/MWh	NA	0.00020 lb/MWh.
Antimony, Sb	0.000080 lb/GWh	0.000080 lb/GWh	0.000080 lb/GWh	0.0020	0.00090 lb/GWh.
Arsenic, As	0.00020 lb/GWh	0.00020 lb/GWh	0.00020 lb/GWh	0.0020	0.0020 lb/GWh.
Beryllium, Be	0.000030 lb/GWh	0.000030 lb/GWh	0.000030 lb/GWh	0.00070	0.000080 lb/GWh.
Cadmium, Cd	0.00040 lb/GWh	0.00040 lb/GWh	0.00040 lb/GWh	0.00040	0.0070 lb/GWh.
Chromium, Cr	0.020 lb/GWh	0.020 lb/GWh	0.020 lb/GWh	0.020	0.0060 lb/GWh.
Cobalt, Co	0.00080 lb/GWh	0.00080 lb/GWh	0.00080 lb/GWh	0.0060	0.0020 lb/GWh.
Lead, Pb	0.00090 lb/GWh	0.00090 lb/GWh	0.00090 lb/GWh	0.0060	0.020 lb/GWh.
Mercury, Hg	NA	NA	NA	0.00010 lb/GWh	NA.
Manganese, Mn	0.0040 lb/GWh	0.0040 lb/GWh	0.0040 lb/GWh	0.030	0.0070 lb/GWh.
Nickel, Ni	0.0040 lb/GWh	0.0040 lb/GWh	0.0040 lb/GWh	0.040	0.0070 lb/GWh.
Selenium, Se	0.030 lb/GWh	0.030 lb/GWh	0.030 lb/GWh	0.0040	0.00090 lb/GWh.

* Beyond-the-floor as discussed elsewhere.
NA = Not applicable.

Most, if not all, coal-fired EGUs and solid oil-derived fuel-fired EGUs already have emission limitations for SO_2 under either the Federal NSPS, individual SIP programs, or the Federal ARP and, as a result, have SO_2 emission controls installed. Further, again most, if not all, coal-fired EGUs have SO_2 CEMS installed and operating under the provisions of one of these programs. Thus, as SO_2 is a suitable surrogate for the acid gas HAP, it could be used as an alternate equivalent standard to the HCl standard for EGUs with FGD systems installed and operated at normal capacity. An SO_2 standard would ensure that equivalent control of the acid gas HAP is achieved, and some facilities may find it preferable to use the existing SO_2 CEMS for compliance purposes rather than having to perform the manual HCl compliance testing. As noted elsewhere, this approach does not work for EGUs that do not have SO_2 controls installed and, thus, those EGUs may not utilize the alternate SO_2 limitations. Further, no SO_2 data were provided by the two IGCC units; therefore, there is no alternative SO_2 limitation being proposed for existing IGCC units.

Some sources have expressed a preference for individual non-Hg metal HAP emission limitations rather than the use of PM as a surrogate. Thus, EPA has analyzed the data for that purpose and we are proposing both alternate individual HAP metal limitations and total HAP metal limitations for all subcategories except liquid oil-fired EGUs. These limitations provide equivalent control of metal HAP as the proposed PM limitations.

We are soliciting comments on all aspects of these alternate emission limitations.

VI. Background Information on the Proposed NSPS

A. What is the statutory authority for this proposed NSPS?

New source performance standards implement CAA section 111(b), and are issued for source categories which EPA has determined cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. CAA section 111(b)(1)(B) requires the EPA to periodically review and, if appropriate, revise the NSPS to reflect improvements in emissions reduction methods.

CAA section 111 requires that the NSPS reflect the application of the best system of emissions reductions which the Administrator determines has been adequately demonstrated (taking into account the cost of achieving such reduction, any non-air quality health and environmental impacts and energy requirements). This level of control is commonly referred to as best demonstrated technology (BDT).

The current standards for steam generating units are contained in the NSPS for electric utility steam generating units (40 CFR part 60, subpart Da), industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Db), and small industrial-commercial-institutional steam generating units (40 CFR part 60, subpart Dc). Previous standards that continue to apply to owners/operators of existing affected facilities, but which have been superseded for owner/operators of new affected facilities, are contained in the NSPS for fossil-fuel-fired steam generating units for which construction was commenced after August 17, 1971, but on or before September 18, 1978 (40 CFR part 60, subpart D).

B. Summary of State of New York, et al., v. EPA Remand

On February 27, 2006, EPA promulgated amendments to the NSPS for EGUs (40 CFR part 60, subpart Da) which established new standards for PM, SO_2, and NO_X (71 FR 9,866). EPA was subsequently sued on the amendments by multiple state governments, municipal governments, and environmental organizations (collectively the Petitioners). *State of New York* v. *EPA,* No. 06–1148 (DC Cir.). The Petitioners alleged that EPA failed to correctly identify the best system of emission reductions for the newly established SO_2 and NO_X standards. The Petitioners also contended that EPA was required to establish separate emission limits for fine filterable PM ($PM_{2.5}$) and condensable PM. Finally, the petitioners claimed the NSPS failed to reflect the degree of emission limitation achievable through the application of IGCC technology. Based upon further examination of the record, EPA determined that certain issues in the rule warranted further consideration. On that basis, EPA sought and, on September 4, 2009, was granted a voluntary remand without vacatur of the 2006 amendments.

C. EPA's Response to the Remand

The emission standards established by the 2006 final rule, which are more stringent than the standards in effect prior to the adoption of the amendments, remain in effect and will continue to apply to affected facilities for which construction was commenced after February 28, 2005, but before May 4, 2011. Following careful consideration of all of the relevant factors, EPA is proposing to establish amended standards for PM, SO_2, and NO_X which would apply to owners/operators of affected facilities constructed, reconstructed, or modified after May 3, 2011.

In terms of the timing of our response to the remand, we consider it appropriate to propose revisions to the NSPS in conjunction with proposing the EGU NESHAP. There are some commonalities among the controls needed to comply with the requirements of the two rules and syncing the two rules so that they apply to the same set of new sources will allow owners/operators of those sources to better plan to comply with both sets of requirements. Therefore, we are proposing these revisions in conjunction with proposing the NESHAP, and intend to finalize both rules simultaneously.

As explained in more detail below and in the technical support documents, we have concluded that the proposed PM, SO_2, and NO_X standards set forth in this proposed rule reflect BDT. In addition, we have concluded that the most appropriate approach to reduce emissions of both filterable $PM_{2.5}$ and condensable PM is to establish a total PM standard, rather than establishing separate standards for each form of PM.The total PM standard, total filterable PM plus condensable PM, set forth in this proposed rule reflects BDT for all forms of PM. We have concluded that establishing a single total PM standard is preferable for a number of reasons. First, this approach effectively accounts for and requires control of both primary forms of PM, filterable PM, which includes both filterable PM_{10} (PM in the stack with an aerodynamic diameter less than or equal to a nominal 10 micrometers) and filterable $PM_{2.5}$ (PM in the stack with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) and condensable PM (materials that are vapors or gases at stack conditions but form solids or liquids upon release to the atmosphere). Second, we have concluded that the same control device constitutes BDT for both forms of filterable PM. Best demonstrated technology for control of both filterable PM_{10} and filterable $PM_{2.5}$ emissions from steam generating units is based upon the use of a FF with coated or membrane filter media bags. Fabric filters control the fine particulate sizes that compose filterable $PM_{2.5}$ and the coarser particulate sizes that are a component of filterable PM_{10} through the same means. Since a FF controls total filterable PM and cannot selectively control filterable $PM_{2.5}$, establishing separate filterable $PM_{2.5}$ and filterable PM_{10} standards would not result in any further reduction in emissions. Thus, although the NSPS for steam generating units do not establish individual standards for filterable PM_{10} and $PM_{2.5}$, the NSPS PM standards for steam generating units do result in control of both of these filterable PM size categories based on the use of the control technologies identified as BDT and used to derive the proposed PM standards. Third, size fractionation of the PM in stacks with entrained water droplets (i.e., those downstream of a wet FGD scrubber) is challenging since the water droplets contain suspended and dissolved material which would form particulate after exiting the stack when the water droplet is evaporated. This challenge is exacerbated due to the difficulties of collecting the water droplets and quickly evaporating the water to reconstitute the suspended and dissolved materials in their eventual final size without changing their size as a result of shattering, agglomeration and deposition on the sample equipment. Although the Agency and others are working toward technologies that may allow particle sizing in wet stack conditions, there is currently no viable test method to determine the size fraction of the filterable PM for stacks that contain water droplets. Because many new EGUs are expected to use wet scrubbers and/or a WESP, owners/operators of these units would have no method to determine compliance with a fine filterable PM standard.

Under the existing NSPS, BDT for an owner/operator of a new affected facility is a FF for control of filterable PM and an FGD for control of SO_2. Depending on the specific stack conditions and coal type being burned, fabric filters may also provide some co-benefit reduction in condensable PM emissions. Furthermore, an FGD designed for SO_2 control has the co-benefit of reducing, to some extent, condensable PM emissions. Therefore, the existing NSPS baseline for control of condensable PM is a FF in combination with an FGD. We have concluded that the additional use of a WESP system in combination with DSI is BDT for condensable PM. We have concluded that it is appropriate to regulate both filterable and condensable PM under a single standard since they may be impacted differently by common controls. For example, DSI is one of the approaches that could be used to reduce the sulfuric acid mist (SO_3 and H_2SO_4) portion of the condensable PM. However, addition of sorbent adds filterable PM to the system and could conceivably increase filterable PM emissions. When using a wet FGD, some small amount of scrubber solids (gypsum, limestone) can be entrained into the exiting gas, resulting in an

increase in filterable PM emissions. In each of these cases, technologies used to meet a stringent separate condensable PM standard could result in an increase in filterable PM emissions, a portion of which consist of fine filterable PM. This increase in filterable PM may challenge the ability of the owner/operator of the affected facility to meet a similarly stringent filterable PM standard. Filterable and condensable PM are often controlled using separate or complimentary technologies—though there are technologies, (*e.g.,* WESP), that can control both filterable and condensable PM emissions. Often times the equipment is used to also control other pollutants such as SO_2, HCl, and Hg. A combined PM standard allows for optimal design and operation of the control equipment. Thus, with the data available to us it is unclear what system of emissions reduction would result in the best overall environmental performance if we attempted to established separate filterable and condensable PM standards and what an appropriate condensable PM standard would be. At this time, the use of a total PM standard is the most effective indicator that the emissions standard is providing the best control of both filterable and condensable $PM_{2.5}$ emissions as well as coarse filterable PM emissions. We are requesting comment on whether separate filterable $PM_{2.5}$ and condensable PM standards would be appropriate and what the numerical values of any such standards should be.

EPA disagrees with the petitioners claim that the NSPS should be based on the performance of IGCC units. The NSPS is a national standard and IGCC is not appropriate in every situation. Although IGCC units have many advantages, technology choice is based on several factors, including the goals and objectives of the owner or operator constructing a facility, the intended purpose or function of the facility, and the characteristic of the particular site. In addition, the emissions benefits resulting from reduced emissions of criteria pollutants are not sufficient in all instances to justify the higher capital costs of today's IGCC units if IGCC is selected as BDT in establishing a national standard. The emissions benefits may, however, be sufficient to justify the use of IGCC in an individual case, after considering cost and other relevant factors, including those described above.

D. EPA's Response to the Utility Air Regulatory Group's Petition for Reconsideration

On January 28, 2009, EPA promulgated amendments separate from the above mentioned amendments to the NSPS for EGUs (40 CFR part 60, subpart Da, 74 FR 5,072). The Utility Air Regulatory Group (UARG) subsequently requested reconsideration of that rulemaking and EPA granted that reconsideration. Specific issues raised by UARG included the opacity monitoring requirements for owners/operators of affected facilities subject to an opacity standard that are not required to install a continuous opacity monitoring system (COMS). Another issue raised by UARG was the opacity standard for owners/operators of affected facilities subject to 40 CFR part 60, subpart D. We are requesting comments on both of these issues in this rulemaking.

VII. Summary of the Significant Proposed NSPS Amendments

The proposed amendments would amend the emission limits for PM, SO_2, and NO_X from steam generating units in 40 CFR part 60, subpart Da. Only those facilities that begin construction, modification, or reconstruction after May 3, 2011 would be affected by the proposed amendments. In addition to proposing to amend the identified emission limits, we are also proposing several less significant amendments, technical clarifications, and corrections to various provisions of the existing utility and industrial steam generating unit NSPS, as explained below.

A. What are the proposed amended emissions standards for EGUs?

We are proposing to amend the PM, SO_2, and NO_X standards for owners/operators of new, modified, and reconstructed units on which construction is commenced after May 3, 2011 as follows. We are proposing a total PM emissions standard (filterable plus condensable PM) for owners/operators of new and reconstructed EGUs of 7.0 nanograms per joule (ng/J) (0.055 lb/MWh) gross energy output. The proposed PM standard for modified units is 15 ng/J (0.034 lb/MMBtu) heat input.

We are proposing an SO_2 emissions standard for new and reconstructed EGUs of 130 ng/J (1.0 lb/MWh) gross energy output or a 97 percent reduction of potential emissions regardless of the type of fuel burned with the following exception. We are not proposing to amend the SO_2 emissions standard for EGUs that burn over 75 percent coal refuse. We are also not proposing to amend the SO_2 emission standard for owners/operators of modified EGUs because of the incremental cost effectiveness and potential site specific limited water availability. Without access to adequate water supplies owners/operators of existing facilities would not be able to operate a wet FGD.

We are co-proposing two options for an amended NO_X emissions standard. EPA's preferred approach would establish a combined NO_X plus CO standard for owners/operators of new, reconstructed, and modified units. The proposed combined standard for new and reconstructed EGUs is 150 ng/J (1.2 (lb NO_X + lb CO)/MWh) and the proposed combined standard for modified units is 230 ng/J (1.8 (lb NO_X + lb CO)/MWh). EPA prefers the approach of establishing a combined standard because it provides additional compliance flexibility while still providing an equivalent or superior level of environmental protection. Alternatively, we are proposing to amend the NO_X emission standard for new, modified, and reconstructed EGUs to 88 ng/J (0.70 lb/MWh) gross energy output regardless of the type of fuel burned and not establish any CO standards.

In addition to proposing revised emission standards, we are also proposing to amend the way an owner/operator of an affected facility would calculate compliance with the proposed standards. Under the existing NSPS, averages are calculated as the arithmetic average of the non out-of-control hourly emissions rates (*i.e.,* hours during which the monitoring device has not failed a quality assurance or quality control test) during the applicable averaging period. For the revised standards, we are proposing that the average be calculated as the sum of the applicable emissions divided by the sum of the gross output of non out-of-control hours during the averaging period. We are proposing this change in part to facilitate moving from the existing PM, SO_2, and NO_X standards, which exclude periods of startup and shutdown, to the proposed PM, SO_2, and NO_X standards, which would include periods of startup and shutdown.

B. Would owners/operators of any EGUs be exempt from the proposed amendments?

We are proposing several amendments that would exempt owners/operators from certain of the proposed amendments. First, we are proposing that owners/operators of innovative emerging technologies that apply for and are granted a commercial demonstration permit by the Administrator for an affected facility that uses a pressurized fluidized bed, a multi-pollutant emissions control system, or advanced combustion controls be exempt from the proposed

amended standard. Owners/operators of these technologies would instead demonstrate compliance with standards similar to those finalized in the 2006 amendments. The total PM standard would be 0.034 lb/MMBtu heat input, the SO_2 standard would be 1.4 lb/MWh gross output or a 95 percent reduction in potential emissions, and the NO_X standard would be 1.0 lb/MWh gross output. In the event we finalize a combined NO_X/CO standard, the corresponding combined limit would be 1.4 lb/MWh gross output. In addition, we are proposing to harmonize all of the steam generating unit NSPS by exempting all steam generating units combusting natural gas and/or low sulfur oil from PM standards and exempting all steam generating units burning natural gas from opacity standards. Finally, we are proposing to exempt owners/operators of affected facilities subject to 40 CFR part 60, subpart Eb (standards of performance for large MWCs), from 40 CFR part 60, subpart Da, exempt owners/operators of affected facilities subject to 40 CFR part 60, subpart CCCC (standards of performance for commercial and industrial solid waste incineration), units from 40 CFR part 60, subparts Da, Db, and Dc, exempt owners/operators of affected facilities subject to 40 CFR part 60, subpart BB (standards of performance for Kraft pulp mills), from the PM standards under 40 CFR part 60, subpart Db, and exempt owners/operators of fuel gas combustion devices subject to 40 CFR part 60, subpart Ja (standards of performance for petroleum refineries), from the SO_2 standard under 40 CFR part 60, subpart Db.

C. What other significant amendments are being proposed?

A complete list of the corrections and technical amendments and corrections is available in the docket in the form of a redline/strikeout version of the existing regulatory language. These additional amendments are being proposed to clarify the intent of the current requirements, correct inaccuracies, and correct oversights in previous versions that were promulgated. The additional significant amendments are as follows.

We are proposing several definitional changes. First, to provide additional flexibility and recognize the environmental benefit of efficient production of electricity we are proposing to expand the definition of the affected facility under 40 CFR part 60, subpart Da, to include integrated CTs and fuel cells. Second, because petroleum coke is increasingly being burned in EGUs selling over 25 MW of electric output, we are proposing to amend the definition of petroleum to include petroleum coke. Next, to minimize permitting and compliance burdens and avoid situations where an IGCC facility switches between different NSPS (40 CFR part 60, subparts KKKK and Da), we are proposing to amend the definition of an IGCC facility to allow the Administrator to exempt owners/operators from the 50 percent solid-derived fuel requirement during construction and repair of the gasifier. Owners/operators of IGCC units might install and operate the stationary CT prior to completion of the gasification system. Under the existing standards, an owner/operator doing this would first be subject to 40 CFR part 60, subpart KKKK, and applicability would switch once the gasification system is completed. This outcome would not result in any additional reduction in emissions. The proposed change would thus reduce regulatory burden without decreasing environmental protection. Finally, both biodiesel and kerosene have combustion characteristics similar to those of distillate oil. Therefore, we are proposing to expand the definition of distillate oil in 40 CFR part 60, subparts Db and Dc, to include both biodiesel and kerosene such that units burning any of these fuels, either separately or in combination would be subject to the same requirements.

Additional proposed amendments include deleting vacated provisions and additional harmonization across the various steam generating unit NSPS. As explained above, CAMR was vacated by the DC Circuit Court in 2008. As a result, the provisions added to 40 CFR part 60, subpart Da, by CAMR are no longer enforceable. Therefore, we are proposing to delete the provisions in 40 CFR part 60, subpart Da, that reference Hg standards and Hg testing and monitoring provisions. In addition, existing 40 CFR part 60, subpart HHHH (Emission Guidelines and Compliance Times for Coal-Fired Electric Steam Generating Units), which was promulgated as part of CAMR, and was, therefore, also vacated by the court's decision, will be removed and that subpart will be deleted. We are proposing to harmonize all of the steam generating unit NSPS by adding BLDS and ESP parameter monitoring systems as alternatives to the requirement to install a COMS in all the subparts (40 CFR part 60, subparts D, Da, Db, and Dc). We are also proposing to change the date by which owners/operators of affected facilities subject to all of the steam generating unit NSPS are to begin submitting performance test data electronically from July 1, 2011, to January 1, 2012.

VIII. Rationale for This Proposed NSPS

The proposed new emission standards for EGUs would apply only to affected sources that begin construction, modification, or reconstruction after May 3, 2011. Based on our review of emission data and control technology information applicable to criteria pollutants, we have concluded that amendments of the PM, SO_2, and NO_X emission standards are appropriate. The technical support documents that accompany the proposal describe in further detail how the proposed amendments to the NSPS reflect the application of the BDT for these sources considering the performance and cost of the emission control technologies and other environmental, health, and energy factors. In establishing the proposed revised emission limits based on BDT, we have to the extent that it is practical and reasonable to do so adopted a fuel and technology neutral approach and have expressed the proposed emission limits on an output basis. These approaches provide the level of emission limitation required by the CAA for the NSPS program while at the same time achieving the additional benefits of compliance flexibility, increased efficiency, and the use of cleaner fuels.

The fuel and technology neutral approach provides a single emission limit for steam generating units based on the application of BDT without regard to the specific type of steam generating equipment or fuel being used. We have concluded that this approach provides owners/operators of affected facilities an incentive to carefully consider fuel use, boiler type, and control technology in planning for new units so as to use the most effective combination of add-on control technologies, clean fuels, and boiler design based on the circumstances to meet the emission standards.

To develop a fuel- and technology-neutral emission limit, we first analyzed data on emission control performance from coal-fired units to establish an emission level that represents BDT for units burning coal. We adopted this approach because the higher sulfur, nitrogen, and ash contents for coal compared to oil or gas makes application of BDT to coal-fired units more complex than application of BDT to either oil- or gas-fired units. Because of these complexities, emission levels selected for coal-fired steam generating units using BDT would also be achievable by oil- and gas-fired EGUs. Thus, we are proposing that the

emission levels established through the application of BDT to coal-fired units apply to all boiler types and fuel use combinations. We have concluded that this fuel-neutral approach both satisfies the requirements of CAA section 111(b) and provides a clear incentive to use cleaner fuels where it is possible to do so.

Where feasible, we are proposing output-based (gross basis) standards in furtherance of pollution prevention which has long been one of our highest priorities. In the current context, maximizing the efficiency of energy generation represents a key opportunity to further pollution prevention. An output-based format establishes emission standards that encourage unit efficiency by relating emissions to the amount of useful-energy generated, not the amount of fuel burned. By relating emission limitations to the productive output of the process, output-based emission standards encourage energy efficiency because any increase in overall energy efficiency results in a lower emissions rate. Output-based standards provide owners/operators of regulated sources with an additional compliance option (*i.e.,* increased efficiency in producing useful output) that can result in both reduced compliance costs and lower emissions. The use of more efficient generating technologies reduces fossil fuel use and leads to multi-media reductions in environmental impacts both on-site and off-site. On-site benefits include lower emissions of all products of combustion, including HAP, as well as reducing any solid waste and wastewater discharges. Off-site benefits include the reduction of emissions and non-air environmental impacts arising from the production, processing, and transportation of fuels and the disposal of by-products of combustion such as fly-ash and bottom-ash.

The general provisions in 40 CFR part 60 provide that "emissions in excess of the level of the applicable emissions limit during periods of startup, shutdown, and malfunction (shall not be) considered a violation of the applicable emission limit unless otherwise specified in the applicable standard." 40 CFR 60.8(c). 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, EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not proposed different standards for those periods.

To establish the proposed output-based SO_2 and NO_X standards, we used hourly pollutant emissions data and gross output data as reported to the Clean Air Markets Division (CAMD) of EPA. In general, retrofit existing units can perform as well as recently operational units. To establish a robust data set on which to base the proposed amendments, we analyzed emissions data from both older plants that have been retrofitted with controls and recently operational units. We did not attempt to filter out periods of startup or shutdown and the proposed standards, therefore, account for those periods.

If any persons believe that our conclusion is incorrect, or that we have failed to consider any relevant information on this point, we encourage them to submit comments. In particular, we note that 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 EPA any period of excess emissions that occurs during periods of startup, shutdown, or malfunction (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.

In developing the proposed 30-day SO_2 and NO_X standards, we summed the unadjusted emissions for all non-out-of-control operating hours and divided that value by the sum of the gross electrical energy output over the same period. For the purposes of this analysis, out-of-control hours were defined as when either the unadjusted applicable emissions or gross output could not be determined for that operating hour. The reduction in potential SO_2 emissions was calculated by comparing the reported SO_2 emissions during a 30-day period to the potential emissions for that same 30-day period. Potential uncontrolled SO_2 emissions were calculated using monthly delivered fuel receipts and fuel quality data from the EIA forms EIA–923, EIA–423, and FERC–423, as applicable. For each operating day, the total potential uncontrolled SO_2 emissions were calculated by multiplying the uncontrolled SO_2 emissions rate for the applicable month as determined using the EIA data by the heat input for that day. This revised averaging approach gives more weight to high load hours and more accurately reflects overall environmental performance. In addition, because low load hours do not factor as heavily into the calculated average the impact of including periods of startup and shutdown is minimized.

Particulate matter and CO data are not reported to CAMD and instead were collected as part of the 2010 ICR. Total PM testing was reported as part of the 2010 ICR and those data were used in both rulemakings. As part of the 2010 ICR, owners/operators reported CO performance test data and whether or not they have a CO CEMS installed on their facility. We requested CO CEMS data from multiple units to compare the relationship between NO_X and CO. The 30-day combined NO_X/CO standard was calculated using the same approach as for NO_X and SO_2.

A. How are periods of malfunction addressed?

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.) 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 EPA anticipate and account for the innumerable types of potential malfunction events in setting emission standards. *See, Weyerhaeuser* v *Costle,* 590 F.2d 1011, 1058 (DC Cir. 1978) ("In the nature of things, no general limit, individual permit, or even any upset provision can anticipate all upset situations. After a certain point, the transgression of regulatory limits caused by 'uncontrollable acts of third parties,' such as strikes, sabotage, operator intoxication or insanity, and a variety of other eventualities, must be a matter for the administrative exercise of case-by-case enforcement discretion, not for specification in advance by regulation.")

Further, it is reasonable to interpret CAA section 111 as not requiring EPA to account for malfunctions in setting emissions standards. For example, we note that section 111 provides that EPA set standards of performance which reflect the degree of emission limitation achievable through "the application of the best system of emission reduction" that 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 EGUs under 40 CFR part 60, subpart Da. 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, 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. 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, 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)). 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).

B. How did EPA determine the proposed emission limitations?

1. Selection of the Proposed PM Standard

Controls for filterable PM are well established. Either an ESP or FF can control both coarse and fine filterable PM. However, controls for condensable PM are less developed. Condensable PM from a coal-fired boiler is composed primarily of SO_3 and H_2SO_4 but may also contain smaller amounts of nitrates, halides, ammonium salts, and volatile metals such as compounds of Hg and Se. Controls that are expected to reduce emissions of condensable PM include the use of lower sulfur coals, the use of an SCR catalyst or other NO_X control device with minimal SO_2 to SO_3 conversion, use of an FGD scrubber, injection of an alkaline sorbent upstream of a PM control device, and use of a WESP. Other control technologies such as FFs or ESPs may also provide some reduction in condensable PM—depending on the flue gas temperature and the composition of the fly ash and other bulk PM. It is unlikely that owners/operators of modified units could universally further reduce the condensable fraction of the PM as they already have FGD controls, operating the PM control at a cooler temperature (or relocating to a cooler location) are not practical options due to concerns with corrosion, and it is possible that the existing ductwork might not make DSI viable without significant adjustments. Therefore, we have concluded that BDT for modified units should be based on the use of a FF in combination with an FGD. Based on the 2010 ICR data for total PM, there are performance tests for 63 units below the existing NSPS filterable PM standard (0.015 lb/MMBtu), that have some type of SO_2 control, and that use a FF. Ninety four percent of these performance tests are achieving an emissions rate of 0.034 lb/MMBtu for total PM, and we have concluded that this value is an achievable standard for owners/operators of modified units. It is also approximately equivalent in stringency to the existing filterable PM standard because no specific condensable PM controls would necessarily be required. However, we have concluded that new EGUs will factor in condensable PM controls. BDT for new EGUs would be a FF and FGD in combination with both DSI and a WESP. Based on the 2010 ICR data for total PM, there are performance tests for 48 units below the existing NSPS filterable PM standard (0.015 lb/MMBtu), that have some type of SO_2 control, that use a FF, and that reported gross electrical output during the performance test. Because no owners/operators of EGUs are presently specifically attempting to control condensable PM beyond eliminating the visible blue plume that can occur from sulfuric acid mist emissions, we concluded it was appropriate to use the top 20 percentile of the performance test data for the proposed total PM standard. The top 20 percentile of these performance tests is 7.0 ng/J (0.055 lb/MWh). We are soliciting comments on the proposed standard and are considering the range of 15 ng/J (0.034 lb/MMBtu) to 5.0 ng/J (0.040 lb/MWh) for the final rule. We are also requesting comment on whether an input-based standard is more appropriate for standards where compliance is based on performance tests instead of CEMS.

2. How did EPA select the proposed SO_2 standard?

A number of SO_2 control technologies are currently available for use with new coal-fired EGUs. Owners/operators of new steam generating projects that use IGCC technology can remove the sulfur associated with the coal in downstream processes after the coal has been gasified. Owner/operators of new steam generating units that use FBC technology can control SO_2 during the combustion process by adding limestone into the fluidized-bed, and, if necessary, installing additional post-combustion controls. Owners/operators of steam generating units using PC combustion technology can use post-combustion controls to remove SO_2 from the flue gases. Additional control strategies that apply to all steam generating units include the use of low sulfur coals, coal preparation to improve the coal quality and lower the sulfur content, and fuel blending with inherently low sulfur fuels.

To assess the SO_2 control performance level of EGUs, we reviewed new and retrofitted units with SO_2 controls. Table 17 of this preamble shows the performance of several of the best performing units in terms of percent reduction in potential SO_2 emissions identified in our analysis of coal-fired EGUs.

TABLE 17—SO_2 EMISSIONS PERFORMANCE DATA

Facility	Time period	Maximum 30-day SO_2 emissions rate (lb/MWh)	Minimum 30-day percent SO_2 reduction
Cayuga 1	12/08–12/09	1.03	97.4
Harrison 1	01/06–01/09	1.45	96.7
Harrison 2	01/06–01/09	1.01	97.7
Harrison 3	01/06–01/09	0.97	98.2
HL Spurlock 1	06/09–12/09	1.83	96.9
HL Spurlock 2	11/08–12/09	1.26	98.0
HL Spurlock 3	01/09–12/09	1.45	96.5
HL Spurlock 4	01/09–12/09	1.08	97.7
Wansley 1	02/09–12/09	0.31	97.7
Wansley 2	05/09–12/09	0.37	97.4
Iatan 1	04/09–12/09	0.16	98.2
Jeffrey 2	05/09–12/09	0.09	99.0
Jeffrey 3	04/09–12/09	0.13	98.5
Trimble County 1	01/05–12/09	1.14	97.6
Mountaineer 1	05/07–12/09	1.15	97.6

With the exception of the HL Spurlock 3 and 4 units all of the listed units use wet limestone-based scrubbers. HL Spurlock 3 and 4 are FBC boilers that remove the majority of SO_2 using limestone injection into the boiler and then remove additional SO_2 by lime injection into the ductwork prior to the FF. Of the identified best performing units, we only have multiple years of performance data for the Harrison, Trimble County, and Mountaineer units. Based on the performance of these units, we have concluded that 97 percent reduction in potential SO_2 emissions has been demonstrated and is achievable on a long term basis. This level of reduction has also been demonstrated at each separate unit at each location in Table 17 of this preamble and accounts for variability in performance of individual scrubbers. Therefore, the proposed upper limit on a percent reduction basis is 97 percent. Even though the Iatan and Jeffrey units are achieving a 98 percent reduction in potential SO_2 emissions, we are not proposing this standard because it is based on relatively short-term data. Based on the variability in SO_2 reductions from the Harrison, Trimble County, and Mountaineer units, we have concluded that short-term data do not necessarily take into account the range of operating conditions that a facility would be expected to operate or control equipment variability and degradation. We are soliciting comments on the proposed limit and are considering the range of 96 to 98 percent reduction in potential SO_2 emissions for the final rule.

To determine an appropriate alternate numerical standard, we evaluated the performance of several recently constructed units in addition to the numerical standards for the units in Table 17 of this preamble. Table 18 of this preamble shows the maximum 30-day average SO_2 emissions rate of units that commenced operation between 2005 and 2008, that are emitting at levels below the current NSPS, and that reported both SO_2 emissions and gross electric output data to CAMD.

TABLE 18—SO_2 EMISSIONS PERFORMANCE DATA FOR NEW EGUS

Facility	SO_2 control technology	In service date	Maximum 30-day SO_2 emissions rate (lb/MWh)
Weston 4	Lime-based Spray Dryer	2008	0.61
Cross 4	Wet Limestone FGD	2008	1.02
TS Power Plant 1	Lime-based Spray Dryer	2008	0.56
Wygen II	Lime-based Spray Dryer	2008	0.95
Walter Scott Jr. Energy Center 4	Lime-based Spray Dryer	2007	0.73
Cross 3	Wet Limestone FGD	2007	1.06
Springerville TS3	Lime-based Spray Dryer	2006	1.04
HL Spurlock 3	Fluidized Bed Limestone Injection + Lime Injection	2005	1.45

The HL Spurlock 3 unit is the only new unit that burns high sulfur coal and that unit could meet the proposed alternate percent reduction standard. However, it would not be expected to achieve a numerical standard based on the performance of the other units. Further, with the exception of the Cross 3 and 4 units, which burn medium sulfur bituminous coals, the remaining units burn lower-sulfur subbituminous coals. To provide the maximum emissions reduction, we further concluded that the alternate numerical standard should be as stringent as the numerical rates achieved by the units used to determine the percent reduction standard. If the alternate numerical standard were less stringent than the emissions rate achieved by the units used to determine the maximum percent reduction, those units would not be required to achieve the maximum percent reduction that has been demonstrated. In addition, the numerical standard should account for variability in today's SO_2 control technologies and provide sufficient compliance margin for owners/operators of new units burning medium sulfur coals to comply with the numerical standard and thereby provide an incentive to burn cleaner fuels. The sulfur concentrations in the flue gas of EGUs burning medium and low sulfur coals is more diffuse than for EGUs burning high sulfur coals, and it has not been demonstrated that units burning these coals would be able to achieve 97 percent reduction of potential emissions on a continuous basis. We are proposing 1.0 lb/MWh as the alternate numerical standard because it provides a comparable level of performance to the 97 percent reduction requirement and satisfies criteria mentioned above. The numerical standard would require at least 80 percent reduction even from the lowest sulfur coals and would accommodate the use of traditional spray dryer scrubbers for owner/operators of new units burning coal with uncontrolled SO_2 emissions of up to approximately 1.6 lb/MMBtu.

Based on the performance of the spray dryer at the Springerville TS3 unit, the numerical standard would provide sufficient flexibility such that an owner/operator of an EGU could burn over 90 percent of the subbituminous coals presently being used in combination with a spray dryer. This technology choice provides owners/operators the flexibility to minimize water use and associated waste water discharge, as well as reducing additional CO_2 that is chemically created as part of the SO_2 control device. Even though there is not necessarily an overall greenhouse (GHG) reduction from using a lime-based instead of a limestone-based scrubber, lime production facilities have relatively concentrated CO_2 streams. Capture and storage of CO_2 at the lime manufacturing facility could potentially be easier since separation of the CO_2 would not be necessary, as is the case with an EGU exhaust gas. Owners/operators of new and reconstructed units burning coals with higher uncontrolled SO_2 emissions would either have to use IGCC with a downstream process to control sulfur prior to combustion, FBC, or a wet SO_2 scrubbing system to comply with the proposed standard. The proposed limit would allow the higher sulfur coals (uncontrolled emissions of greater than approximately 3 lb SO_2/MMBtu) to demonstrate compliance with the 97 percent reduction requirement as an alternate to the numerical limit. We are soliciting comments on the proposed limit and are considering the range of 100 to 150 ng/J (0.80 to 1.2 lb/MWh) for the final rule.

Coal refuse (also called waste coal) is a combustible material containing a significant amount of coal that is reclaimed from refuse piles remaining at the sites of past or abandoned coal mining operations. Coal refuse piles are an environmental concern because of acid seepage and leachate production, spontaneous combustion, and low soil fertility. Units that burn coal refuse provide multimedia environmental benefits by combining the production of energy with the removal of coal refuse piles and by reclaiming land for productive use. Consequently, because of the unique environmental benefits that coal refuse-fired EGUs provide, these units warrant special consideration so as to prevent the amended NSPS from discouraging the construction of future coal refuse-fired EGUs in the U.S.

Coal refuse from some piles has sulfur contents at such high levels that they present potential economic and technical difficulties in achieving the same SO_2 standard that we are proposing for higher quality coals. Therefore, so as not to preclude the development of these projects, we are proposing to maintain the existing SO_2 emissions standard for owners/operators of affected facilities combusting 75 percent or more coal refuse on an annual basis.

We are proposing to maintain the existing SO_2 standard for modified units to preserve the use of spray dryer FGD. Existing units might not have access to adequate water for wet FGD scrubbers and it is not generally cost effective to upgrade existing spray dryer FGD scrubbers to a wet FGD scrubber. In addition, the 90 percent sulfur reduction for modified units also allows existing modified FBCs to comply without the addition of post-combustion SO_2 controls. We have concluded that it is not generally cost effective to add additional post combustion SO_2 controls for modified fluidized beds.

3. Selection of the Proposed NO_X Standard

In the 2006 final NSPS amendments (71 FR 9866), EPA concluded that advanced combustion controls were BDT. However, upon further review we have concluded this was not appropriate. Although select existing PC EGUs burning subbituminous coals have been able to achieve annual NO_X emissions of less than 1.0 lb/MWh (*e.g.,* Rush Island, Newton), PC EGUs burning other coal types using only combustion controls have not demonstrated similar emission rates. Lignite-fired PC EGUs have only demonstrated an annual NO_X emissions rate of 1.7 lb/MWh (*e.g.,* Martin Lake) and the best bituminous fired PC EGUs using only combustion controls are slightly higher than 2.0 lb/MWh on an annual basis (*e.g.,* Jack McDonough, Brayton Point, AES Cayuga, Genoa). The variability in NO_X control technologies results in a maximum 30-day average emissions rate typically being ¼ to ⅓ higher than the annual average emissions rate. Therefore, it has not been demonstrated that owners/operators of PC EGUs burning any coal type using advanced combustion controls could comply with the existing NO_X standard.

After re-evaluating the performance, costs, and other environmental impacts of adding SCR in addition to combustion controls, we have concluded that combustion controls in combination with SCR represents BDT for continuous reduction of NO_X emissions from EGUs. Therefore, the regulatory baseline for NO_X emissions is defined to be combustion controls in combination with the installation of SCR controls on all new PC-fired units.

To assess the NO_X control performance level of EGUs, we reviewed new and retrofitted units with post combustion NO_X controls. Table 19 of this preamble shows the performance of several of the best performing units identified in our analysis of coal-fired EGUs.

TABLE 19—NO_X PERFORMANCE DATA

Facility	Time period	Maximum 30-day NO_X emissions rate (lb/MWh)	Boiler type & primary coal rank
Havana 9	01/05–12/09	0.70	PC, Sub.
Walter Scott Jr. 4	04/07–12/09	0.58	PC, Sub.
Mirant Morgantown 1	06/07–12/09	0.65	PC, Bit.
Mirant Morgantown 2	06/08–12/09	0.70	PC, Bit.
Roxboro 2	01/09–12/09	0.67	PC, Bit.
Cardinal 1	01/09–12/09	0.38	PC, Bit.
Cardinal 2	01/09–12/09	0.46	PC, Bit.
Cardinal 3	01/09–12/09	0.45	PC, Bit.
Muskingum River 5	01/08–12/09	0.60	PC, Bit.
John E Amos	06/09–12/09	0.62	PC, Bit.
Mitchell 1	01/09–12/09	0.59	PC, Bit.
Mitchell 2	01/09–12/09	0.54	PC, Bit.
Weston 4	07/08–12/09	0.48	PC, Sub.
H L Spurlock 4	05/09–12/09	0.67	CFB, Bit.
Wansley 1	02/09–12/09	0.67	PC, Bit.
Wansley 2	01/09–12/09	0.59	PC, Bit.
Nebraska City 2	05/09–12/09	0.60	PC, Sub.
TS Power 1	07/08–12/09	0.49	PC, Sub.

Note: PC = pulverized coal.
CFB = circulating fluidized bed.
Sub = subbituminous coal.
Bit = bituminous coal.

All of the units listed in Table 19 of this preamble have demonstrated 0.70 lb/MWh is achievable. Even though some units are achieving a lower emissions rate, the majority of units listed in Table 19 of this preamble have less than a year of operating data. Proposing a more stringent standard might not provide sufficient compliance margin to account for expected variability in the long term performance of NO_X controls. Although not all affected facilities using SCR are currently achieving an emissions rate of 0.70 lb/MWh, all major boiler designs have demonstrated combustion controls that are able to reduce NO_X emissions to levels where the addition of SCR (or design modifications and operating changes to existing SCR) would allow compliance with a NO_X emissions rate of 0.70 lb/MWh. We are therefore selecting 88 ng/J (0.70 lb/MWh) as the proposed NO_X standard for new, modified, and reconstructed units. The range of values we are currently considering for the final rule is 76 to 110 ng/J (0.60 to 0.90 lb/MWh).

Combustion optimization for overall environmental performance is a balance between boiler efficiency, NO_X emissions, and CO emissions. Although a well operated boiler using combustion controls can achieve a high efficiency and both low NO_X and CO emissions, the pollutant emissions rates are related. For example, NO_X reduction techniques that rely on delayed combustion and lower combustion temperatures tend to increase incomplete combustion and result in a corresponding increase in CO emissions. Conversely, high levels of excess air can be used to control CO emissions. However, high levels of excess air increase NO_X emissions.

The proposed BDT for NO_X is combustion controls plus the application of SCR. However, there are several approaches an owner/operator could use to comply with an individual NO_X standard. One approach would be to use combustion controls to minimize the formation of NO_X to the maximum extent possible and then use a less efficient SCR systems. This tends to result in high CO emissions and significant unburned carbon in the fly ash. From an environmental perspective, we would prefer that owners/operators select combustion controls that result in slightly higher NO_X emissions without substantially increasing CO emissions, and use regular efficiency SCR systems. As compared to establishing individual pollutant emission standards, a combined NO_X plus CO standard accounts for variability in combustion properties and provides additional compliance strategy options for the regulated community, while still providing an equivalent level of environmental protection. In addition, a combined standard provides additional flexibility for owners/operators to minimize carbon and/or ammonia in the fly ash such that the fly ash could still be used in beneficial reuse projects.

In addition, an overly stringent NO_X standard has the potential to impede the ability of an owner/operator of an EGU from operating at peak efficiency thereby minimizing GHG emissions. A combined standard on the other hand allows owners/operators additional flexibility to operate at or near peak efficiency. A combined standard would also allow the regulated community to work with the local environmental permitting agency to minimize the pollutant of most concern for that specific area. We have previously established a combined NO_X plus CO combined emissions standard for thermal dryers at coal preparation plants (40 CFR part 60, subpart Y).

To assess the combined NO_X/CO performance level of EGUs, we requested data from units identified by the 2010 ICR as using certified CO CEMS and achieving the existing NSPS NO_X standard of 1.0 lb/MWh gross output. We continue to be interested in additional NO_X and CO certified CEMS data from EGUs and comparable units using that are achieving the existing NSPS NO_X standard of 1.0 lb/MWh gross output. Table 20 of this preamble shows the performance of the units identified in our analysis.

TABLE 20—NO_X/CO PERFORMANCE DATA

Facility	Time period	Maximum 30-day NO_X + CO emissions rate (lb/MWh)	Maximum 30-day NO_X/CO emissions rate (lb/MWh)	Boiler type & primary coal rank
Northside 1	01/05–12/09	1.1	0.89/0.29	CFB, PC.
Northside 2	01/05–12/09	1.1	0.93/0.46	CFB, PC.
Walter Scott, Jr. 4	04/07–12/09	0.95	0.58/0.42	PC, Sub.
WA Parish 5	09/05–12/09	1.1	0.66/0.62	PC, Sub.
WA Parish 6	06/05–12/09	1.2	0.76/0.81	PC, Sub.
WA Parish 7	06/05–12/09	1.8	0.53/1.4	PC, Sub.
WA Parish 8	04/06–12/09	1.5	0.42/1.1	PC, Sub.
HL Spurlock 3	01/09–12/09	1.4	0.83/0.61	CFB, Bit.
HL Spurlock 4	05/09–12/09	1.4	0.67/0.70	CFB, Bit.
TS Power 1	04/08–12/09	0.80	0.49/0.47	PC, Sub.

Note: PC = pulverized coal or petroleum coke.
CFB = circulating fluidized bed.
Sub = subbituminous coal.

Because CO has not historically been a primary pollutant of concern for owners/operators of EGUs, it has not necessarily been a significant factor when selecting combustion control strategies and has not typically been continuously monitored. Due to the limited availability of CO CEMS data and to account for potential variability we are not aware of, we have concluded it is appropriate in this case to propose a standard with sufficient compliance margin to not inhibit the ability of owner/operators of EGUs to comply with NO_X specific best available control technology (BACT) requirements or requirements that result from compliance with EPA's proposed Transport Rule. Although 2 of the units shown in Table 21 of this preamble are operating below 1.0 lb/MWh, there are 4 that are operating in the 1.1 to 1.2 lb/MWh range. To provide a compliance margin and to account for situations where NO_X might be more of a priority pollutant than CO, we are proposing a combined standard of 1.2 lb/MWh. This margin is apparent when comparing the HL Spurlock and Northside units. These fluidized bed boilers use selective non-catalytic reduction (SNCR) to reduce NO_X emissions. Although the HL Spurlock units perform better in terms of NO_X, the combustion controls result in higher CO and combined NO_X/CO emission rates. In determining the appropriate combined standard for owner/operators of modified units, we used the data from the WA Parish units. All four of these units have been retrofitted to comply with stringent NO_X requirements. Owners/operators of modified units could potentially have a more difficult time controlling both NO_X and CO because the configuration of the boiler cannot be changed. All 4 of the WA Parish units have demonstrated that a standard of 230 ng/J (1.8 lb/MWh) is achievable and we are, therefore, proposing that standard for modified units. We are requesting comment on these standards and are considering a range of 130 to 180 ng/J (1.0 to 1.4 lb/MWh) for new and reconstructed units and of 180 to 230 ng/J (1.4 to 1.8 lb/MWh) for modified units.

Another potential GHG benefit, beyond boiler efficiency, of a combined NO_X + CO standard is the flexibility to minimize nitrous oxide (N_2O) emissions. Formation of N_2O during the combustion process results from a complex series of reactions and is dependent upon many factors. Operating factors impacting N_2O formation include combustion temperature, excess air, and sorbent feed rate. The N_2O formation resulting from SNCR depends upon the reagent used, the amount of reagent injected, and the injection temperature. Adjusting any of these factors can impact CO and/or NO_X emissions, and a combined standard provides an owner/operator the maximum flexibility to reduce overall criteria and GHG emissions. Pulverized coal boilers tend to operate at sufficiently high temperatures so as to not generally have significant N_2O emissions. On the other hand, fluidized bed boilers operate at lower temperatures and can have measurable N_2O emissions. However, the fuel flexibility benefit (*i.e.,* the ability to burn coal refuse and biomass) of fluidized bed boilers can help to offset the increase in N_2O emissions.

4. Commercial Demonstration Permit

The commercial demonstration permit section of the EGU NSPS was included in the original rulemaking in 1979 (44 FR 33580) to assure that the NSPS did not discourage the development of new and promising technologies. In the 1979 rule, the Administrator recognized that the innovative technology waiver provisions under CAA section 111(j) are not adequate to encourage certain capital intensive technologies. (44 FR 33580.) Under the innovative technology provisions, the Administrator may grant waivers for a period of up to 7 years from the date of issuance of a waiver or up to 4 years from the start of operation of a facility, whichever is less. The Administrator recognized that this time frame is not sufficient for amortization of high-capital-cost technologies. The commercial demonstration permit section established less stringent requirements for initial full-scale demonstration plants that received a permit in order to mitigate the potential impact of the rule on emerging technologies and insure that standards did not preclude the development of such technologies.

The authority to issue these permits was predicated on the DC Circuit Court's opinion in *Essex Chemical Corp.* v. *Ruckelshaus,* 486 F. 2d 42 (DC Cir. 1973); NSPS should be set to avoid unreasonable costs or other impacts. Standards requiring a high level of performance, such as the proposed standards for PM, SO_2, and NO_X, might discourage the continued development of some new technologies. Owners/operators may view it as too risky to use new and untried or unproven technologies that have the potential to achieve greater continuous emission reductions than those required to be achieved under the new standards or achieve those reductions at a reduced cost. Thus, to encourage the continued development of new technologies that

show promise in achieving levels of performance comparable to those of existing technologies, but at lower cost or with other offsetting environmental or energy benefits, special provisions are needed which encourage the development and use of new technologies, while ensuring that emissions will be minimized.

To mitigate the potential impact on emerging technologies, EPA is proposing to maintain similar standards to those finalized in 2006 for demonstration plants using innovative technologies. This should insure that the amended standards do not preclude the development of new technologies and should compensate for problems that may arise when applying them to commercial-scale units. Under the proposal, the Administrator (in consultation with DOE) would issue commercial demonstration permits for the first 1,000 MW of full-scale demonstration units of pressurized fluidized bed technology and EGUs using a multi-pollutant pollution control technology. Owners/operators of these units that are granted a commercial demonstration permit would be exempt from the amended standards and would instead be subject to less stringent emission standards. The proposed commercial demonstration permit standards for SO_2 and NO_X are similar to those finalized in 2006 and would avoid weakening existing standards while providing flexibility for innovative and emerging technologies. As discussed earlier, the proposed total PM standard of 0.034 lb/MMBtu approximates an equivalent stringency as the 2006 filterable PM standard of 0.015 lb/MMBtu. In addition, the first 1,000 MW of equivalent electrical capacity using advanced combustion controls to reduce NO_X emissions would be subject to an emissions standard of 1.0 lb/MWh (or 1.4 (lb NO_X + CO)/MWh).

The reason we selected these particular technologies is as follows. Multi-pollutant controls (*e.g.,* the Airborne Process™, the CEFCO process, Eco Power's COMPLY 2000, Powerspan's ECO®, ReACT™, Skyonic's SkyMine®, TOPSØE SNOX™, and the Pahlman process technology developed by Enviroscrub) offer the potential of reduced compliance costs and improved overall environmental performance. In addition, for boilers with exhaust temperatures that are too low for SCR (i.e., fluidized bed boilers) multi-pollutant controls are an alternative to SNCR. As discussed above, the use of SNCR can increase N_2O emissions. Since multi-pollutant controls use a different mechanism to reduce NO_X emissions, they do not necessarily result in additional N_2O formation. However, guaranteeing that the technologies could achieve the proposed standards on a continuous basis might discourage the deployment and demonstration of these technologies at EGUs. Pressurized fluidized bed technology has the potential to improve the efficiency and reduce the environmental impact of using coal to generate electricity. However, it is still a relatively undeveloped technology and has only been deployed on a limited basis worldwide. Allowing new pressurized beds to demonstrate compliance with slightly less stringent standards will help assure the NSPS does not discourage the development of this technology. Advanced combustion controls allow for the possibility of developing EGUs with low NO_X emissions while minimizing the need to install and operate SNCR or SCR. Advanced combustion controls reduce compliance costs, parasitic energy requirements, and ammonia emissions. Allowing the Administrator to approve commercial demonstration permits would limit regulatory impediments to improvements in combustion controls. If the Administrator subsequently finds that a given emerging technology (taking into consideration all areas of environmental impact, including air, water, solid waste, toxics, and land use) offers superior overall environmental performance, alternative standards could then be established by the Administrator. Technologies considered as nothing more than modified versions of existing demonstrated technologies will not be viewed as emerging technologies and will not be approved for a commercial demonstration permit. We are requesting comment on additional technologies that should be considered and the maximum magnitude of the demonstration permits.

5. Other Exemptions

Because filterable PM emissions are generally negligible for boilers burning natural gas or low sulfur oil, eliminating the PM standard for owners/operators of natural gas and low sulfur oil-fired EGUs would both help harmonize the various steam generating unit NSPS and lower the compliance burden without increasing emissions. Similarly, eliminating the opacity standard for owners/operators of natural gas-fired EGUs would reduce testing and monitoring requirements that do not result in any emissions benefit.

As municipal solid waste (MSW) combustors and CISWI units increase in size it is possible that they could generate sufficient electricity to become subject to the EGU NSPS. We have concluded that it is more appropriate to regulate these units under the CAA section 129 regulations and are, therefore, proposing to exempt owners/operators of affected facilities subject to the standards of performance for large MSW combustors (40 CFR part 60, subpart Eb) and CISWI (40 CFR part 60, subpart CCCC) from complying with the otherwise applicable standards for pollutants that those subparts address. The PM, SO_2, and NO_X standards in 40 CFR part 60, subpart Eb, are averaged over a daily basis and the PM, SO_2, and NO_X standards in 40 CFR part 60, subpart CCCC, do not require CEMS and are based on performance test data. The standards are either approximately equivalent to or more stringent than the present standards in 40 CFR part 60, subpart Da, so this proposed amendment would simplify compliance for owner/operators of MSW combustors and CISWI without an increase in emissions.

Similarly, in the final 2007 steam generating unit amendments (72 FR 32,710) we inadvertently expanded the applicability of 40 CFR part 60, subpart Db, to include industrial boilers combusting black liquor and distillate oil at Kraft pulp mills. Even though the distillate oil is generally low sulfur and would otherwise be exempt from the PM standards in 40 CFR part 60, subpart Db, the boilers use ESPs and the addition of "not using a post-combustion technology (except a wet scrubber) to reduce SO_2 or PM emissions" to the oil-fired exemption inadvertently expanded the applicability to owners/operators of boilers currently subject to the standards of performance for Kraft pulp mills (40 CFR part 60, subpart BB). Because 40 CFR part 60, subpart BB, includes a PM standard, we have concluded it is more appropriate to only regulate PM emissions from these units under 40 CFR part 60, subpart BB, and are, therefore, proposing to exempt these units from the PM standard under 40 CFR part 60, subpart Db. The PM standard in 40 CFR part 60, subpart BB, is approximately equivalent in stringency to the one in 40 CFR part 60, subpart Db, prior to the recent amendments, so this proposed amendment would simplify compliance for owner/operators of Kraft pulp mills without an increase in emissions.

We are also proposing to exempt owners/operators of IBs that meet the applicability requirements and that are complying with the SO_2 standard in 40 CFR part 60, subpart Ja (standards of

performance for petroleum refineries) from complying with the otherwise applicable SO_2 limit in 40 CFR part 60, subpart Db. The SO_2 standard in 40 CFR part 60, subpart Ja, is more stringent than in 40 CFR part 60, subpart Db, so this proposed amendment would simplify compliance for owner/operators of petroleum refineries without an increase in pollutant emissions.

C. Changes to the Affected Facility

The present definition of a steam generating unit under 40 CFR part 60, subpart Da, starts at the coal bunkers and ends at the stack breeching. It includes the fuel combustion system (including bunker, coal pulverizer, crusher, stoker, and fuel burners, as applicable), the combustion air system, the steam generating system (firebox, boiler tubes, *etc.*), and the draft system (excluding the stack). This definition works well for traditional coal-fired EGUs, but does not account for potential efficiency improvements that have become available since 40 CFR part 60, subpart Da, was originally promulgated and are recognized through the use of output-based standards.

The proposed rule revision to include integrated CTs and/or fuel cells in the definition of a steam generating unit would increase compliance flexibility and decrease costs. Although we are not aware of any EGUs that have presently integrated either device, using exhaust heat for reheating or preheating boiler feedwater, preheating combustion air, or using the exhaust directly in the boiler to generate steam has high theoretical incremental efficiencies. In addition, using exhaust heat to reheat boiler feedwater would minimize the steam otherwise extracted from the steam turbine used for the reheating process and increase the theoretical electric output for an equivalent sized boiler. Because the exhaust from either an integrated CT or fuel cell would likely not be exhausted through the primary boiler stack, we are requesting comment on the appropriate emissions monitoring for these separate stacks. Because these emissions would likely be relatively small compared to the boiler, we are considering allowing emissions to be estimated using procedures that are similar to those used in the acid rain trading programs as an alternative to an NO_X CEMS. The CT or fuel cell emissions and electric output would be added to the boiler/steam turbine outputs.

D. Additional Proposed Amendments

Petroleum Coke. Petroleum coke, a carbonaceous material, is a by-product residual from the thermal cracking of heavy residual oil during the petroleum refining process and is a potentially useful boiler fuel. It has a superior heating value and lower ash content than coal and has historically been priced at a discount compared to coal. However, depending on the original crude feedstock, it may contain greater concentrations of sulfur and metals. At the time 40 CFR part 60, subpart Da, was originally promulgated, petroleum coke was not considered to be "created for the purpose of creating useful heat" and, hence, was not considered a "fossil fuel." However, we have concluded that because petroleum coke has similar physical characteristics to coal, owners/operators of EGUs burning petroleum coke can cost effectively achieve the proposed standards. Due to the increased use of heavier crudes and more efficient processing of refinery residuals, U.S. and worldwide production of petroleum coke is increasing and is expected to continue to grow. Therefore, we expect owners/operators of EGUs to increase their use of petroleum coke in the future. Consistent with the EGU NESHAP, we are proposing to add petroleum coke to the definition of petroleum.

We are requesting comment on whether petroleum coke should be added to the definition of coal instead of petroleum. Both 40 CFR part 60, subparts Db and Dc, the large and small IB NSPS, include petroleum coke under the definition of coal. Including petroleum coke under coal would be consistent with the IB NSPS. However, the proposed emission standards are fuel neutral and because the revised definition would only apply to affected facilities that begin construction, modification, or reconstruction after the proposal date the impact on the regulated community would be the same if we added petroleum coke to the definition of coal as it would if we added it to the definition of petroleum.

Continuous Opacity Monitoring Systems (COMS). We have concluded that a BLDS and an ESP predictive model provide sufficient assurance that the filterable PM control device is operating properly such that a COMS is no longer necessary. Allowing this flexibility across the various steam generating unit NSPS would increase flexibility and decrease compliance costs without reducing environmental protection.

Titles of 40 CFR part 60, subparts D and Da. We are proposing to simplify the titles, but not amending the applicability, of 40 CFR part 60, subparts D and Da. The end of the titles "for Which Construction Is Commenced After August 17, 1971" and "for Which Construction is Commenced After September 18, 1978" respectively are unnecessary and potentially confusing.

E. Request for Comments on the Proposed NSPS Amendments

We request comments on all aspects of the proposed amendments. All significant comments received will be considered in the development and selection of the final amendments. We specifically solicit comments on additional amendments that are under consideration. These potential amendments are described below.

Net Output. The current output-based emission limit for PM, SO_2, and NO_X uses gross output, and the proposal includes standards that are based on gross energy output. In general, about 5 percent of station power is used internally by parasitic energy demands, but these parasitic loads vary on a source-by-source basis. To provide a greater incentive for achieving overall energy efficiency and minimizing parasitic loads, we would prefer to base output-based standards on net-energy output. However, it is our understanding that requiring a net output approach could result in monitoring difficulties and unreasonable monitoring costs at modified units. Demonstrating compliance with net-output based standards could be particularly problematic at existing units with both affected and unaffected facilities and units with common controls and/or stacks. Monitoring net output for new and reconstructed units can, on the other hand, be designed into the facility at low costs. To recognize the environmental benefit of overall environmental performance, we are considering establishing a net output-based emission standards for new and reconstructed units in the final rule in lieu of gross output-based standards.

In addition to recognizing the environmental benefit of minimizing the internal parasitic energy demand generally, net output based standards would serve to further recognize the environmental benefits of the use of supercritical steam conditions because parasitic loads tend to be lower for units using supercritical steam conditions compared to subcritical steam conditions. Furthermore, although the gross efficiencies of IGCC units are projected to be several percentage points higher than a comparable PC facility using supercritical steam conditions, the parasitic energy demands at IGCC units are expected to be much higher at approximately 15 percent. Consequently, on a net output basis, the

efficiencies are comparable. Because we do not have continuous net output data available, we are considering assuming 5 percent parasitic losses to convert the gross output values to net output. We are requesting comments on the appropriate conversion factor.

Combined Heat and Power. We are requesting comment on whether it is appropriate to recognize the environmental benefit of electricity generated by CHP units by accounting for the benefit of on-site generation which avoids losses from the transmission and distribution of the electricity. Actual line losses vary from location to location, but if we adopt this provision in the final rule, we are considering a benefit of 5 percent avoided transmission and distribution losses when determining the electric output for CHP units. To assure that only well balanced units would be eligible; this provision would be restricted to units where the useful thermal output is at least 20 percent of the total output.

Opacity. We are requesting comment on the appropriate opacity monitoring procedures for owners/operators of affected facilities that are subject to an opacity standard but are not required to install a COMS. The present monitoring requirements as amended on January 20, 2011 (76 FR 3,517) require Method 9 performance testing every 12 months for owners/operators of affected facilities with no visible emissions, performance testing every 6 months for owners/operators of affected facilities with maximum opacity readings of 5 percent of less, performance testing every 3 months for owners/operators of affected facilities with maximum opacity readings of between 5 to 10 percent, and performance testing every 45 days for owners/operators of affected facilities with maximum opacity readings of greater than 10 percent. We are requesting comment on revising the schedule to require owners/operators of affected facilities with maximum opacity readings of 5 percent or less to conduct annual performance testing. To further reduce the compliance burden for owners/operators of affected facilities that intermittently use backup fuels with opacity of 5 percent or less (*i.e.,* natural gas with distillate oil backup), we are requesting comment on allowing Method 9 performance testing to be delayed until 45 days after the next day that a fuel with an opacity standard is combusted. The required performance testing for owners/operators of affected facilities with maximum opacity readings between 5 to 10 percent would be required to be performed within 6 months. The required performance testing for owners/operators of affected facilities with maximum opacity readings greater than 10 percent would be required to be performed within 3 months. In addition, the alternate Method 22 visible observation approach requires 30 operating days of no visible emissions to qualify for the reduced monitoring procedures. We are requesting comment on only requiring either 5 or 10 days of observation with no visible emissions to qualify for the reduced periodic monitoring.

In general, the level of filterable PM emissions and the resultant opacity from oil-fired steam generating units is a function of the completeness of fuel combustion as well as the ash content in the oil. Distillate oil contains negligible ash content, so the filterable PM emissions and opacity from distillate oil-fired steam generating units are primarily comprised of carbon particles resulting from incomplete combustion of the oil. Naturally low sulfur crude oil and desulfurized oils are higher quality fuels and exhibit lower viscosity and reduced asphaltene, ash, and sulfur content, which result in better atomization and improved overall combustion properties. To provide additional flexibility and decrease the compliance burden on affected facilities, we are requesting comment on whether the opacity standard should be eliminated for owners/operators of affected facilities burning ultra low sulfur (*i.e.,* 15 ppm sulfur) distillate oil.

We are also requesting comment on amending the opacity requirements for owners/operators of affected facilities using PM CEMS, but not complying with the PM standard under 40 CFR part 60, subpart Da. Owners/operators of these facilities are subject to an opacity standard and are required to periodically monitor opacity. We are requesting comment on the appropriateness of waiving all opacity monitoring for owners/operators of these affected facilities. In addition, we are also requesting comment on allowing owners/operators of 40 CFR part 60, subpart D, affected facilities that opt to comply with the 40 CFR part 60, subpart Da, PM standard and qualify for the corresponding opacity exemption to opt back out. (Under the existing rule, once a 40 CFR part 60, subpart D, affected facility opts to comply with the 40 CFR part 60, subpart Da, PM standard in order to qualify for the corresponding opacity exemption, it cannot subsequently opt to go back to complying with the 40 CFR part 60, subpart D, PM standard.) Finally, we are requesting comment on the appropriateness of eliminating the opacity standard for owners/operators of 40 CFR part 60, subpart D, affected facilities using PM CEMS even if they are not complying with the 40 CFR part 60, subpart Da, PM standard. Consistent with paragraph 40 CFR 60.11(e), as long as these facilities demonstrate continuous compliance with the applicable PM standard on a 3-hour average, the opacity standard would not apply.

In addition, we are requesting comment on eliminating the opacity standard for owners/operators of affected facilities complying with a total PM standard of 15 ng/J (0.034 lb/MMBtu) or less that use control equipment parameter monitoring or some other continuous monitoring approach to demonstrate compliance with that standard. Based on the PM performance test data collected as part of the 2010 ICR, at this total PM emissions rate the filterable portion is expected to be significantly lower than the original 40 CFR part 60, subpart Da, filterable PM standard, 0.030 lb/MMBtu. As described in the 2006 NSPS amendments, at filterable PM emissions at this level, opacity is less useful and eliminating the standards would simplify compliance without decreasing environmental protection.

IGCC Units. We are requesting comment on whether an IGCC unit that co-produces hydrocarbons or hydrogen should be subject to the CT NSPS instead of the EGU NSPS. The original rationale for including IGCC units in the EGU NSPS is that it is simply another process for converting coal to electricity. However, an IGCC that co-produces hydrocarbons or hydrogen would convert a substantial portion of the original energy in the coal to useful chemicals instead of to measurable useful electric and thermal output. Using net-output based standards in this situation would be difficult because a portion of the parasitic load would be attributed to the production of the useful chemicals and it would not be possible to apportion this easily. To avoid owners/operators from producing a small amount of hydrocarbons/hydrogen to avoid being subject to 40 CFR part 60, subpart Da, we are requesting comment on the percentage of coal that must be converted to useful chemical products to quality for regulation under the stationary CT NSPS. We are presently considering between 10 to 20 percent. We are also requesting comment on whether there is a way to effectively account for the parasitic losses such attributable to production of the useful chemicals.

Elimination of Existing References. To simplify compliance and improve the

readability of 40 CFR part 60, subpart Da, we are requesting comment on deleting the "emergency condition" requirement for the SO_2 standard exemption, references to percent reductions for NO_X and PM, references to solvent refined coal, and the existing commercial demonstration permit references. The emergency condition requirement was originally included in 40 CFR part 60, subpart Da, as an alternative to excluding periods of malfunction. The provision was intended to avoid power supply disruptions while also minimizing operation of affected facilities without operation of SO_2 controls. However, the reliability of FGD technology has been demonstrated since 40 CFR part 60, subpart Da, was originally promulgated and malfunctions are uncommon events. Furthermore, the Transport Rule provides a financial incentive to operate SO_2 control equipment at all times. Therefore, we would delete references to the emergency condition requirement and simply exclude periods of malfunction from the SO_2 standard for owners/operators of affected facilities presently subject to 40 CFR part 60, subpart Da.

The 1990 CAA amendments removed the requirement that standards be based on a percent reduction. The percent reduction requirements for NO_X and PM have been superseded by the numerical limits for owners/operators of existing units and deleting these references would improve the readability of the subpart. Similarly, we are not aware of any affected facility burning solvent refined coal or operating under the existing commercial demonstration permit. Because these provisions have been superseded, deleting these references would improve the readability of the subpart.

The IB NSPS currently does not credit fuel pretreatment toward compliance with the SO_2 percent reduction standard unless the fuel pretreatment results in a 50 percent or greater reduction in the potential SO_2 emissions rate and results in an uncontrolled SO_2 emissions rate of equal to less than 0.60 lb/MMBtu. We are requesting comment on whether these restrictions discourage the development and use of cost-effective fuel pretreatment technologies and increase costs to the regulated community. To the extent that this restriction could be eliminated without adversely impacting protection of the environment, we are considering eliminating this restriction. We are also requesting comment on other provisions in the steam generating unit NSPS that could be eliminated to reduce regulatory burden without decreasing environmental protection.

The large IB NSPS (40 CFR part 60, subpart Db) currently includes regulatory language for standards for boilers burning MSW. This language was included to assure the broad applicability of 40 CFR part 60, subpart Db. However, subsequent to the original promulgation of 40 CFR part 60, subpart Db, EPA promulgated specific standards for MWCs and exempted owners/operators of MWCs from 40 CFR part 60, subpart Db. We are requesting comment on deleting all references to MSW in 40 CFR part 60, subpart Db. This would simplify compliance and readability of the rule without increasing emissions to the environment. Owners/operators of these units would still be subject to emission standards under 40 CFR part 60, subpart Db, if they stop burning MSW.

Coal Refuse. The high ash and corresponding low Btu content of coal refuse results in lower efficiencies than comparable coal-fired EGUs. Therefore, we are requesting comment on the environmental impact of subcategorizing coal refuse-fired EGUs and maintaining the existing NO_X standard of 1.0 lb/MWh (or 1.4 lb [NO_X + CO]/MWh) for owners/operators of these units.

Temporary Boilers. On occasion, owners/operators of industrial facilities need to bring in temporary boilers for steam production for short-term use while the primary steam boilers are not available. The existing testing and monitoring requirements for IB may not be appropriate for temporary boilers used for less than 30 days. We intend to establish alternate testing and monitoring requirements for owners/operators of temporary IBs and are requesting comment on the appropriate requirements.

IX. Summary of Cost, Environmental, Energy, and Economic Impacts of This Proposed NSPS

In setting the standards, the CAA requires us to consider alternative emission control approaches, taking into account the estimated costs and benefits, as well as the energy, solid waste and other effects. EPA requests comment on whether it has identified the appropriate alternatives and whether the proposed standards adequately take into consideration the incremental effects in terms of emission reductions, energy and other effects of these alternatives. EPA will consider the available information in developing the final rule.

The costs, environmental, energy, and economic impacts are typically expressed as incremental differences between the impacts on owners/operators of units complying with the proposed amendments relative to complying with the current NSPS emission standards (*i.e.,* baseline). However, for EGUs this would not accurately represent actual costs and benefits of the proposed amendments. Requirements of the NSR program often result in new EGUs installing controls beyond what is required by the existing NSPS. In addition, owners/operators of new EGUs subject to the requirements of the Transport Rule will likely elect to minimize operating costs by operating at SO_2 and NO_X emission rates lower than what is required by the existing NSPS. Finally, the proposed EGU NESHAP PM and SO_2 standards for new EGUs are as stringent as or more stringent than the proposed NSPS amendments, and we have concluded that there are no costs or benefits associated with these amendments. We are requesting comment on this conclusion.

To establish the regulatory baseline for NO_X emissions, we reviewed annual NO_X emission rates for units operating at levels below the existing NSPS NO_X standard that commenced operation between 2005 and 2008 and that reported both NO_X emissions and gross electric output data to CAMD. The 2009 average annual NO_X emissions rate for these units was 0.61 lb/MWh. To account for the variability in performance of presently used NO_X controls, we concluded that 30-day averages are typically ¼ to ⅓ higher than annual average emission rates and used 0.80 lb/MWh as the baseline. This represents an approximate 12 percent reduction in the growth of NO_X emissions from new units that would be subject to the proposed standards. We have concluded that a combined NO_X/CO standard would have similar impacts because CO controls are based on readily available combustion controls. The additional monitoring costs for a combined standard would include additional CEMS certification because many facilities currently have CO CEMS for operational control.

Although multiple coal-fired EGUs have recently commenced operation and several are currently under construction, no new coal-fired EGUs have commenced construction in either 2009 or 2010. In addition, forecasts of new generation capacity from both the EIA and the Edison Electric Institute do not project any new coal-fired EGUs being constructed in the short term. This is an indication that, in the near term, few new coal-fired EGUs will be subject to the NSPS amendments. Because the use of natural gas in boiler/

steam turbine-based EGUs is an inefficient use of natural gas to generate electricity, all new natural gas-fired EGUs built in the foreseeable future will most likely be combined cycle units or CT peaking units and, thus, not subject to 40 CFR part 60, subpart Da, but instead subject to the NSPS for stationary CTs (40 CFR part 60, subpart KKKK). Furthermore, because of fuel supply availability and cost considerations, we assumed that no new oil-fired EGUs will be built during the next 5 years.

Therefore, we are not projecting that any new, reconstructed, or modified steam generating units would become subject to the proposed amendments over the next 5 years. Even though we are not projecting any impacts from the proposed amendments, in the event a new steam generating units does become subject the proposed amendments we have concluded that the proposed amendments would be appropriate. For more information on these impacts, please refer to the economic impact analysis and technical support documents in the public docket.

X. Impacts of These Proposed Rules

A. What are the air impacts?

Under the proposed Toxics Rule, EPA projects annual HCl emissions reductions of 91 percent in 2015, Hg emissions reductions of 79 percent in 2015, and $PM_{2.5}$ emissions reductions of 29 percent in 2015. In addition, EPA projects SO_2 emission reductions of 53 percent, annual NO_X emissions reductions of 7 percent, and annual CO_2 reductions of 1 percent from the power sector by 2015, relative to the base case. See Table 21.

TABLE 21—SUMMARY OF POWER SECTOR EMISSIONS REDUCTIONS (TPY)

	SO_2 (million tons)	NO_X (million tons)	Mercury (tons)	HCl (thousand tons)	$PM_{2.5}$ (thousand tons)	CO_2 (million metric tonnes)
Base Case	3.9	2.0	29	78	286	2,243
Proposed Toxics Rule	1.8	1.9	6	10	202	2,219
Change	−2.1	−0.1	−23.0	−68	−83.2	−24.2

B. What are the energy impacts?

Under the provisions of this proposed rule, EPA projects that approximately 9.9 GW of coal-fired generation (roughly 3 percent of all coal-fired capacity and 1% of total generation capacity in 2015) may be removed from operation by 2015. These units are predominantly smaller and less frequently used generating units dispersed throughout the area affected by the rule. If current forecasts of either natural gas prices or electricity demand were revised in the future to be higher, that would create a greater incentive to keep these units operational.

EPA also projects fuel price increases resulting from the proposed Toxics Rule. Average retail electricity prices are shown to increase in the continental U.S. by 3.7 percent in 2015. This is generally less of an increase than often occurs with fluctuating fuel prices and other market factors. Related to this, the average delivered coal price increases by less than 1 percent in 2015 as a result of shifts within and across coal types. EPA also projects that electric power sector-delivered natural gas prices will increase by about 1 percent over the 2015–2030 timeframe and that natural gas use for electricity generation will increase by about less than 300 billion cubic feet (BCF) over that horizon. These impacts are well within the range of price variability that is regularly experienced in natural gas markets. Finally, the EPA projects coal production for use by the power sector, a large component of total coal production, will decrease by 20 million tons in 2015 from base case levels, which is less than 2 percent of total coal produced for the electric power sector in that year.

C. What are the compliance costs?

The power industry's "compliance costs" are represented in this analysis as the change in electric power generation costs between the base case and policy case in which the sector pursues pollution control approaches to meet the proposed Toxics Rule HAP emission standards. In simple terms, these costs are the resource costs of what the power industry will directly expend to comply with EPA's requirements.

EPA projects that the annual incremental compliance cost of the proposed Toxics Rule is $10.9 billion in 2015 ($2007). The annualized incremental cost is the projected additional cost of complying with the proposed rule in the year analyzed, and includes the amortized cost of capital investment and the ongoing costs of operating additional pollution controls, needed new capacity, shifts between or amongst various fuels, and other actions associated with compliance.

End-use energy efficiency can be an important part of a compliance strategy for this regulation. It can reduce the cost of compliance, lower consumer costs, reduce emissions, and help to ensure reliability of the U.S. power system. Policies to promote end-use energy efficiency are largely outside of EPA's direct control. However this rule can provide an incentive for action to promote energy efficiency. To examine the potential impacts of Federal and state energy efficiency policies, EPA used the Integrated Planning Model (IPM).

An illustrative Energy Efficiency Scenario was developed and run as a sensitivity for both the Base Case and the Toxics Rule Case. The illustrative Energy Efficiency Case assumed adoption of two key energy efficiency policies. First, it assumed that states adopted rate-payer funded energy efficiency programs, such as energy efficiency resource standards, integrated resource planning and demand side management plans. Examples of energy efficiency programs that might be driven by these policies include rebate programs for efficient products and state programs to provide technical assistance and information for energy efficient home retrofits. The electricity demand reduction that could be gained from these programs was taken from work done by Lawrence Berkley National Laboratory (LBNL).[179] Second, the Department of Energy (DOE) provided estimates of the demand reductions that could be achieved from implementation of appliance efficiency standards mandated by existing statutes but not yet implemented (appliance standards that have been implemented are in the base case.) EPA assumed that these policies are used beyond the timeframe of the DOE and LBNL estimates (2035

[179] The Shifting Landscape of Ratepayer Funded Energy Efficiency in the U.S., Galen Barbose *et al.,* October 2009, Lawrence Berkeley National Laboratory, LBNL–2258E.

and 2020 respectively) so that their impacts continue through 2050. Table 22 below gives the electricity demand reductions that these two policies would yield.

TABLE 22—ENERGY EFFICIENCY SENSITIVITY RESULTS: ELECTRICITY DEMAND REDUCTIONS

(all in TWh)	*2009*	*2012*	*2015*	*2020*	*2030*	*2040*	*2050*
Ratepayer-funded EE Programs	.....	59	110	174	198	198	198
% of U.S. Demand	.....	1.5%	2.7%	4.1%	4.2%	3.9%	3.6%
Federal Appliance Standards	.....	0	6	52	112	114	124
% of U.S. Demand	.....	0.0%	0.2%	1.2%	2.4%	2.2%	2.2%
Total EE Demand Reductions	.....	59	117	226	310	312	322
% of U.S. Demand	.....	1.5%	2.9%	5.3%	6.6%	6.1%	5.8%
U.S. Electricity Demand (EPA Reference)	3,838	4,043	4,086	4,302	4,703	5,113	5,568
Average Annual Growth Rate (2009 to 20xx)	.....	.....	1.05%	1.04%	0.97%	0.93%	0.91%
Net Demand after EE	3,838	3,984	3,969	4,076	4,392	4,801	5,246
Average Annual Growth Rate (2009 to 20xx)	.....	.....	0.56%	0.55%	0.64%	0.73%	0.77%

As shown, these policies are estimated to result in a moderate reduction in U.S. electricity demand climbing to over five percent by 2020 and averaging over five percent from 2020 to 2050. These reductions lower annual average electricity demand growth (from 2009 historic data) through 2020 relative to the reference forecast from 1.04 percent to 0.55 percent.

The effects of the Energy Efficiency Scenario on the projected total electricity generating costs of the power sector are shown below in Table 23. In this table we see the projected costs in the Base and Toxics Rule Cases with and without energy efficiency.

TABLE 23—EFFECT OF ENERGY EFFICIENCY POLICY ON GENERATION SYSTEM COSTS

Total costs (billion 2007$)—IPM + Total EE	2015	2020	2030
Base	144	155	200
Base + EE	142	150	190
Toxics Rule	155	165	210
Toxics Rule + EE	153	159	199
1. Increment (Base to Base + EE)	−2	−5	−11
2. Increment (Toxics Rule to Toxics Rule + EE)	−2	−6	−11
3. Increment (Base to Toxics Rule)	11	10	10
4. Increment (Base + EE to Toxics Rule + EE)	11	9	9
5. Increment (Base to Toxics Rule) to (Base + EE to Toxics Rule + EE)	0	−1	−1
6. Increment (Base to Toxics Rule + EE)	9	4	−1

In this analysis, the costs of the energy efficiency policies are treated as a component of the cost of generating electricity and are imbedded in the costs seen in Table 23. The modeling estimated that these energy efficiency policies would reduce the total cost of implementing the rule by billions of dollars. EPA looked at a case in which these energy efficiency policies were in place with and without the Toxics Rule. As Table 23 shows, with or without the Toxics Rule, energy efficiency policies reduce the overall costs to generate electricity. The cost reductions increase over time. When comparing the Toxics Rule Case without energy efficiency to the Toxics Rule Case with energy efficiency, the analysis shows that these energy efficiency policies could reduce overall system costs by $2 billion in 2015, $6 billion in 2020, and $11 billion in 2030.

The energy savings driven by these energy efficiency policies, and corresponding lower levels of demand, translate into reductions in electricity prices. EPA's modeling shows that the Toxics Rule increases retail prices by 3.7 percent, 2.6 percent and 1.9 percent in 2015, 2020 and 2030, respectively, relative to the base case. If energy efficiency policies are implemented, the price increase would be smaller in 2015 when retail prices would increase by 3.3 percent. In 2020 and 2030 the reduced demand for electricity is sufficient to reduce the retail price of electricity relative to the Base Case even with the Toxics Rule. If the Toxics Rule is implemented with energy efficiency, retail electricity prices decrease by about 1.6 percent in 2020 and by about 2.3 percent in 2030 relative to the Base.[180] The effect on average electricity bills, however, may fall more than these percentages as energy efficiency means that less electricity will be used by consumers of electricity.

In the Energy Efficiency Cases, IPM projects considerably more plant retirements than in the Base and Policy Cases. The Base Case with Energy Efficiency in 2020 shows twice as much capacity retiring, and more than double the capacity of coal plant retirements as the Base Case without energy efficiency. The Toxics Rule would increase the amount of capacity retired over the Base Case by 8 GW. If the energy efficiency policies were imposed as the power sector was taking action to come into compliance, the effect of the Toxics Rule on plant retirements would be greater with an additional 25 GW of

[180] Source: EPA's Retail Electricity Price Model.

retirements in 2020. These results are shown in Table 24 below.

TABLE 24—EFFECT OF ENERGY EFFICIENCY ON RETIREMENTS

Retirements Grand Total & (Coal) (GW)	2015	2020	2030
Base	27 (5)	27 (5)	27 (5)
Base + EE	38 (12)	54 (12)	53 (12)
Toxics Rule	35 (15)	35 (14)	35 (14)
Toxics Rule + EE	47 (25)	60 (24)	60 (24)
1. Increment (Base to Base + EE)	11 (7)	27 (7)	26 (7)
2. Increment (Toxics Rule to Toxics Rule + EE)	11 (10)	25 (10)	24 (10)
3. Increment (Base to Toxics Rule)	9 (10)	8 (9)	8 (9)
4. Increment (Base + EE to Toxics Rule + EE)	9 (13)	6 (12)	6 (12)
5. Increment (Base to Toxics Rule) to (Base + EE to Toxics Rule + EE)	0 (3.0)	−2 (3)	−2 (3)
6. Increment (Base to Toxics Rule + EE)	20 (20)	33 (19)	32 (19)

In effect, the timely adoption and implementation of energy efficiency policies would augment currently projected reserve capacities that are instrumental to assuring system reliability.

The addition of energy efficiency policies during and beyond the Toxics Rule compliance period can result in very modest reductions in air emissions. This is largely due to lower levels of electricity generation. As a result, with energy efficiency policies the Toxics Rule would achieve reductions of approximately an additional 520 pounds of Hg emissions, an additional 80,000 tons of SO_2, and an additional 110,000 tons of NO_X in 2020.

Although EPA cannot mandate energy efficiency policies, the positive effects of these policies on the cost of rule to industry and consumers could be a strong incentive to undertake them as a part of an overall compliance strategy.

Table 25 presents estimated breakouts of the cost of reducing certain key pollutants under the Toxics Rule. Because many of the strategies to reduce pollutants are multi-pollutant in nature, it is not possible to create a technology-specific breakout of costs (*e.g.* a baghouse reduces $PM_{2.5}$ as well as Hg, it also reduces the cost of using additional sorbents to reduce acid gases or further reduce Hg). Costs were first calculated by using representative unit costs for each control option. These costs were then multiplied by the amount of capacity that employed the given control option. Costs were then pro-rated amongst the pollutants that a given technology reduced. This pro-ration was based on rough estimates of the percentage reduction expected for a given pollutant (*e.g.* because a baghouse alone removes significant amounts of $PM_{2.5}$ and has a much smaller Hg reduction, most of the baghouse cost was assigned to $PM_{2.5,}$ in the case of ACI (which often includes a baghouse) reductions of Hg and fine PM were similar, therefore costs were pro-rated more equally). Since total costs from the bottom up calculation did not exactly match our total modeled costs, the pollutant by pollutant costs were then pro-rated to equal the total model costs.

TABLE 25—BREAKOUTS OF COSTS BY CONTROL MEASURE AND POLLUTANT FOR THE PROPOSED TOXICS RULE

		Dry FGD + FF	DSI	FF	ACI	Scrubber upgrade	Waste coal FGD	Total
Total (2007 $MM)	Capital	1,421	428	1,092	1,498	669	94	5,201
	FOM	252	71	41	45	0	20	431
	VOM	377	1,241	105	627	0	66	2,416
	2015 Annual Capital + FOM + VOM.	2,050	1,740	1,238	2,173	669	179	8,048
Cost Share	HCl	29%	56%	0%	0%	52%	29%	
	Hg	10%	0%	10%	51%	0%	10%	
	$PM_{2.5}$	32%	0%	90%	49%	0%	32%	
	SO_2	29%	44%	0%	0%	48%	29%	
Total Annual Costs, 2015 (2007 $MM).	HCL	588	979	0	0	347	51	1,965
	Hg	205	0	124	1,106	0	18	1,453
	$PM_{2.5}$	654	0	1,114	1,067	0	57	2,892
	SO_2	603	761	0	0	322	53	1,739
	TOTAL	2,050	1,740	1,238	2,173	669	179	8,048

	Capital + FOM + VOM Costs	Fuel cost	Total cost	Share of total cost	Capital share	Tons reduced	$/ton ($/lb for Hg)	General range of costs from other MACT rules
Acid Gasses (HCl + HCN + HF)	1,965	1,064	3,029	24%	37%	106,038	$18,529	$2,500–$55,000
Hg	1,453	825	2,277	18%	49%	18	$40,428	$1,250–$55,200
$PM_{2.5}$	2,892	357	3,249	36%	74%	83,246	$34,742	$1,600–$55,000
SO_2	1,739	645	2,384	22%	44%	2,050,871	$848	$540–$5,100
Total	8,048	2,892	10,940	100%				

D. What are the economic impacts?

For this proposed rule, EPA analyzed the costs using IPM. IPM is a dynamic linear programming model that can be used to examine the economic impacts of air pollution control policies for a variety of HAP and other pollutants throughout the contiguous U.S. for the entire power system.

Documentation for IPM can be found in the docket for this rulemaking or at *http://www.epa.gov/airmarkets/progsregs/epa-ipm/index.html*.

EPA also included an analysis of impacts of the proposed rule to industries outside of the electric power sector by using the Multi-Market Model. This model is a partial equilibrium model that includes 100 sectors that cover energy, manufacturing, and service applications and is designed to capture the short-run effects associated with an environmental regulation. It was used to estimate economic impacts for the recently promulgated Industrial Boiler major and area source standards and CISWI standard.

We use the Multi-Market model to estimate the social cost of the proposed rule. Using this model, we estimate the social costs of the proposal to be $10.9 billion (2007$), which is almost identical to the compliance costs. The usefulness of a Multi-Market model in predicting the estimated effects is limited because the electric power sector affects all sectors of the economy. For the final rule, we will be refining the social cost estimates with general equilibrium models, including an assessment with our upgraded CGE model, EMPAX. Commenters are encouraged to provide other general equilibrium model platforms and to provide other information to refine the social cost assessments for the final rule.

EPA also performed a screening analysis for impacts on small entities by comparing compliance costs to sales/revenues (*e.g.,* sales and revenue tests). EPA's analysis found the tests were typically higher than 1 percent for small entities included in the screening analysis. EPA has prepared an Initial Regulatory Flexibility Analysis (IRFA) that discusses alternative regulatory or policy options that minimize the rule's small entity impacts. It includes key information about key results from the SBAR panel.

Although a stand-alone analysis of employment impacts is not included in a standard cost-benefit analysis, the current economic climate has led to heightened concerns about potential job impacts. Such an analysis is of particular concern in the current economic climate as sustained periods of excess unemployment may introduce a wedge between observed (market) wages and the social cost of labor. In such conditions, the opportunity cost of labor required by regulated sectors to bring their facilities into compliance with an environmental regulation may be lower than it would be during a period of full employment (particularly if regulated industries employ otherwise idled labor to design, fabricate, or install the pollution control equipment required under this proposed rule). For that reason, EPA also includes estimates of job impacts associated with the proposed rule. EPA presents an estimate of short-term employment opportunities as a result of increased demand for pollution control equipment. Overall, the results suggest that the proposed rule could support a net of roughly 31,000 job-years [181] in direct employment impacts in 2015.

The basic approach to estimate these employment impacts involved using projections from IPM from the proposed rule analysis such as the amount of capacity that will be retrofit with control technologies, for various energy market implications, along with data on labor and resource needs of new pollution controls and labor productivity from secondary sources, to estimate employment impacts for 2015. For more information, please refer to the TSD for this analysis, "Employment Estimates of Direct Labor in Response to the Proposed Toxics Rule in 2015."

EPA relied to Morgenstern, *et al.* (2002), identify three economic mechanisms by which pollution abatement activities can indirectly influence jobs:

Higher production costs raise market prices, higher prices reduce consumption, and employment within an industry falls ("demand effect");

Pollution abatement activities require additional labor services to produce the same level of output ("cost effect"); and

Post regulation production technologies may be more or less labor intensive (*i.e.,* more/less labor is required per dollar of output) ("factor-shift effect").

Using plant-level Census information between the years 1979 and 1991, Morgenstern, *et al.,* estimate the size of each effect for four polluting and regulated industries (petroleum, plastic material, pulp and paper, and steel). On average across the four industries, each additional $1 million spending on pollution abatement results in an small net increase of 1.6 jobs; the estimated effect is not statistically significant different from zero. As a result, the authors conclude that increases in pollution abatement expenditures do not necessarily cause economically significant employment changes. The conclusion is similar to Berman and Bui (2001) who found that increased air quality regulation in Los Angeles did not cause large employment changes.[182] For more information, please refer to the RIA for this proposed rule.

The ranges of job effects calculated using the Morgenstern, *et al.*, approach are listed in Table 26.

TABLE 26—RANGE OF JOB EFFECTS FOR THE ELECTRICITY SECTOR

	Estimates using Morgenstern, *et al.* (2001)		Factor shift effect
	Demand effect	Cost effect	
Change in Full-Time Jobs per Million Dollars of Environmental Expenditure [a].	−3.56	2.42	2.68.
Standard Error	2.03	1.35	0.83.
EPA estimate for Proposed Rule [b]	−45,000 to +2,500	+4,700 to 24,000	+200 to 32,000.

[a] Expressed in 1987 dollars. See footnote a from Table 9–3 of the RIA for inflation adjustment factor used in the analysis.

[b] According to the 2007 Economic Census, the electric power generation, transmission and distribution sector (NAICS 2211) had approximately 510,000 paid employees.

[181] Numbers of job years are not the same as numbers of individual jobs, but represents the amount of work that can be performed by the equivalent of one full-time individual for a year (or FTE). For example, 25 job years may be equivalent to five full-time workers for five years, 25 full-time workers for one year, or one full-time worker for 25 years.

[182] For alternative views in economic journals, see Henderson (1996) and Greenstone (2002).

EPA recognizes there may be other job effects which are not considered in the Morgenstern, *et al.*, study. Although EPA has considered some economy-wide changes in industry output as shown earlier with the Multi-Market model, we do not have sufficient information to quantify other associated job effects associated with this rule. EPA solicits comments on information (*e.g.*, peer-reviewed journal articles) and data to assess job effects that may be attributable to this rule.

E. What are the benefits of this proposed rule?

We estimate the monetized benefits of this proposed regulatory action to be $59 billion to $140 billion (2007$, 3 percent discount rate) in 2016. The monetized benefits of the proposed regulatory action at a 7 percent discount rate are $53 billion to $130 billion (2007$). These estimates reflect the economic value of the Hg benefits as well as the $PM_{2.5}$ and CO_2-related co-benefits.

Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower benefits estimates are plausible, but most of the expert-based estimates fall between these two estimates.[183] A summary of the monetized benefits estimates at discount rates of 3 percent and 7 percent is in Table 27 of this preamble.

TABLE 27—SUMMARY OF THE $PM_{2.5}$ MONETIZED CO-BENEFITS ESTIMATES FOR THE PROPOSED TOXICS RULE IN 2016

[Billions of 2007$][a]

	Estimated emission reductions (million tons per year)	Monetized $PM_{2.5}$ co-benefits (3% discount rate)	Monetized $PM_{2.5}$ co-benefits (7% discount rate)
$PM_{2.5}$ Precursors			
SO_2	2.1	$58 to $140	$53 to $130.
Total		$58 to $140	$53 to $130.

[a] All estimates are for the implementation year (2016), and are rounded to two significant figures. All fine particles are assumed to have equivalent health effects, but the benefit-per-ton estimates vary between precursors because each ton of precursor reduced has a different propensity to form $PM_{2.5}$. Benefits from reducing HAP are not included.

These benefits estimates represent the total monetized human health benefits for populations exposed to less $PM_{2.5}$ in 2016 from controls installed to reduce air pollutants in order to meet these standards. These estimates are calculated as the sum of the monetized value of avoided premature mortality and morbidity associated with reducing a ton of $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. To estimate human health benefits derived from reducing $PM_{2.5}$ and $PM_{2.5}$ precursor emissions, we used the general approach and methodology laid out in Fann, *et al.* (2009).[184]

To generate the benefit-per-ton estimates, we used a model to convert emissions of $PM_{2.5}$ precursors into changes in ambient $PM_{2.5}$ levels and another model to estimate the changes in human health associated with that change in air quality. Finally, the monetized health benefits were divided by the emission reductions to create the benefit-per-ton estimates. Even though we assume that all fine particles have equivalent health effects, the benefit-per-ton estimates vary between precursors because each ton of precursor reduced has a different propensity to form $PM_{2.5}$. For example, SO_X has a lower benefit-per-ton estimate than direct $PM_{2.5}$ because it does not form as much $PM_{2.5}$, thus the exposure would be lower, and the monetized health benefits would be lower.

For context, it is important to note that the magnitude of the PM benefits is largely driven by the concentration response function for premature mortality. Experts have advised EPA to consider a variety of assumptions, including estimates based both on empirical (epidemiological) studies and judgments elicited from scientific experts, to characterize the uncertainty in the relationship between $PM_{2.5}$ concentrations and premature mortality. For this proposed rule we cite two key empirical studies, one based on the American Cancer Society cohort study[185] and the extended Six Cities cohort study.[186] In the Regulatory Impacts Analysis (RIA) for this proposed rule, which is available in the docket, we also include benefits estimates derived from expert judgments and other assumptions.

This analysis does not include the type of detailed uncertainty assessment found in the 2006 $PM_{2.5}$ NAAQS RIA because we lack the necessary air quality input and monitoring data to run the benefits model. However, the 2006 $PM_{2.5}$ NAAQS benefits analysis[187] provides an indication of the sensitivity of our results to various assumptions.

It should be emphasized that the monetized benefits estimates provided above do not include benefits from several important benefit categories, including reducing other air pollutants, ecosystem effects, and visibility impairment. The benefits from reducing various HAP have not been monetized in this analysis, including reducing 68,000 tons of HCl, and 3,200 tons of other metals each year. Although we do not have sufficient information or modeling available to provide monetized estimates for this rulemaking, we include a qualitative assessment of the health effects of these air pollutants in the RIA for this proposed rule, which is available in the docket.

[183] Roman *et al.*, 2008. Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S. Environ. Sci. Technol., 42, 7, 2268–2274.

[184] Fann, N., C.M. Fulcher, B.J. Hubbell. 2009. "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.

[185] Pope *et al.*, 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution." Journal of the American Medical Association 287:1132–1141.

[186] Laden *et al.*, 2006. "Reduction in Fine Particulate Air Pollution and Mortality." *American Journal of Respiratory and Critical Care Medicine.* 173: 667–672.

[187] U.S. Environmental Protection Agency, 2006. Final Regulatory Impact Analysis: $PM_{2.5}$ NAAQS. Prepared by Office of Air and Radiation. October. Available on the Internet at *http://www.epa.gov/ttn/ecas/ria.html.*

TABLE 28—SUMMARY OF THE MONETIZED BENEFITS, SOCIAL COSTS, AND NET BENEFITS FOR THE PROPOSED RULE IN 2016

[Millions of 2006$] [a]

	3% Discount rate	7% Discount rate
Total Monetized Benefits [b]	$59,000 to $140,000	$53,000 to $130,000.
Hg-related Benefits [c]	$4.1 to $5.9	$0.45 to $0.89.
CO_2-related Benefits	$570	$570.
$PM_{2.5}$-related Co-benefits [d]	$59,000 to $140,000	$53,000 to $120,000.
Total Social Costs [e]	$10,900	$10,900.
Net Benefits	$48,000 to $130,000	$42,000 to $130,000.
Non-monetized Benefits	Visibility in Class I areas. Cardiovascular effects of Hg exposure. Other health effects of Hg exposure. Ecosystem effects. Commercial and non-freshwater fish consumption.	

[a] All estimates are for 2016, and are rounded to two significant figures. The net present value of reduced CO_2 emissions are calculated differently than other benefits. The same discount rate used to discount the value of damages from future emissions (SCC at 5, 3, 2.5 percent) is used to calculate net present value of SCC for internal consistency. This table shows monetized CO_2 co-benefits at discount rates at 3 and 7 percent that were calculated using the global average SCC estimate at a 3 percent discount rate because the interagency workgroup on this topic deemed this marginal value to be the central value. In section 6.6 of the RIA we also report the monetized CO_2 co-benefits using discount rates of 5 percent (average), 2.5 percent (average), and 3 percent (95th percentile).

[b] The total monetized benefits reflect the human health benefits associated with reducing exposure to MeHg, $PM_{2.5}$, and ozone.

[c] Based on an analysis of health effects due to recreational freshwater fish consumption.

[d] The reduction in premature mortalities account for over 90 percent of total monetized $PM_{2.5}$ benefits.

[e] Social costs are estimated using the MultiMarket model, in order to estimate economic impacts of the proposal to industries outside the electric power sector. Details on the social cost estimates can be found in Chapter 9 and Appendix E of the RIA.

For more information on the benefits and cost analysis, please refer to the RIA for this rulemaking, which is available in the docket.

XI. Public Participation and Request for Comment

We request comment on all aspects of this proposed rule.

During this rulemaking, we conducted outreach to small entities and convened a SBAR Panel to obtain advice and recommendation of representatives of the small entities that potentially would be subject to the requirements of this proposed rule. As part of the SBAR Panel process we conducted outreach with representatives from various small entities that would be affected by this proposed rule. We met with these SERs to discuss the potential rulemaking approaches and potential options to decrease the impact of the rulemaking on their industries/sectors. We distributed outreach materials to the SERs; these materials included background, project history, CAA section 112 overview, constraints on rulemaking, affected facilities, data, rulemaking options under consideration, potential control technologies and estimated costs, applicable small entity definitions, small entities potentially subject to regulation, and questions for SERs. We met with SERs that will be impacted directly by this proposed rule to discuss the outreach materials and receive feedback on the approaches and alternatives detailed in the outreach packet. The Panel received written comments from the SERs following the meeting in response to discussions at the meeting and the questions posed to the SERs by the Agency. The SERs were specifically asked to provide comment on regulatory alternatives that could help to minimize the rule's impact on small businesses. (See elsewhere in this preamble for further information regarding the SBAR process.)

EPA consulted with state and local officials in the process of developing the proposed action to permit them to have meaningful and timely input into its development. EPA met with 10 national organizations representing state and local elected officials to provide general background on the proposal, answer questions, and solicit input from state/local governments. EPA also consulted with tribal officials early in the process of developing this proposed rule to permit them to have meaningful and timely input into its development. Consultation letters were sent to 584 tribal leaders. The letters provided information regarding EPA's development of NESHAP for EGUs and offered consultation. Three consultation meetings were requested and held. The Unfunded Mandates Reform Act (UMRA) discussion in this preamble includes a description of the consultation. (See elsewhere in this preamble for further information regarding these consultations with state, local, and tribal officials.)

XII. Statutory and Executive Order Reviews

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

Under EO 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of $100 million or more 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.

Accordingly, EPA submitted this action to the OMB for review under EO 12866 and any changes in response to OMB recommendations have been documented in the docket for this action. For more information on the costs and benefits for this rule, please refer to Table 28 of this preamble.

When estimating the human health benefits and compliance costs in Table 28 of this preamble, EPA applied methods and assumptions consistent with the state-of-the-science for human health impact assessment, economics and air quality analysis. EPA applied its best professional judgment in performing this analysis and believes that these estimates provide a reasonable indication of the expected benefits and costs to the nation of this rulemaking. The RIA available in the docket describes in detail the empirical

basis for EPA's assumptions and characterizes the various sources of uncertainties affecting the estimates below. In doing what is laid out above in this paragraph, EPA adheres to EO 13563, "Improving Regulation and Regulatory Review," (76 FR 3821, January 18, 2011), which is a supplement to EO 12866.

In addition to estimating costs and benefits, EO 13563 focuses on the importance of a "regulatory system [that] * * * promote[s] predictability and reduce[s] uncertainty" and that "identify[ies] and use[s] the best, most innovative, and least burdensome tools for achieving regulatory ends." In addition, EO 13563 states that "[i]n developing regulatory actions and identifying appropriate approaches, each agency shall attempt to promote such coordination, simplification, and harmonization. Each agency shall also seek to identify, as appropriate, means to achieve regulatory goals that are designed to promote innovation." We recognize that the utility sector faces a variety of requirements, including ones under section 110(a)(2)(D) dealing with the interstate transport of emissions contributing to ozone and PM air quality problems, with coal combustion wastes, and with the implementation of section 316(b) of the CWA. They will also soon be the subject of a rulemaking under CAA section 111 concerning emissions of GHG. In developing today's proposed rule, EPA recognizes that it needs to endeavor to approach these rulemakings in ways that allow the industry to make practical investment decisions that minimize costs in complying with all of the final rules, while still achieving the fundamentally important environmental and public health benefits that underlie the rulemakings.

1. Human Health and Environmental Effects Due to Exposure to MeHg

In this section, we provide a qualitative description of human health and environmental effects due to exposure to MeHg. In 2000, the NAS Study was issued which provides a thorough review of the effects of MeHg on human health (NRC, 2000). Many of the peer-reviewed articles cited in this section are publications originally cited in the MeHg Study. In addition, EPA has conducted literature searches to obtain other related and more recent publications to complement the material summarized by the NRC in 2000.

2. Reference and Benchmark Doses

In 1995, EPA set a health-based ingestion rate for chronic oral exposure to MeHg, termed an oral RfD, at 0.0001 mg/kg-day. The RfD was based on effects reported to children exposed *in utero* during the Iraqi poisoning episode (Marsh, et al., 1987). Subsequent research from large epidemiological studies in the Seychelles, Faroe Islands, and New Zealand added substantially to the body of knowledge on neurological effects from MeHg exposure. Per Congressional direction via the House Appropriations Report for Fiscal Year 1999, the NRC was contracted by EPA to examine these data and, if appropriate, make recommendations for deriving a revised RfD. The NRC's analysis concluded that the Iraqi study on children exposed *in utero* should no longer be considered the critical study for the derivation of the RfD. NRC also provided specific recommendations to EPA for a MeHg RfD based on analyses of the three large epidemiological studies (NRC, 2000). Although derived from a more complete data set and with a somewhat different methodology, the current RfD is numerically the same as the previous (1995) RfD (0.0001 mg/kg-day).

The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious effects during a lifetime (EPA, 2002). Data published since 2001, development of risk assessment methods, and continued examination of the concepts underlying benchmark doses and RfDs based on them add to EPA's interpretation of the 2001 MeHg RfD in the current rulemaking. Additional information on EPA's interpretation can be found in Section X of the Appropriate & Necessary TSD.

3. Neurologic Effects of Exposure to MeHg

In their review of the literature, the NRC found neurodevelopmental effects to be the most sensitive endpoints and appropriate for establishing an RfD (NRC, 2000). Studies involving animals found sensory effects and support the conclusions reached by studies involving human subjects, with a similar range of neurodevelopmental effects reported (NRC, 2000). As noted by the NRC, the clinical significance of some of the more subtle endpoints included in the human low-dose studies is difficult to gauge due to the quantal nature of the effects observed (*i.e.,* subjects either display the abnormality or do not) and the rather low occurrence rate of these effects.

Little is known about the effects of low-level chronic MeHg exposure in children that can be linked to exposures after birth. The difficulty in identifying a cohort exposed after birth but not prenatally, or separating prenatal from postnatal effects, makes research on the topic complicated. These challenges were present in the three large epidemiologic studies used to derive the RfD, as in all three studies there was postnatal exposure as well.

Several studies have shown neurological effects including delayed peak latencies in brainstem auditory evoked potentials are associated with prenatal or recent MeHg exposures (Debes, et al., 2006; Grandjean, et al., 1997; Murata, *et al.,* 2004). A recent case control study of Chinese children in Hong Kong (Cheuk and Wong, 2006) paired 59 normal controls with 52 children (younger than 18 years) diagnosed with attention deficit/hyperactivity disorder (ADHD). The authors reported a significant difference in blood Hg levels between cases and controls (geometric mean 18.2 nmol/L (95 percent confidence interval, CI, 15.4–21.5 nmol/L] vs. 11.6 nmol/L [95 percent CI 9.9–13.7 nmol/L], $p < 0.001$), which persisted after they adjusted for age, gender and parental occupational status (p less than 0.001).

Several studies have also examined the effects of chronic low-dose MeHg exposures on adult neurological and sensory functions (*e.g.,* Lebel, *et al.,* 1996; Lebel, *et al.,* 1998; Beuter and Edwards, 1998). Research results suggest that elevated hair MeHg concentrations in individuals are associated with visual deficits, including loss of peripheral vision and chromatic and contrast sensitivity. These concentrations range between a high of 50 ppm, and possibly as low as 20 ppm, although a no observed adverse effect level (NOAEL) was not clearly estimated). These individuals also exhibited a loss of manual dexterity, hand-eye coordination, and grip strength; difficulty performing complex sequences of movement; and (at the higher doses) tremors, although expression of some effects was sex-specific. Although additional data would be needed to quantify a dose-response relationship for these effects, it is noteworthy that the effects occurred at doses lower than the Japanese and Iranian poisoning episodes, via consumption of Hg-laden fish in riverine Brazilian communities. These are areas where extensive Hg contamination has resulted from small-scale gold mining activities begun in the 1980s. Note that these doses are above the EPA's RfD equivalent level for hair Hg. In regard to the Lebel, et al. (1998) study, the NRC states that "the mercury exposure of the cohort is presumed to have resulted from fish-consumption

patterns that are stable and thus relevant to estimating the risk associated with chronic, low-dose MeHg exposure" (NRC, 2000). The NRC noted, however, "that the possibility cannot be excluded that the neurobehavioral deficits of the adult subjects were due to increased prenatal, rather than ongoing, MeHg exposure." More recent studies in the Brazilian communities provide some evidence that the adverse neurobehavioral effects may in fact result from postnatal exposures (*e.g.,* Yokoo, *et al.,* 2003); however, additional longitudinal study of these and other populations is required to resolve questions regarding exposure timing and fully characterize the potential neurological impacts of MeHg exposure in adults.

4. Cardiovascular Impacts of Exposure to MeHg

A number of epidemiological and toxicological studies have evaluated the relationship between MeHg exposures and various cardiovascular effects including acute myocardial infarction (AMI), oxidative stress, atherosclerosis, decreased heart rate variability (HRV), and hypertension. An AMI (*i.e.,* heart attack) is clearly an adverse health effect. The other four effects are considered "intermediary" effects and risk factors for development of AMI or coronary heart disease. Hypertension is a commonly measured clinical outcome that is also considered a risk factor for other adverse effects (such as stroke).

These epidemiological studies evaluated Hg exposures using various measures (including Hg or MeHg in blood, cord blood, hair and toenails) and the associations of these exposures with various effects. The overall results of the available studies (published before and after NRC 2000) are summarized in the following paragraphs.

Studies in two cohorts (the Kuopio Ischemic Heart Disease Risk Factor study, or KIHD study; and the European Community Multicenter Study on Antioxidants, Myocardial Infarction and Breast Cancer, or EURAMIC study), report statistically significant positive associations between MeHg exposure and AMI. A third study (U.S. Health Professionals Study, USHPS) also reported a positive association between Hg exposure and AMI but only after excluding individuals who may have been occupationally exposed to inorganic Hg. However, a fourth study (the Northern Sweden Health and Disease Study, or NSHDS) reported an inverse relationship between MeHg exposure and AMI, and another study (Minamata Cohort) identified no increase in fatal heart attacks following a MeHg poisoning epidemic.

Although each of these AMI studies had strengths and limitations, the EURAMIC and KIHD studies appear to be most robust. Strengths of these two studies include their large sample sizes and control for key potential confounders (such as exposure to omega-3 fatty acid, which are related to decreases in cardiovascular effects). The KIHD study was well-designed and included a population-based recruitment and limited loss to follow-up. Additional strengths of the EURAMIC study include exposure data that were collected shortly after the AMI. In addition, recruitment of participants across nine countries likely resulted in a wide range of MeHg and fish fatty acid intakes. Although the USHPS study was well-conducted, the Hg exposure measure used was potentially confounded by possible inorganic Hg exposures in roughly half of the study population. When these subjects were excluded from the analyses, the power of the study to detect an effect was reduced. Limitations of the NSHDS study included its relatively small sample size and narrow MeHg exposure range. The Minamata study also had important limitations, primarily that the effects of the very high exposures in this population may differ substantially from effects of lower exposures expected at typical environmental levels; also the death certificates were collected starting 10 years after the initial cases of MeHg poisoning.

In summary, the most robust available studies (*i.e.,* the EURAMIC and KIHD), report statistically significant positive relationships between MeHg exposure and the incidence of AMI. Further, both studies report statistically significantly positive trend tests for the relationship between MeHg and AMI. The USHPS provides some additional evidence of a positive association. The NSHDS and the Minamata Cohort studies are less robust; however, the results from those two studies showed no adverse effect, and, therefore, reduce the overall confidence in the association of MeHg with AMIs.

The studies that evaluated intermediary effects generally provide some additional evidence of the potential adverse effects of Hg or MeHg to the cardiovascular system. However, results are somewhat inconsistent. For example, two epidemiological studies (the KIHD and the Tapajós River Basin studies) reported positive associations between MeHg exposures and oxidative stress, but one short-term study (the Quebec Sport Fisherman Study) reported a negative association. For atherosclerosis, the results across epidemiological studies are more consistent. Three studies (the KIHD, Faroese Whaler Cohort Study, and Nunavik Inuit Cohort in Quebec) reported a positive association between MeHg exposure and atherosclerosis. Moreover, animal studies and *in vitro* studies (cell studies) provide additional evidence that MeHg may cause oxidative stress and increased risk of atherosclerosis.

Another intermediary effect, decreases in heart rate variability (HRV), can be indicative of cardiovascular disease, particularly in the elderly. Associations of decreased HRV with increased MeHg exposures have been reported in four of five studies of adults and three studies of children; however, the clinical significance of decreased HRV in children is not known.

The existing epidemiological studies are inconsistent in showing an association between MeHg and hypertension. A prospective study of the Faroe Islands birth cohort reported statistically significant associations between elevated cord blood Hg levels or maternal hair Hg levels and increased diastolic and systolic blood pressures for 7-year-old children; this association was no longer seen in the children tested at 14 years. Other studies suggest that these are not correlated.

In January 2010, EPA sponsored a workshop in which a group of experts were asked to assess the plausibility of a causal relationship between MeHg exposure and cardiovascular health effects, and to advise EPA on methodologies for estimating population-level cardiovascular health impacts of reduced MeHg exposure. The final workshop report was published in January, 2011, and includes as its key recommendation the development of a dose-response function relating MeHg exposure and AMI incidence for use in regulatory benefits analyses that target Hg air emissions.

The experts identified both intermediary and clinical effects in the published literature. The panelists assessed the strength of evidence associated with three intermediary effects (*i.e.,* oxidative stress, atherosclerosis, and HRV), and with two main clinical effects (*i.e.,* hypertension and AMI). The panel concluded there was at least moderate evidence of an association between MeHg exposure and all of these effects in the epidemiological literature. The evidence for an association with hypertension was considered the weakest.

The workshop panel concluded that "a causal link between MeHg and AMI

is plausible, given the range of intermediary effects for which some positive evidence exists and the strength and consistency across the epidemiological studies for AMI." During the workshop, the individual experts provided quantitative estimates of the likelihood of a true causal relationship between MeHg and AMI, ranging from 0.45 to 0.80, and characterized by the panel as "moderate to strong." A recently published health benefits analysis of reduced MeHg exposures analyzed the epidemiology literature and assessed the "plausibility of causal interpretation of cardiovascular risk" as about ⅓ as a separate parameter in their analysis.

EPA did not develop a quantitative dose-response assessment or quantified estimates of benefits for cardiovascular effects associated with MeHg exposures, as there is no consensus among scientists on the dose-response functions for these effects. In addition, there is inconsistency among available studies as to the association between MeHg exposure and various cardiovascular system effects. The pharmacokinetics of some of the exposure measures (such as toenail Hg levels) are not well understood. The studies have not yet received the review and scrutiny of the more well-established neurotoxicity data base.

5. Genotoxic Effects of Exposure to MeHg

The Mercury Study noted that MeHg is not a potent mutagen but is capable of causing chromosomal damage in a number of experimental systems. The NRC concluded that evidence that human exposure to MeHg caused genetic damage is inconclusive; they note that some earlier studies showing chromosomal damage in lymphocytes may not have controlled sufficiently for potential confounders.) One study of adults living in the Tapajós River region in Brazil (Amorim, et al., 2000) reported a direct relationship between MeHg concentration in hair and DNA damage in lymphocytes,; polyploidal aberrations and chromatid breaks observed at Hg hair levels around 7.25 ppm and 10 ppm, respectively. Long-term MeHg exposures in this population were believed to occur through consumption of fish, suggesting that genotoxic effects (largely chromosomal aberrations) may result from dietary, chronic MeHg exposures similar to and above those seen in the Faroes and Seychelles populations.

6. Immunotoxic Effects to Exposure to MeHg

Although exposure to some forms of Hg can result in a decrease in immune activity or an autoimmune response (ATSDR, 1999), evidence for immunotoxic effects of MeHg is limited (NRC, 2000). Some persistent immunotoxic effects have been observed in mice treated with MeHg in drinking water at relatively high levels of exposure (Havarinasab, *et al.,* 2007). A recent study of fish-consuming communities in Amazonian Brazil has identified a possible association between MeHg exposure and immunotoxic effects reflective of autoimmune dysfunction. The authors noted that this may reflect interactions with infectious disease and other factors (Silva, *et al.,* 2004). Exposures to these communities occurred via fish consumption (some community members were also exposed to inorganic Hg through gold mining activities). The researchers assessed levels of specific antibodies that are markers of Hg-induced autoimmunity. They found that both prevalence and levels of these antibodies were higher in a population exposed to MeHg via fish consumption compared to a reference (unexposed) population. Median hair Hg concentration was 8 ppm in the more exposed population (range 0.29 to 58.47 ppm) and 5.57 ppm in the less exposed reference population (range 1.19 to 16.96 ppm). The ranges of Hg hair concentrations reported in this study are within an order of magnitude of the concentration corresponding to the MeHg RfD. Overall, there is a relatively small body of evidence from human studies that suggests exposure to MeHg can result in immunotoxic effects.

7. Other Hg-Related Human Toxicity Data

Based on limited human and animal data, MeHg is classified as a "possible" human carcinogen by the IARC (1994) and in the IRIS (EPA, 2002). The existing evidence supporting the possibility of carcinogenic effects in humans from low-dose chronic exposures is tenuous. Multiple human epidemiological studies have found no significant association between Hg exposure and overall cancer incidence, although a few studies have shown an association between Hg exposure and specific types of cancer incidence (*e.g.,* acute leukemia and liver cancer; NRC, 2000). The Mercury Study observed that "MeHg is not likely to be a human carcinogen under conditions of exposure generally encountered in the environment" (p 6–16, Vol. V). This was based on observation that tumors were noted in one species only at doses causing severe toxicity to the target organ. Although some of the human and animal research suggests that a link between MeHg and cancer may plausibly exist, more research is needed.

There is also some evidence of reproductive and renal toxicity in humans from MeHg exposure. For example, a smaller than expected number of pregnancies were observed among women exposed via contaminated wheat in the Iraqi poisoning episode of 1956 (Bakir, *et al.,* 1973); other victims of that same poisoning event exhibited signs of renal damage (Jalili and Abbasi, 1961); and an increased incidence of deaths due to kidney disease was observed in women exposed in Minamata Bay via contaminated fish (Tamashiro, *et al.,* 1986). Other data from animal studies suggest a link between MeHg exposure and similar reproductive and renal effects, as well as hematological toxicity (NRC, 2000). Overall, human data regarding reproductive, renal, and hematological toxicity from MeHg are very limited and are based on either studies of the two high-dose poisoning episodes in Iraq and Japan or animal data, rather than epidemiological studies of chronic exposures at the levels of interest in this analysis. Note that the Mercury Study provides an assessment of MeHg cancer risk using the 1993 version of the Revised Cancer Guidelines.

8. Ecological Effects of Hg

Deposition of Hg to watersheds can also have an impact on ecosystems and wildlife. Mercury contamination is present in all environmental media with aquatic systems experiencing the greatest exposures due to bioaccumulation. Bioaccumulation refers to the net uptake of a contaminant from all possible pathways and includes the accumulation that may occur by direct exposure to contaminated media as well as uptake from food. In the sections that follow, numerous adverse effects have been identified. Further reducing the presence of Hg in the environment may help to alleviate the potential for adverse ecological health outcomes.

A review of the literature on effects of Hg on fish [188] reports results for numerous species including trout, bass (large and smallmouth), northern pike, carp, walleye, salmon, and others from

[188] Crump, KL, and Trudeau, VL. Mercury-induced reproductive impairment in fish. Environmental Toxicology and Chemistry. Vol. 28, No. 5, 2009.

laboratory and field studies. The studies were conducted in areas from New York to Washington and the effects studied are reproductive in nature. Although we cannot determine at this time whether these reproductive deficits are affecting fish populations across the U.S. it should be noted that it would seem reasonable that over time reproductive deficits would have an effect on populations. Lower fish populations would conceivably impact the ecosystem services like recreational fishing derived from having healthy aquatic ecosystems.

Mercury also affects avian species. In previous reports [189] much of the focus has been on large piscivorous species in particular the common loon. The loon is most visible to the public during the summer breeding season on northern lakes and they have become an important symbol of wilderness in these areas.[190] A multitude of loon watch, preservation, and protection groups have formed over the past few decades and have been instrumental in promoting conservation, education, monitoring, and research of breeding loons.[191] Significant adverse effects on breeding loons from Hg have been found to occur including behavioral (reduced nest-sitting), physiological (flight feather asymmetry) and reproductive (chicks fledged/territorial pair) effects and reduced survival.[192] Additionally, Evers, et al. (see footnote 5), report that they believe that the weight of evidence indicates that population-level effects occur in parts of Maine and New Hampshire, and potentially in broad areas of the loon's range.

Recently attention has turned to other piscivorous species such as the white ibis, and great snowy egret. Although considered to be fish-eating generally, these wading birds have a very wide diet including crayfish, crabs, snails, insects and frogs. These species are experiencing a range of adverse effects due to exposure to Hg. The white ibis has been observed to have decreased foraging efficiency.[193] Additionally ibises have been shown to exhibit decreased reproductive success and altered pair behavior.[194] These effects include significantly more unproductive nests, male/male pairing, reduced courtship behavior and lower nestling production by exposed males. In this study, a worst-case scenario suggested by the results could involve up to a 50 percent reduction in fledglings due to MeHg in diet. In egrets, Hg has been implicated in the decline of the species in south Florida [195] and Hoffman [196] has shown that egrets show liver and possibly kidney effects. Although ibises and egrets are most abundant in coastal areas and these studies were conducted in south Florida and Nevada the ranges of ibises and egrets extend to a large portion of the U.S.

Insectivorous birds have also been shown to suffer adverse effects due to Hg exposure. These songbirds such as Bicknell's thrush, tree swallows, and the great tit have shown reduced reproduction, survival, and changes in singing behavior. Exposed tree swallows produced fewer fledglings,[197] lower survival,[198] and had compromised immune competence.[199] The great tit has exhibited reduced singing behavior and smaller song repertoire in areas of high contamination.[200] These effects may result in population reductions sufficient to affect people's enjoyment of these birds.

In mammals adverse effects have been observed in mink and river otter, both fish eating species. For otter from Maine and Vermont, maximum concentrations on Hg in fur nearly equal or exceed a concentration associated with mortality and concentration in liver for mink in Massachusetts/Connecticut and the levels in fur from mink in Maine exceed concentrations associated with acute mortality.[201] Adverse sublethal effects may be associated with lower Hg concentrations and consequently be more widespread than potential acute effects. These effects may include increased activity, poorer maze performance, abnormal startle reflex, and impaired escape and avoidance behavior.[202] Although we do not have data to show population level effects that would impact wildlife viewing and enjoyment these are ecosystem services potentially affected by impacts on these species.

The proposed rule will also reduce emissions of directly emitted PM and ozone precursors and estimates of the $PM_{2.5}$-related co-benefits of these air quality improvements may be found in Table 28 of this preamble. When characterizing uncertainty in the PM-mortality relationship, EPA has historically presented a sensitivity analysis applying alternate assumed thresholds in the PM concentration-response relationship. In its synthesis of the current state of the PM science, EPA's 2009 Integrated Science Assessment for Particulate Matter concluded that a no-threshold log-linear model most adequately portrays the PM-mortality concentration-response relationship. In the RIA accompanying this rulemaking, rather than segmenting

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[192] Evers, DC, Savoy, LJ, DeSorbo, CR, Yates, DE, Hanson, W, Taylor, KM, Siegel, LS, Cooley, JH, Jr., Bank, MS, Major, A, Munney, K, Mower, BF, Vogel, HS, Schoch, N, Pokras, M, Goodale, MW, Fair, J. Adverse effects from environmental mercury loads on breeding common loons. Ecotoxicology. 17:69–81, 2008; Mitro, MG, Evers, DC, Meyer, MW, and Piper, WH. Common loon survival rates and mercury in New England and Wisconsin. Journal of Wildlife Management. 72(3): 665–673, 2008.

[193] Adams, EM, and Frederick, PC. Effects of methylmercury and spatial complexity on foraging behavior and foraging efficiency in juvenile white ibises (Eudocimus albus). Environmental Toxicology and Chemistry. Vol 27, No. 8, 2008.

[194] Frederick, P, and Jayasena, N. Altered pairing behavior and reproductive success in white ibises exposed to environmentally relevant concentrations of methylmercury. Proceedings of The Royal Society B. doi: 10–1098, 2010.

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[196] Hoffman, DJ, Henny, CJ, Hill, EF, Grover, RA, Kaiser, JL, Stebbins, KR. Mercury and drought along the lower Carson River, Nevada: III. Effects on blood and organ biochemistry and histopathology of snowy egrets and black-crowned night-herons on Lahontan Reservoir, 2002–2006. Journal of Toxicology and Environmental Health, Part A. 72: 20, 1223–1241, 2009.

[197] Brasso, RL, and Cristol, DA. Effects of mercury exposure in the reproductive success of tree swallows (Tachycineta bicolor). Ecotoxicology. 17:133–141, 2008.

[198] Hallinger, KK, Cornell, KL, Brasso, RL, and Cristol, DA. Mercury exposure and survival in free-living tree swallows (Tachycineta bicolor). Ecotoxicology. Doi: 10.1007/s10646–010–0554–4, 2010.

[199] Hawley, DM, Hallinger, KK, Cristol, DA. Compromised immune competence in free-living tree swallows exposed to mercury. Ecotoxicology. 18:499–503, 2009.

[200] Gorissen, L, Snoeijs, T, Van Duyse, E, and Eens, M. Heavy metal pollution affects dawn singing behavior in a small passerine bird. Oecologia. 145: 540–509, 2005.

[201] Yates, DE, Mayack, DT, Munney, K, Evers DC, Major, A, Kaur, T, and Taylor, RJ. Mercury levels in mink (Mustela vison) and river otter (Lonra canadensis) from northeastern North America. Ecotoxicology. 14, 263–274, 2005.

[202] Scheuhammer, AM, Meyer MW, Sandheinrich, MB, and Murray, MW. Effects of environmental methylmercury on the health of wild birds, mammals, and fish. Ambio. Vol. 36, No. 1, 2007.

out impacts predicted to be associated levels above and below a "bright line" threshold, EPA includes a "lowest measured level" (LML) analysis that illustrates the increasing uncertainty that characterizes exposure attributed to levels of $PM_{2.5}$ below the LML of each epidemiological study used to estimate $PM_{2.5}$-related premature death. Figures provided in the RIA show the distribution of baseline exposure to $PM_{2.5,}$ as well as the lowest air quality levels measured in each of the epidemiology cohort studies. This information provides a context for considering the likely portion of PM-related mortality benefits occurring above or below the LML of each study; in general, our confidence in the size of the estimated reduction $PM_{2.5}$-related premature mortality diminishes as baseline concentrations of $PM_{2.5}$ are lowered. Using the Pope, *et al.* (2002) study, 86 percent of the population is exposed at or above the LML of 7.5 μg/m^3. Using the Laden, *et al.* (2006) study, 30 percent of the population is exposed at or above the LML of 10 μg/m^3. Although the LML analysis provides some insight into the level of uncertainty in the estimated PM mortality benefits, EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations. It is important to note that the monetized benefits include many but not all health effects associated with $PM_{2.5}$ exposure. Benefits are shown as a range from Pope, et al., (2002) to Laden, *et al.,* (2006). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type.

The cost analysis is also subject to uncertainties. Estimating the cost conversion from one process to another is more difficult than estimating the cost of adding control equipment because it is more dependent on plant specific information. More information on the cost uncertainties can be found in the RIA.

A summary of the monetized benefits and net benefits for the proposed rule at discount rates of 3 percent and 7 percent is in Table 28 of this preamble.

For more information on the benefits analysis, please refer to the RIA for this rulemaking, which is available in the docket.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to the OMB under the PRA, 44 U.S.C. 3501 *et seq.* An ICR document has been prepared by EPA (ICR No. 2137.05).

The information requirements 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 CAA section 114 (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

This proposed rule 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.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 3 years after the effective date of the standards) is estimated to be $49.1 million. This includes 329,605 labor hours per year at a total labor cost of $27.0 million per year, and total non-labor capital costs of $22.1 million per year. This estimate includes initial and annual performance test, conducting and documenting a tune-up, semiannual excess emission reports, maintenance inspections, developing a monitoring plan, notifications, and recordkeeping. The total burden for the Federal government (averaged over the first 3 years after the effective date of the standard) is estimated to be 18,039 hours per year at a total labor cost of $877 million per year.

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

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on EPA's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2009–0234. Submit any comments related to the ICR to EPA and OMB. *See* **ADDRESSES** section at the beginning of this preamble for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after May 3, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by June 2, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

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

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as (as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201): (1) A small business according to SBA size standards by the North American Industry Classification System category of the owning entity (for NAICS 221112 and 221122, the range of small business size standards for electric utilities is 4 million

megawatt hours of production or less); (2) a small governmental jurisdiction that is a government of a city, county, town, township, village, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, EPA cannot certify that this action will not have a significant economic impact on a substantial number of small entities. This determination, which is included in the Initial Regulatory Flexibility Analysis (IRFA) found in Chapter 10 of the RIA for this proposed rule, is based on the economic impact of this proposed rule to all affected small entities across the electric power sector.

The summary of the IRFA is as follows. EPA has assessed the potential impact of this action on small entities and found that approximately 102 of the estimated 1,400 EGUs potentially affected by today's proposed rule are owned by the 83 potentially affected small entities identified by EPA's analysis. EPA estimates that 59 of the 83 identified small entities will have annualized costs greater than 1 percent of their revenues.

Because the potential existed for a likely significant impact for substantial number of small entities, EPA convened a SBAR Panel to obtain advice and recommendation of representatives of the small entities that potentially would be subject to the requirements of this rule.

1. Panel Process and Panel Outreach

As required by RFA section 609(b), as amended by SBREFA, EPA has conducted outreach to small entities and on October 27, 2010, EPA's Small Business Advocacy Chairperson convened a Panel under RFA section 609(b). In addition to the Chair, the Panel consisted of the Director of the Sector Policies and Programs Division within EPA's Office of Air and Radiation, the Chief Counsel for Advocacy of SBA, and the Administrator of the Office of Information and Regulatory Affairs within OMB.

As part of the SBAR Panel process we conducted outreach with representatives from 18 various small entities that potentially would be affected by this rule. The SERs included representatives of EGUs owned by municipalities, cooperatives, and private investors. We distributed outreach materials to the SERs; these materials included background and project history, CAA section 112 overview, constraints on the rulemaking, rulemaking options under consideration, and potential control technologies and estimated cost. We met with 14 of the SERs, as well as five non-SER participants from organizations representing power producers, on December 2, 2010, to discuss the outreach materials, potential requirements of the rule, and regulatory areas where EPA has discretion and could potentially provide flexibility. The Panel received written comments from, or on behalf of, 10 SERs following the meeting in response to discussions at the meeting and the questions posed to the SERs by the Agency. The SERs were specifically asked to provide comment on regulatory approaches that could help to minimize the rule's impact on small businesses.

2. Panel Recommendations for Small Business Flexibilities

Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments on issues related to elements of the IRFA. A copy of the Final Panel Report (including all comments received from SERs in response to the Panel's outreach meeting) is included in the docket for this proposed rule. In general, the Panel recommended that EPA consider its various flexibilities to the maximum extent possible consistent with CAA requirements to mitigate the impacts of the rulemaking on small businesses and to seek comment on potential adverse economic impacts of the proposed rule on affected small entities and recommendations to mitigate such impacts. With respect to specific issues and options, however, there were varying recommendations from panel members. Issues and options discussed among the panel members included: (1) MACT floor determinations and variability assessment; (2) monitoring, reporting, and recordkeeping requirements; (3) subcategorization; (4) area source standards; (5) work practice standards; (6) health based emission limits; (7) related Federal rules; (8) potential adverse economic impacts; and (9) concerns with the SBAR process. Panel member recommendations regarding each of these issues and options are presented in Chapter 9 of the Final Panel Report. As noted elsewhere in this preamble, this proposal is based on a regulatory alternative that includes subcategorization, MACT floor-based numerical emission limitations, work practice standards, alternative standards, alternative compliance options, and emissions averaging.

We invite comments on all aspects of the proposal and its impacts, including potential adverse impacts, on small entities.

D. Unfunded Mandates Reform Act of 1995

Title II of the UMRA of 1995, Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under UMRA section 202, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, UMRA section 205 generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under UMRA section 203. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this proposed rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, we have prepared a written statement entitled "Unfunded Mandates Reform Act Analysis for the Proposed Toxics Rule" under UMRA section 202 that is within the RIA and which is summarized below.

1. Statutory Authority

As discussed elsewhere in this preamble, the statutory authority for this proposed rulemaking is CAA section 112. Title III of the CAA Amendments was enacted to reduce nationwide air toxic emissions. CAA section 112(b) lists the 188 chemicals, compounds, or groups of chemicals deemed by Congress to be HAP. These toxic air pollutants are to be regulated by NESHAP.

CAA section 112(d) directs us to develop NESHAP which require existing and new major sources to control emissions of HAP using MACT based standards. This NESHAP applies to all coal- and oil-fired EGUs.

In compliance with UMRA section 205(a), we identified and considered a reasonable number of regulatory alternatives. Additional information on the costs and environmental impacts of these regulatory alternatives is presented in the RIA for this rulemaking and in the docket. The regulatory alternative upon which this proposed rule is based represents the MACT floor for all regulated pollutants for four of the five subcategories of EGUs and for all but one regulated pollutant for the fifth subcategory. These proposed MACT floor-based standards represent the least costly and least burdensome alternative. Beyond-the-floor emission limits for Hg are proposed for existing and new EGUs designed to burn coal having a calorific value less than 8,300 Btu/lb.

2. Social Costs and Benefits

The RIA prepared for this proposed rule including the Agency's assessment of costs and benefits and is in the docket.

It is estimated that 3 years after implementation of this proposed rule, HAP would be reduced by thousands of tons, including reductions in HCl, HF, metallic HAP (including Hg), and several other organic HAP from EGUs. Studies have determined a relationship between exposure to these HAP and the onset of cancer; however, the Agency is unable to provide a monetized estimate of the HAP benefits at this time. In addition, there are significant reductions in $PM_{2.5}$ and in SO_2 that would occur, including approximately 84 thousand tons of $PM_{2.5}$ and over 2 million tons of SO_2. These reductions occur by 2016 and are expected to continue throughout the life of the affected sources. The major health effect associated with reducing $PM_{2.5}$ and $PM_{2.5}$ precursors (such as SO_2) is a reduction in premature mortality. Other health effects associated with $PM_{2.5}$ emission reductions include avoiding cases of chronic bronchitis, heart attacks, asthma attacks, and work-lost days *(i.e.,* days when employees are unable to work). Although we are unable to monetize the benefits associated with the HAP emissions reductions other than for Hg, we are able to monetize the benefits associated with the $PM_{2.5}$ and SO_2 emissions reductions. For SO_2 and $PM_{2.5}$, we estimated the benefits associated with health effects of PM but were unable to quantify all categories of benefits (particularly those associated with ecosystem and visibility effects). Our estimates of the monetized benefits in 2016 associated with the implementation of the proposed alternative range from $59 billion (2007 dollars) to $140 billion (2007 dollars) when using a 3 percent discount rate (or from $53 billion (2007 dollars) to $130 billion (2007 dollars) when using a 7 percent discount rate). Our estimate of social costs is $10.9 billion (2007 dollars). For more detailed information on the benefits and costs estimated for this proposed rulemaking, refer to the RIA in the docket.

3. Future and Disproportionate Costs

UMRA requires that we estimate, where accurate estimation is reasonably feasible, future compliance costs imposed by this proposed rule and any disproportionate budgetary effects. Our estimates of the future compliance costs of this proposed rule are discussed previously in this preamble.

EPA assessed the economic and financial impacts of the rule on government-owned entities using the ratio of compliance costs to the value of revenues from electricity generation, and our results focus on those entities for which this measure could be greater than 1 percent or 3 percent of base revenues. EPA projects that 55 government entities will have compliance costs greater than 1 percent of base generation revenue in 2016, and 37 may experience compliance costs greater than 3 percent of base revenues. Also, one government entity is estimated to have all of its affected units retire. Overall, 17 units owned by government entities retire. It is also worth noting that two-thirds of the net compliance costs shown above are due to lost profits from retirements. More than half of those lost profits arise from retiring two large units, according to EPA modeling. For more details on these results and the methodology behind their estimation, see the results included in the RIA and which are discussed previously in this preamble.

4. Effects on the National Economy

UMRA requires that we estimate the effect of this proposed rule on the national economy. To the extent feasible, we must estimate the effect on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness of the U.S. goods and services, if we determine that accurate estimates are reasonably feasible and that such effect is relevant and material.

The nationwide economic impact of this proposed rule is presented in the RIA in the docket. This analysis provides estimates of the effect of this proposed rule on some of the categories mentioned above. The results of the economic impact analysis are summarized previously in this preamble. The results show that there will be a less than 4 percent increase in electricity price on average nationwide in 2016, and a less than 7 percent increase in natural gas price nationwide in 2016. Power generation from coal-fired plants will fall by about 1 percent nationwide in 2016.

5. Consultation With Government

UMRA requires that we describe the extent of the Agency's prior consultation with affected State, local, and tribal officials, summarize the officials' comments or concerns, and summarize our response to those comments or concerns. In addition, UMRA section 203 requires that we develop a plan for informing and advising small governments that may be significantly or uniquely impacted by a proposal. Consistent with the intergovernmental consultation provisions of UMRA section 204, EPA has initiated consultations with governmental entities affected by this proposed rule. EPA invited the following 10 national organizations representing state and local elected officials to a meeting held on October 27, 2010, in Washington DC: (1) National Governors Association, (2) National Conference of State Legislatures, (3) Council of State Governments, (4) National League of Cities, (5) U.S. Conference of Mayors, (6) National Association of Counties, (7) International City/County Management Association, (8) National Association of Towns and Townships, (9) County Executives of America, and (10) Environmental Council of States. These 10 organizations of elected state and local officials have been identified by EPA as the "Big 10" organizations appropriate to contact for purpose of consultation with elected officials. The purposes of the consultation were to

provide general background on the proposal, answer questions, and solicit input from State/local governments. During the meeting, officials asked clarifying questions regarding CAA section 112 requirements and central decision points presented by EPA (*e.g.,* use of surrogate pollutants to address HAP, subcategorization of source category, assessment of emissions variability). They also expressed uncertainty with regard to how utility boilers owned/operated by state and local entities would be impacted, as well as with regard to the potential burden associated with implementing the rule on state and local entities (*i.e.,* burden to re-permit affected EGUs or update existing permits). Officials requested, and EPA provided, addresses associated with the 112 state and local governments estimated to be potentially impacted by the proposed rule. EPA has not received additional questions or requests from state or local officials.

Consistent with UMRA section 205, EPA has identified and considered a reasonable number of regulatory alternatives. Because the potential existed for a likely significant impact for substantial number of small entities, EPA convened a SBAR Panel to obtain advice and recommendation of representatives of the small entities that potentially would be subject to the requirements of the rule. As part of that process, EPA considered several options. Those options included establishing emission limits, establishing work practice standards, establishing subcategories, and consideration of monitoring options. The regulatory alternative selected is a combination of the options considered and includes proposed provisions regarding a number of the recommendations resulting from the SBAR Panel process as described below (see elsewhere in this preamble for more detail).

EPA determined that there is a distinguishable difference in emissions characteristics associated with five EGU design types and that these characteristics may affect the feasibility and/or effectiveness of emission control. Thus, the five types of units are proposed to be regulated separately (*i.e.,* subcategorized) to account for the difference in emissions and applicable controls. The proposal establishes three subcategories for coal-fired EGUs and two subcategories for oil-fired EGUs: (1) Coal-fired units designed to burn coal having a calorific value of 8,300 Btu/lb or greater, (2) coal-fired units designed to burn virgin coal having a calorific value less than 8,300 Btu/lb, (3) IGCC units (for Hg emissions only), (4) liquid oil units, and (5) solid oil-derived units.

The regulatory alternative upon which the proposed standards for coal-fired EGUs are based includes: (1) MACT floor-based numerical emission limitations for HCl (a HAP as well as a surrogate for all other acid gas HAP) and for PM (a surrogate for non-Hg metallic HAP) for existing and new EGUs in all three subcategories; (2) MACT floor-based numerical emission limitations for Hg for existing and new coal-fired units designed to burn coal having a calorific value of 8,300 Btu/lb or greater and IGCC units; (3) beyond-the-floor numerical emission limitations for Hg for existing and new coal-fired units designed to burn virgin coal having a calorific value less than 8,300 Btu/lb; and (4) work practices to limit emissions of dioxin/furan organic HAP and non-dioxin/furan organic HAP for existing and new EGUs in all three subcategories. The regulatory alternative upon which the proposed standards for oil-fired EGUs are based includes: (1) MACT floor-based numerical emission limitations for Hg, total non-Hg metallic HAP, HCl, and HF for existing and new EGUs in both subcategories; and (2) work practices to limit emissions of dioxin/furan organic HAP and non-dioxin/furan organic HAP for existing and new EGUs in both subcategories. The proposed use of surrogate pollutants would result in reduced compliance costs because testing would only be required for the surrogate pollutants (*i.e.,* HCl and PM) versus for the HAP (*i.e.,* acid gases and non-Hg metals).

EPA also is proposing three alternative standards for certain subcategories: (1) SO_2 (as an alternate to HCl for all subcategories with add-on FGD systems except IGCC units and liquid oil-fired units); (2) individual non-Hg metallic HAP (as an alternate to PM for all subcategories except liquid oil-fired units, and as an alternative to total non-Hg metallic HAP for the liquid oil-fired units subcategory); and (3) total non-Hg metallic HAP (as an alternate to PM for all subcategories except liquid oil-fired units). In addition, liquid oil-fired EGUs may choose to demonstrate compliance with the Hg, non-Hg metallic HAP, HCl, and HF emission limits on the basis of fuel analysis. Maximum fuel inlet values for Hg, non-Hg metals, chlorine, and fluorine would be established based on the inlet fuel values measured during the performance test indicating compliance with the emission limits. We also are proposing that owners and operators of existing affected sources may demonstrate compliance by emissions averaging for units at the affected source that are within a single subcategory. Alternative standards, alternative compliance options, and emissions averaging can provide sources the flexibility to comply in the least costly manner.

The proposed work practice standard, which requires implementation of an annual performance (compliance) test program includes requirements to inspect the burner, flame pattern, and the system controlling the air-to-fuel ratio, and make any necessary adjustments and/or conduct any required maintenance and repairs; minimize CO emissions consistent with the manufacturer's specifications; measure the concentration of CO in the effluent stream before and after any adjustments are made; and submit an annual report containing the concentrations of CO and O_2 measured before and after adjustments, a description of any corrective actions taken as a part of the combustion adjustment, and the type and amount of fuel used over the 12 months prior to the annual adjustment.

E. Executive Order 13132, Federalism

Under EO 13132, EPA may not issue an action 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 action.

EPA has concluded that this action may have federalism implications, because it may impose substantial direct compliance costs on state or local governments, and the Federal government will not provide the funds necessary to pay those costs. Accordingly, EPA provides the following federalism summary impact statement as required by section 6(b) of EO 13132.

Based on the estimates in EPA's RIA for today's proposed rule, the proposed regulatory option, if promulgated, may have federalism implications because the option may impose approximately $666.3 million in annual direct compliance costs on an estimated 97 state or local governments. Specifically, we estimate that there are 81 municipalities, 5 states, and 11 political subdivisions (*i.e.,* a public district with territorial boundaries embracing an area wider than a single municipality and frequently covering more than one county for the purpose of generating, transmitting and distributing electric

energy) that may be directly impacted by today's proposed rule. Responses to EPA's 2010 ICR were used to estimate the nationwide number of potentially impacted state or local governments. As previously explained, this 2010 survey was submitted to all coal- and oil-fired EGUs listed in the 2007 version of DOE/EIA's "Annual Electric Generator Report," and "Power Plant Operations Report."

EPA consulted with state and local officials in the process of developing the proposed rule to permit them to have meaningful and timely input into its development. EPA met with 10 national organizations representing state and local elected officials to provide general background on the proposal, answer questions, and solicit input from *state*/local governments. The UMRA discussion in this preamble includes a description of the consultation.

In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

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

Subject to EO 13175 (65 FR 67249, November 9, 2000) EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation and develops a tribal summary impact statement. Executive Order 13175 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."

EPA has concluded that this action may have tribal implications. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. This proposed rule would impose requirements on owners and operators of EGUs. EPA is aware of three coal-fired EGUs located in Indian Country but is not aware of any EGUs owned or operated by tribal entities.

EPA offered consultation with tribal officials early in the process of developing this proposed regulation to permit them to have meaningful and timely input into its development. Consultation letters were sent to 584 tribal leaders. The letters provided information regarding EPA's development of NESHAP for EGUs and offered consultation. Three consultation meetings were held on December 7, 2010, with the Upper Sioux Community of Minnesota; on December 13 with Moapa Band of Paiutes, Forest County Potawatomi, Standing Rock Sioux Tribal Council, Fond du Lac Band of Chippewa; and on January 5, 2011 with the Forest County Potawatomi, and a representative from the National Tribal Air Association (NTAA). In these meetings, EPA presented the authority under the CAA used to develop these rules, and an overview of the industry and the industrial processes that have the potential for regulation. Tribes expressed concerns about the impact of EGUs on the reservations. Particularly, they were concerned about potential Hg deposition and the impact on the water resources of the Tribes, with particular concern about the impact on subsistence lifestyles for fishing communities, the cultural impact of impaired water quality for ceremonial purposes, and the economic impact on tourism. In light of these concerns, the tribes expressed interest in an expedited implementation of the rule, they expressed concerns about how the Agency would consider variability in setting the standards and use tribal-specific fish consumption data from the tribes in our assessments, they were not supportive of using work practice standards as part of the rule, and they asked the Agency to consider going beyond-the-floor to offer more protection for the tribal communities. A more specific list of comments can be found in the Docket.

In addition to these consultations, EPA also conducted outreach on this rule through presentations at the National Tribal Forum in Milwaukee, WI, and on NTAA calls. EPA specifically requested tribal data that could support the appropriate and necessary analysis and the RIA for this rule. We will also hold additional meetings with tribal environmental staff to inform them of the content of this proposal as well as provide additional consultation with tribal elected officials where it is appropriate.

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

Executive Order 13045 (62 FR 19,885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under EO 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 this planned rule on children, and explain why this planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is subject to EO 13045 because it is an economically significant regulatory action as defined by EO 12866, and we believe that the action concerns an environmental health risk which may have a disproportionate impact on children. Although this proposed rule is based on technology performance, the statute is designed to require standards that are likely to protect against hazards to public health with an adequate margin of safety as described elsewhere in this document. The protection offered by this proposed rule is especially important for children, especially the developing fetus. As referenced in the section entitled, "Consideration of Health Risks to Children and Environmental Justice Communities" children are more vulnerable than adults to many HAP emitted by EGUs due to differential behavior patterns and physiology. These unique susceptibilities were carefully considered in a number of different ways in the analyses associated with this rulemaking, and are summarized elsewhere in this document.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to this proposed rule.

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

Executive Order 13211, (66 FR 28355, 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 EO 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 EO 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." This proposed rule is a "significant regulatory action" because it may likely have a significant adverse effect on the supply, distribution, or use of energy. The basis for the determination is as follows.

We estimate a less than 4 percent price increase for electricity nationwide in 2016 and a 1 percent percentage fall in coal-fired power production. EPA projects that delivered natural gas prices will increase by about 1 percent over the 2015 to 2030 timeframe. 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.

Therefore, we conclude that this proposed rule when implemented is likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. EPA cites the following standards in this proposed rule: EPA Methods 1, 2, 2F, 2G, 3A, 3B, 4, 5, 5D, 6, 6C, 9, 19, 26, 26A, 29, 30A, 30B, and 202 of 40 CFR part 60. Consistent with the NTTAA, EPA conducted searches to identify VCS in addition to these EPA methods. No applicable voluntary standards were identified for EPA Methods 2F, 2G, 8, 19, 201A, and 202. The search and review results have been documented and are placed in the docket for this proposed rule.

EPA has decided to use American National Standards Institute (ANSI)/ASME PTC 19–10–1981 Part 10, "Flue and Exhaust Gas Analyses," acceptable as an alternative to Methods 3B (for CO_2, CO, and O_2), 6 (for SO_2), 6A and 6B (for CO_2 and SO_2). This standard is available from the ASME, Three Park Avenue, New York, NY 10016–5990.

Another VCS, ASTM D6735–01, "Standard Test Method for Measurement of Gaseous Chlorides and Fluorides from Mineral Calcining Exhaust Sources Impinger Method," is an acceptable alternative to EPA Methods 26 and 26A.

An additional VCS, ASTM D6784–02 (2008)—Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method) is acceptable as an alternative to Method 29 for Hg, but only if the standard falls within the applicable concentration range of 0.5 to 100 $\mu g/Nm^3$.

During the search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to EPA's reference method, EPA ordered a copy of the standard and reviewed it as a potential equivalent method. All potential standards were reviewed to determine the practicality of the VCS for this rule. This review requires significant method validation data which meets the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in EPA reference methods. EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

The search identified 22 other VCS that were potentially applicable for this rule in lieu of EPA reference methods. After reviewing the available standards, EPA determined that 22 candidate VCS (ASTM D3154–00 (2006), ASME B133.9–1994 (2001), ANSI/ASME PTC 19–10–1981 Part 10, ASTM D5835–95 (2007), International Organization for Standards (ISO) 10396:1993 (2007), ISO 12039:2001, ASTM D6522–00 (2005), Canadian Standards Association (CAN/CSA) Z223.2–M86 (1999), ISO 9096:1992 (2003), ANSI/ASME PTC–38–1980 (1985), ASTM D3685/D3685M–98 (2005), ISO 7934:1998, ISO 11632:1998, ASTM D3464–96 (2007), ASTM D3796–90 (2004), ISO 10780:1994, CAN/CSA Z223.21–M1978, ASTM D3162–94 (2005), CAN/CSA Z223.1–M1977, EN 1911–1,2,3 (1998), EN 13211:2001, CAN/CSA Z223.26–M1987) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the proposed rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations. These 22 methods are listed Attachment 1 to the documentation memo, along with the EPA review comments, which may be found in the docket.

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, low-income, and tribal populations in the U.S.

This proposed rule establishes national emission standards for new and existing EGUs that combust coal and oil. EPA estimates that there are approximately 1,400 units located at 550 facilities covered by this proposed rule.

This proposed rule will reduce emissions of all the listed HAP that come from EGUs. This includes metals (Hg, As, Be, Cd, Cr, Pb, Mn, Ni, and Se), organics (POM, acetaldehyde, acrolein, benzene, dioxins, ethylene dichloride, formaldehyde, and PCB), and acid gases (HCl and HF). At sufficient levels of exposure, these pollutants can cause a range of health effects including cancer; irritation of the lungs, skin, and mucous membranes; effects on the central nervous system such as memory and IQ loss and learning disabilities; damage to the kidneys; and other acute health disorders.

The proposed rule will also result in substantial reductions of criteria pollutants such as CO, PM, and SO_2. Sulfur dioxide is a precursor pollutant that is often transformed into fine PM ($PM_{2.5}$) in the atmosphere; some of the directly-emitted PM is in the form of $PM_{2.5}$. Reducing emissions of PM and SO_2 will, as a result, reduce concentrations of $PM_{2.5}$ in the atmosphere. These reductions in $PM_{2.5}$ will provide large health benefits, such as reducing the risk of premature mortality for adults, chronic and acute bronchitis, childhood asthma attacks, and other respiratory and cardiovascular diseases. (For more details on the health effects of metals, organics, and $PM_{2.5}$, please refer to the RIA contained in the docket for this rulemaking.) This proposed rule will also have a small effect on electricity and natural gas

prices and has the potential to affect the cost structure of the utility industry and could lead to shifts in how and where electricity is generated. Although energy prices are estimated to increase, we can only estimate national impacts. We are unable to determine impacts other than at the national level at this time.

Pursuant to EO 12898 and the "Interim Guidance on Considering Environmental Justice During the Development of an Action" (July 2010), during development of a rule EPA considers whether there are positive or negative impacts of the action that appear to affect low-income, minority, or tribal communities disproportionately. Regardless of whether a disproportionate effect exists, EPA also considers whether there is a chance for these communities to meaningfully participate in the rulemaking process.

Today's proposed rule is one of a group of regulatory actions that EPA will take over the next several years to respond to statutory and judicial mandates that will reduce exposure to HAP and $PM_{2.5}$, as well as to other pollutants, from EGUs and other sources. In addition, EPA will pursue energy efficiency improvements throughout the economy, along with other Federal agencies, states and other groups. This will contribute to additional environmental and public health improvements while lowering the costs of realizing those improvements. Together, these rules and actions will have substantial and long-term effects on both the U.S. power industry and on communities currently breathing dirty air. Therefore, we anticipate significant interest in many, if not most, of these actions from EJ communities, among many others.

1. Key EJ Aspects of the Rule

This is an air toxics rule; therefore, it does not permit emissions trading among sources. Instead, this proposed rule will place a limit on the rates of Hg and other HAP emitted from each affected EGU. As a result, emissions of Hg and other HAP such as HCl will be substantially reduced in the vast majority of states. In some states, however, there may be small increases in Hg emissions due to shifts in electricity generation from EGUs with higher emission rates to EGUs with already low emission rates. Hydrogen chloride emissions are projected to increase at a small number of sources but that does not lead to any increased emissions at the state level.

The primary risk analysis to support the finding that this proposed rule is both appropriate and necessary includes an analysis of the effects of Hg from EGUs on people who rely on freshwater fish they catch as a regular and frequent part of their diet. These groups are characterized as subsistence level fishing populations or fishers. A significant portion of the data in this analysis came from published studies of EJ communities where people frequently consume locally-caught freshwater fish. These communities included: (1) White and black populations (including female and poor strata) surveyed in South Carolina; (2) Hispanic, Vietnamese and Laotian populations surveyed in California; and (3) Great Lakes tribal populations (Chippewa and Ojibwe) active on ceded territories around the Great Lakes. These data were used to help estimate risks to similar populations beyond the areas where the study data was collected. For example, while the Vietnamese and Laotian survey data were collected in California, given the ethnic (heritage) nature of these high fish consumption rates, we assumed that they could also be associated with members of these ethnic groups living elsewhere in the U.S. Therefore, the high-end consumption rates referenced in the California study for these ethnic groups were used to model risk at watersheds elsewhere in the U.S. As a result of this approach, the specific fish consumption patterns of several different EJ groups are fundamental to EPA's assessment of both the underlying risks that make this proposed rule appropriate and necessary, and of the analysis of the benefits of reducing exposure to Hg and the other hazardous air pollutants.

EPA's full analysis of risks from consumption of Hg-contaminated fish are contained in the preamble for this rule. The effects of this proposed rule on the health risks from Hg and other HAP are presented in the preamble and in the RIA for this rule. This information can be accessed through docket EPA–HQ–OAR–2009–0234 and from the main EPA webpage for the rule *http://www.epa.gov/ttn/atw/utility/utilitypg.html.*

2. Potential Environmental and Public Health Impacts to Vulnerable Populations

EPA has conducted several analyses that provide additional insight on the potential effects of this rule on EJ communities. These include: (1) The socio-economic distribution of people living close to affected EGUs who may be exposed to pollution from these sources; and (2) an analysis of the distribution of health effects expected from the reductions in $PM_{2.5}$ that will result from implementation of this proposed rule (so-called "co-benefits").

a. Socio-Economic Distribution. As part of the analysis for this proposed rule, EPA reviewed the aggregate demographic makeup of the communities near EGUs covered by this proposed rule. Although this analysis gives some indication of populations that may be exposed to levels of pollution that cause concern, it does NOT identify the demographic characteristics of the most highly affected individuals or communities. EGUs usually have very tall emission stacks; this tends to disperse the pollutants emitted from these stacks fairly far from the source. In addition, several of the pollutants emitted by these sources, such as Hg and SO_2, are known to travel long distances and harm both the environment and human health hundreds or even thousands of miles from where they were emitted.

This proximity-to-the-source review is included in the analysis for this proposed rule because some EGUs emit enough Ni or Cr to cause elevated lifetime cancer risks greater than 1 in a million in nearby communities. In addition, EPA's analysis indicates that there are localized areas with elevated levels of Hg deposition around most U.S. EGUs.

The review identified those census blocks within two circular distances (5 km and 50 km) of coal-fired EGUs and determined their demographic and socio-economic composition (*e.g.,* race, income, education, etc.). The radius of 5 km (or approximately 3 miles) was chosen because it has been used in other demographic analyses focused on areas around potential sources. The radius of 50 km (or approximately 31 miles) was used to approximate the distance from the source where elevated levels of Hg deposition might occur and may also be indicative of the area where risks from non-Hg HAP are most likely to occur.

The results of EPA's demographic analysis for coal fired EGUs are shown in the following table:

TABLE 30—COMPARATIVE SUMMARY OF THE DEMOGRAPHICS WITHIN 5 KM (3 MILES) AND 50 KM (31 MILES) OF THE AFFECTED SOURCES

	White (%)	African American (%)	Native American (%)	Other and multiracial (%)	Hispanic (%)	Minority (%)	Below poverty line (%)
5 km (3-mile) Buffer	70.8	15.8	0.7	12.7	15.5	35.5	15.6
50 km (31.1 miles) Buffer	74.5	15.2	0.5	9.7	9.9	29.7	11.6
National Average	75.1	12.3	0.9	11.7	13.7	31.6	13.1

The data indicate that coal-fired EGUs are located in areas where minority share of the population living within a 3-mile buffer is higher than the national average. For these same areas, the percent of the population below the poverty line is also higher than the national average. At 50 km from the source, however, the demographics are different. Although the percent African American remain above the national average, the percent of minority (including Native Americans) and the percent of the population living below the poverty line decrease below their respective national averages. These results are presented in more detail in the "Review of Proximity Analysis," February 2011, a copy of which is available in the docket.

b. $PM_{2.5}$ (Co-Benefits) Analysis. As mentioned above, many of the steps EGUs take to reduce their emissions of air toxics as required by this proposed rule will also reduce emissions of PM and SO_2. As a result, this proposed rule will reduce concentrations of $PM_{2.5}$ in the atmosphere. Exposure to $PM_{2.5}$ can cause or contribute to adverse health effects, such as asthma and heart disease, that significantly affect many minority, low-income, and tribal individuals and their communities. Fine PM ($PM_{2.5}$) is particularly (but not exclusively) harmful to children, the elderly, and people with existing heart and lung diseases, including asthma. Exposure can cause premature death and trigger heart attacks, asthma attacks in children and adults with asthma, chronic and acute bronchitis, and emergency room visits and hospitalizations, as well as milder illnesses that keep children home from school and adults home from work. Missing work due to illness or the illness of a child is a particular problem for people who work jobs that do not provide paid sick days. Many low-wage employees also risk losing their jobs if they are absent too often, even if it is due to their own illness or the illness of a child or other relative. Finally, many individuals in these communities also lack access to high quality health care to treat these types of illnesses. Due to all these factors, many minority and low-income communities are particularly susceptible to the health effects of $PM_{2.5}$ and receive many benefits from reducing it.

We estimate that in 2016 the PM-related annual benefits of the proposed rule for adults include approximately 6600 to 17,000 fewer premature mortalities, 4,300 fewer cases of chronic bronchitis, 10,000 fewer non-fatal heart attacks, 12,000 fewer hospitalizations (for respiratory and cardiovascular disease combined), 4.9 million fewer days of restricted activity due to respiratory illness and approximately 830,000 fewer lost work days. We also estimate substantial health improvements for children in the form of 110,000 fewer asthma attacks, 6,700 fewer hospital admissions due to asthma, 10,000 fewer cases of acute bronchitis, and approximately 210,000 fewer cases of upper and lower respiratory illness.

We also examined the $PM_{2.5}$ mortality risks according to race, income, and educational attainment. We then estimated the change in $PM_{2.5}$ mortality risk as a result of this proposed rule among people living in the counties with the highest (top 5 percent) $PM_{2.5}$ mortality risk in 2005. We then compared the change in risk among the people living in these "high-risk" counties with people living in all other counties.

In 2005, people living in the highest-risk counties and in the poorest counties have substantially higher risks of $PM_{2.5}$-related death than people living in the other 95 percent of counties. This was true regardless of race; the difference between the groups of counties for each race is large while the differences among races in both groups of counties is very small. In contrast, the analysis found that people with less than high school education have significantly greater risks from $PM_{2.5}$ mortality than people with a greater than high school education. This was true both for the highest-risk counties and for the other counties. In summary, the analysis indicates that in 2005, educational status, living in one of the poorest counties, and living in a high-risk county are associated with higher $PM_{2.5}$ mortality risk while race is not.

Our analysis finds that this proposed rule will significantly reduce the $PM_{2.5}$ mortality among all populations of different races living throughout the U.S. compared to both 2005 and 2016 pre-rule (i.e., base case) levels. The analysis indicates that people living in counties with the highest rates (top 5 percent) of $PM_{2.5}$ mortality risk in 2005 receive the largest reduction in mortality risk after this rule takes effect. We also find that people living in the poorest 5 percent of the counties receive a larger reduction in $PM_{2.5}$ mortality risk than all other counties. More information can be found in Appendix C of the RIA.

EPA estimates that the benefits of the proposed rule are distributed among these populations fairly evenly. Therefore, there is no indication that people of particular race, income, or level of education receive a greater benefit (or smaller benefit) than others. However, the analysis does indicate that this proposed rule in conjunction with the implementation of existing or proposed rules (*e.g.,* the Transport Rule) will reduce the disparity in risk between those in the highest-risk counties and the other 95 percent of counties for all races and educational levels. In addition, in many cases implementation of this proposed rule and other rules will, together, reduce risks in the highest-risk counties to the approximate level of risk for the rest on the counties before implementation.

These results are presented in more detail in the "Benefits Appendix" to this rule, a copy of which is available in the docket.

3. Meaningful Public Participation

EPA defines "Environmental Justice" to include meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and polices. To promote meaningful involvement, EPA has developed a communication and outreach strategy to ensure that interested communities have access to

this proposed rule, are aware of its content, and have an opportunity to comment during the comment period. During the comment period, EPA will publicize the rulemaking via newsletters, EJ listserves, webinars and the internet, including the Office of Policy's (OP) Rulemaking Gateway Web site (*http://yosemite.epa.gov/opei/RuleGate.nsf/*). EPA will also provide general rulemaking fact sheets (*e.g.,* why is this important for my community) for EJ community groups and conduct conference calls with interested communities.

Once this rule is finalized and implemented, affected EGUs will need to update their operating (Title V) permits to reflect their new emissions limits and any other applicable requirements (*i.e.,* monitoring and recordkeeping) from this rule. The Title V permitting process provides that most permit actions must include an opportunity for public review and comments. In addition, after the public review process, EPA has an opportunity to review the proposed permit and object to its issuance if it does not meet CAA requirements. This process gives members of affected communities the opportunity to comment on the permit conditions for specific sources affected by this rulemaking.

4. Summary

This proposed rule strictly limits the emissions rate of Hg and other HAP from every affected EGU in the U.S. EPA's analysis indicates substantial health benefits, including for vulnerable populations, from reductions in $PM_{2.5}$. EPA's analysis also indicates reductions in risks for individuals, including for members of many minority populations, who eat fish frequently from U.S. lakes and rivers and who live near affected sources. Based on all the available information, EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority, low-income, or tribal populations. EPA is providing multiple opportunities for EJ communities to both learn about and comment on this rule and welcomes their participation.

List of Subjects in 40 CFR Parts 60 and 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 16, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, of the Code of the 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.*

Subpart A—[Amended]

2. Section 60.17 is amended:

a. By redesignating paragraphs (a)(91) and (a)(92) as paragraphs (a)(94) and (a)(95);

b. By redesignating paragraphs (a)(89) and (a)(90) as paragraphs (a)(91) and (a)(92);

c. By redesignating paragraphs (a)(54) through (a)(88) as paragraphs (a)(55) through (a)(89);

d. By adding paragraph (a)(54);

e. By adding paragraph (a)(90); and

f. By adding paragraph (a)(93) to read as follows:

§ 60.17 Incorporations by Reference.

* * * * *

(54) ASTM D3699—08, Standard Specification for Kerosine, IBR approved for §§ 60.41b of subpart Db of this part and 60.41c of subpart Dc of this part.

* * * * *

(90) ASTM D6751–11, Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels, IBR approved for §§ 60.41b of subpart Db of this part and 60.41c of subpart Dc of this part.

* * * * *

(94) ASTM D7467–10, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20), IBR approved for §§ 60.41b of subpart Db of this part and 60.41c of subpart Dc of this part.

* * * * *

Subpart D—[Amended]

3. The heading to Subpart D is revised to read as follows:

Subpart D—Standards of Performance for Fossil-Fuel-Fired Steam Generators

4. Section 60.40 is amended by revising paragraph (e) to read as follows:

§ 60.40 Applicability and designation of affected facility.

* * * * *

(e) Any facility covered under either subpart Da or KKKK is not covered under this subpart.

5. Section 60.41 is amended by adding the definitions of "natural gas" to read as follows:

§ 60.41 Definitions.

* * * * *

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquid petroleum gas, as defined by the American Society of Testing and Materials in ASTM D1835 (incorporated by reference, see § 60.17); or

(3) A mixture of hydrocarbons that maintains a gaseous state at ISO conditions. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 34 and 43 megajoules (MJ) per dry standard cubic meter (910 and 1,150 Btu per dry standard cubic foot).

* * * * *

6. Section 60.42 is amended as follows:

a. By revising paragraph (a) introductory text.

b. By adding paragraph (d).

c. By adding paragraph (e).

§ 60.42 Standard for Particulate Matter (PM).

(a) Except as provided under paragraphs (b), (c), (d), and (e) of this section, on and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility any gases that:

* * * * *

(d) An owner and operator of an affected facility that combusts only natural gas and that is subject to a federally enforceable permit limiting fuel use to natural gas is exempt from the PM and opacity standards specified in paragraph a of this section.

(e) An owner or operator of an affected facility that combusts only gaseous or liquid fossil fuel (excluding residual oil) with potential SO_2 emissions rates of 26 ng/J (0.060 lb/MMBtu) or less and that does not use post-combustion technology to reduce emissions of SO_2 or PM is exempt from the PM standards specified in paragraph a of this section.

7. Section 60.45 is amended as follows:

a. By revising paragraph (a).

b. By revising paragraphs (b) introductory text and (b)(1) through (b)(5).

c. By revising paragraph (b)(6) introductory text.

§ 60.45 Emissions and Fuel Monitoring.

(a) Each owner or operator of an affected facility subject to the applicable emissions standard shall install, calibrate, maintain, and operate continuous opacity monitoring system (COMS) for measuring opacity and a continuous emissions monitoring system (CEMS) for measuring SO_2 emissions, NO_X emissions, and either oxygen (O_2) or carbon dioxide (CO_2) except as provided in paragraph (b) of this section.

(b) Certain of the CEMS and COMS requirements under paragraph (a) of this section do not apply to owners or operators under the following conditions:

(1) For a fossil-fuel-fired steam generator that combusts only gaseous or liquid fossil fuel (excluding residual oil) with potential SO_2 emissions rates of 26 ng/J (0.060 lb/MMBtu) or less and that does not use post-combustion technology to reduce emissions of SO_2 or PM, COMS for measuring the opacity of emissions and CEMS for measuring SO_2 emissions are not required if the owner or operator monitors SO_2 emissions by fuel sampling and analysis or fuel receipts.

(2) For a fossil-fuel-fired steam generator that does not use a flue gas desulfurization device, a CEMS for measuring SO_2 emissions is not required if the owner or operator monitors SO_2 emissions by fuel sampling and analysis.

(3) Notwithstanding § 60.13(b), installation of a CEMS for NO_X may be delayed until after the initial performance tests under § 60.8 have been conducted. If the owner or operator demonstrates during the performance test that emissions of NO_X are less than 70 percent of the applicable standards in § 60.44, a CEMS for measuring NO_X emissions is not required. If the initial performance test results show that NO_X emissions are greater than 70 percent of the applicable standard, the owner or operator shall install a CEMS for NO_X within one year after the date of the initial performance tests under § 60.8 and comply with all other applicable monitoring requirements under this part.

(4) If an owner or operator is not required to and elects not to install any CEMS for SO_2 and NO_X, a CEMS for measuring either O_2 or CO_2 is not required.

(5) For affected facilities using a PM CEMS, a bag leak detection system to monitor the performance of a fabric filter (baghouse) according to the most current requirements in section § 60.48Da of this part, or an ESP predictive model to monitor the performance of the ESP developed in accordance and operated according to the most current requirements in section § 60.48Da of this part a COMS is not required.

(6) A COMS for measuring the opacity of emissions is not required for an affected facility that does not use post-combustion technology (except a wet scrubber) for reducing PM, SO_2, or carbon monoxide (CO) emissions, burns only gaseous fuels or fuel oils that contain less than or equal to 0.30 weight percent sulfur, and is operated such that emissions of CO to the atmosphere from the affected source are maintained at levels less than or equal to 0.15 lb/MMBtu on a boiler operating day average basis. Owners and operators of affected sources electing to comply with this paragraph must demonstrate compliance according to the procedures specified in paragraphs (b)(6)(i) through (iv) of this section.

* * * * *

Subpart Da—[Amended]

8. The heading to Subpart Da is revised to read as follows:

Subpart Da—Standards of Performance for Electric Utility Steam Generating Units

9. Section 60.40Da is amended by revising paragraph (e) and by adding paragraph (f) to read as follows:

§ 60.40Da Applicability and designation of affected facility.

* * * * *

(e) Applicability of the requirement of this subpart to an electric utility combined cycle gas turbine other than an IGCC electric utility steam generating unit is as specified in paragraphs (e)(1) through (e)(3) of this section.

(1) Affected facilities (i.e. heat recovery steam generators used with duct burners) associated with a stationary combustion turbine that are capable of combusting more than 73 MW (250 MMBtu/hr) heat input of fossil fuel are subject to this subpart except in cases when the affected facility (i.e. heat recovery steam generator) meets the applicability requirements and is subject to subpart KKKK of this part.

(2) For heat recovery steam generators used with duct burners subject to this subpart, only emissions resulting from the combustion of fuels in the steam generating unit (i.e. duct burners) are subject to the standards under this subpart. (The emissions resulting from the combustion of fuels in the stationary combustion turbine engine are subject to subpart GG or KKKK, as applicable, of this part).

(3) Any affected facility that meets the applicability requirements and is subject to subpart Eb or subpart CCCC of this part is not subject to the emission standards under subpart Da.

(f) *General Duty to minimize emissions.* 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.

10. Section 60.41Da is amended by revising the definitions of "gaseous fuel," "integrated gasification combined cycle electric utility steam generating unit," "petroleum" and "steam generating unit," adding the definitions of "affirmative defense" and "petroleum coke," and deleting the definitions of "dry flue gas desulfurization technology," "emission rate period," and "responsible official" to read as follows:

§ 61.41Da 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.

* * * * *

Gaseous fuel means any fuel that is present as a gas at standard conditions and includes, but is not limited to, natural gas, refinery fuel gas, process gas, coke-oven gas, synthetic gas, and gasified coal.

* * * * *

Integrated gasification combined cycle electric utility steam generating unit or *IGCC electric utility steam generating unit* means an electric utility combined cycle gas turbine that is designed to burn fuels containing 50 percent (by heat input) or more solid-derived fuel not meeting the definition of natural gas. The Administrator may waive the 50 percent solid-derived fuel requirement during periods of the gasification system construction or repair. No solid fuel is directly burned in the unit during operation.

* * * * *

Petroleum for facilities constructed, reconstructed, or modified before May 4, 2011, means crude oil or a fuel derived from crude oil, including, but not limited to, distillate oil, and residual oil. For units constructed, reconstructed, or modified after May 3, 2011, Petroleum means crude oil or a fuel derived from crude oil, including, but not limited to, distillate oil, residual oil, and petroleum coke.

* * * * *

Petroleum Coke, also known as *petcoke,* means a carbonization product of high-boiling hydrocarbon fractions obtained in petroleum processing (heavy residues). Petroleum coke is typically derived from oil refinery coker units or other cracking processes.

* * * * *

Steam generating unit for facilities constructed, reconstructed, or modified before May 4, 2011, means any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam (including fossil-fuel-fired steam generators associated with combined cycle gas turbines; nuclear steam generators are not included). For units constructed, reconstructed, or modified after May 3, 2011, Steam generating unit means any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam (including fossil-fuel-fired steam generators associated with combined cycle gas turbines; nuclear steam generators are not included) plus any integrated combustion turbines and fuel cells.

* * * * *

11. Revise § 60.42Da to read as follows:

§ 60.42Da Standard for particulate matter (PM).

(a) Except as provided in paragraph (a)(4) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, an owner or operator of an affected facility shall not cause to be discharged into the atmosphere from any affected facility for which construction, reconstruction, or modification commenced before March 1, 2005, any gases that contain filterable PM in excess of:

(1) 13 ng/J (0.03 lb/MMBtu) heat input;

(2) 1 percent of the potential combustion concentration (99 percent reduction) when combusting solid fuel; and

(3) 30 percent of potential combustion concentration (70 percent reduction) when combusting liquid fuel.

(4) An owner or operator of an affected facility that combusts only gaseous or liquid fuels (excluding residual oil) with potential SO_2 emissions rates of 26 ng/J (0.060 lb/MMBtu) or less, and does not use a post-combustion technology to reduce emissions of SO_2 or PM is exempt from the PM standard specified in paragraphs (a)(1), (a)(2), and (a)(3) of this section:

(b) Except as provided in paragraphs (b)(1) and (b)(2) of this section, on and after the date the initial PM performance test is completed or required to be completed under § 60.8, whichever date comes first, an owner or operator of an affected facility shall not cause to be discharged into the atmosphere any gases which exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(1) Owners and operators of an affected facility that elect to install, calibrate, maintain, and operate a continuous emissions monitoring system (CEMS) for measuring PM emissions according to the requirements of this subpart are exempt from the opacity standard specified in this paragraph (b) of this section.

(2) An owner or operator of an affected facility that combusts only natural gas is exempt from the opacity standard specified in paragraph (b) of this section.

(c) Except as provided in paragraphs (d) and (e) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005, but before May 4, 2011, shall cause to be discharged into the atmosphere from that affected facility any gases that contain filterable PM in excess of either:

(1) 18 ng/J (0.14 lb/MWh) gross energy output; or

(2) 6.4 ng/J (0.015 lb/MMBtu) heat input.

(d) As an alternative to meeting the requirements of paragraph (c) of this section, the owner or operator of an affected facility for which construction, reconstruction, or modification commenced after February 28, 2005, but before May 4, 2011, may elect to meet the requirements of this paragraph. For an affected facility that commenced construction, reconstruction, or modification, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator shall cause to be discharged into the atmosphere from that affected facility any gases that contain filterable PM in excess of:

(1) 13 ng/J (0.030 lb/MMBtu) heat input, and

(2) For an affected facility that commenced construction or reconstruction, 0.1 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.9 percent reduction) when combusting solid, liquid, or gaseous fuel, or

(3) For an affected facility that commenced modification, 0.2 percent of the combustion concentration determined according to the procedure in § 60.48Da(o)(5) (99.8 percent reduction) when combusting solid, liquid, or gaseous fuel.

(e) An owner or operator of an affected facility than combusts only gaseous or liquid fuels (excluding residual oil) with potential SO_2 emissions rates of 26 ng/J (0.060 lb/MMBtu) or less, and that does not use a post-combustion technology to reduce emissions of SO_2 or PM is exempt from the PM standard specified in paragraphs (c) of this section.

(f) Except as provided in paragraph (g) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, modification, or reconstruction after May 3, 2011, shall cause to be discharged into the atmosphere from that affected facility any gases that contain total PM in excess of either:

(1) For an affected facility that commenced construction or reconstruction 7.0 ng/J (0.055 lb/MWh) gross energy output; or

(2) For an affected facility that commenced modification, 15 ng/J (0.034 lb/MMBtu) heat input.

(g) An owner or operator of an affected facility that combusts only natural gas is exempt from the total PM standard specified in paragraph (f) of this section.

(h) The PM emission standards under this section do not apply to an owner or operator of any affected facility that is operated under a PM commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.47Da.

12. Section 60.43Da is amended as follows:

a. By revising paragraphs (a)(1) through (a)(3).

b. By revising paragraph (f).

c. By revising paragraph (i).

d. By revising paragraph (j).

e. By revising paragraph (k).

f. By adding paragraph (a)(4).
g. By adding paragraph (l).
h. By adding paragraph (m).
i. By adding paragraph (n).

§ 60.43Da Standard for sulfur dioxide (SO_2).

(a) * * *

(1) 520 ng/J (1.20 lb/MMBtu) heat input and 10 percent of the potential combustion concentration (90 percent reduction);

(2) 30 percent of the potential combustion concentration (70 percent reduction), when emissions are less than 260 ng/J (0.60 lb/MMBtu) heat input;

(3) 180 ng/J (1.4 lb/MWh) gross energy output; or

(4) 65 ng/J (0.15 lb/MMBtu) heat input.

* * * * *

(f) The SO_2 standards under this section do not apply to an owner or operator of an affected facility that is operated under an SO_2 commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.47Da.

* * * * *

(i) Except as provided in paragraphs (j) and (k) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification commenced after February 28, 2005, but before May 4, 2011, shall cause to be discharged into the atmosphere from that affected facility, any gases that contain SO_2 in excess of the applicable emission limitation specified in paragraphs (i)(1) through (3) of this section.

(1) For an affected facility which commenced construction, any gases that contain SO_2 in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output; or

(ii) 5 percent of the potential combustion concentration (95 percent reduction).

(2) For an affected facility which commenced reconstruction, any gases that contain SO_2 in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input; or

(iii) 5 percent of the potential combustion concentration (95 percent reduction).

(3) For an affected facility which commenced modification, any gases that contain SO_2 in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input; or

(iii) 10 percent of the potential combustion concentration (90 percent reduction).

(j) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification commenced after February 28, 2005, but before May 4, 2011, and that burns 75 percent or more (by heat input) coal refuse on a 12-month rolling average basis, shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of the applicable emission limitation specified in paragraphs (j)(1) through (3) of this section.

(1) For an affected facility which commenced construction, any gases that contain SO_2 in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output; or

(ii) 6 percent of the potential combustion concentration (94 percent reduction).

(2) For an affected facility which commenced reconstruction, any gases that contain SO_2 in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input; or

(iii) 6 percent of the potential combustion concentration (94 percent reduction).

(3) For an affected facility which commenced modification, any gases that contain SO_2 in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output;

(ii) 65 ng/J (0.15 lb/MMBtu) heat input; or

(iii) 10 percent of the potential combustion concentration (90 percent reduction).

(k) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility located in a noncontinental area that commenced construction, reconstruction, or modification commenced after February 28, 2005, but before May 4, 2011, shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of the applicable emission limitation specified in paragraphs (k)(1) and (2) of this section.

(1) For an affected facility that burns solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/MMBtu) heat input.

(2) For an affected facility that burns other than solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 230 ng/J (0.54 lb/MMBtu) heat input.

(l) Except as provided in paragraphs (m) and (n) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification commenced after May 3, 2011, shall cause to be discharged into the atmosphere from that affected facility, any gases that contain SO_2 in excess of the applicable emission limitation specified in paragraphs (l)(1) or (2) of this section.

(1) For an affected facility which commenced construction or reconstruction, any gases that contain SO_2 in excess of either:

(i) 130 ng/J (1.0 lb/MWh) gross energy output; or

(ii) 3 percent of the potential combustion concentration (97 percent reduction).

(2) For an affected facility which commenced modification, any gases that contain SO_2 in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output; or

(ii) 10 percent of the potential combustion concentration (90 percent reduction).

(m) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification commenced after May 3, 2011, and that burns 75 percent or more (by heat input) coal refuse on a 12-month rolling average basis, shall caused to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of the applicable emission limitation specified in paragraphs (m)(1) or (2) of this section.

(1) For an affected facility which commenced construction or reconstruction, any gases that contain SO_2 in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output; or

(ii) 6 percent of the potential combustion concentration (94 percent reduction).

(2) For an affected facility which commenced modification, any gases that contain SO_2 in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output; or

(ii) 10 percent of the potential combustion concentration (90 percent reduction).

(n) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility located in a noncontinental area that commenced construction, reconstruction, or modification commenced after May 3, 2011, shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of the applicable emission limitation specified in paragraphs (n)(1) and (2) of this section.

(1) For an affected facility that burns solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 520 ng/J (1.2 lb/MMBtu) heat input.

(2) For an affected facility that burns other than solid or solid-derived fuel, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain SO_2 in excess of 230 ng/J (0.54 lb/MMBtu) heat input.

13. Section 60.44Da is amended:

a. By revising paragraph (a) introductory text.

b. By revising paragraph (b).

c. By revising paragraph (d).

d. By revising paragraph (e).

e. By revising paragraph (f).

f. By adding paragraph (g).

g. By adding paragraph (h).

§ 60.44Da Standard for nitrogen oxides (NO).

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator subject to the provisions of this subpart shall cause to be discharged into the atmosphere from any affected facility, except as provided under paragraphs (b), (d), (e), and (f) of this section, any gases that contain NO_X (expressed as NO_2) in excess of the following emission limits:

* * * * *

(b) The NO_X emission limitations under this section do not apply to an owner or operator of an affected facility which is operating under a commercial demonstration permit issued by the Administrator in accordance with the provisions of § 60.47Da.

(d)(1) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction after July 9, 1997, but before March 1, 2005 shall cause to be discharged into the atmosphere any gases that contain NO_X (expressed as NO_2) in excess of 200 ng/J (1.6 lb/MWh) gross energy output, except as provided under § 60.48Da(k).

(2) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of affected facility for which reconstruction commenced after July 9, 1997, but before March 1, 2005 shall cause to be discharged into the atmosphere any gases that contain NO_X (expressed as NO_2) in excess of 65 ng/J (0.15 lb/MMBtu) heat input.

(e) Except as provided in paragraph (f) of this section, on and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after February 28, 2005 but before May 4, 2011, shall cause to be discharged into the atmosphere from that affected facility any gases that contain NO_X (expressed as NO_2) in excess of the applicable emission limitation specified in paragraphs (e)(1) through (3) of this section.

(1) For an affected facility which commenced construction, any gases that contain NO_X (expressed as NO_2) in excess of 130 ng/J (1.0 lb/MWh) gross energy output, except as provided under § 60.48Da(k).

(2) For an affected facility which commenced reconstruction, any gases that contain NO_X (expressed as NO_2) in excess of either:

(i) 130 ng/J (1.0 lb/MWh) gross energy output; or

(ii) 47 ng/J (0.11 lb/MMBtu) heat input.

(3) For an affected facility which commenced modification, any gases that contain NO_X (expressed as NO_2) in excess of either:

(i) 180 ng/J (1.4 lb/MWh) gross energy output; or

(ii) 65 ng/J (0.15 lb/MMBtu) heat input.

(f) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, the owner or operator of an IGCC electric utility steam generating unit subject to the provisions of this subpart and for which construction, reconstruction, or modification commenced after February 28, 2005 but before May 4, 2011, shall meet the requirements specified in paragraphs (f)(1) through (3) of this section.

(1) Except as provided for in paragraphs (f)(2) and (3) of this section, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain NO_X (expressed as NO_2) in excess of 130 ng/J (1.0 lb/MWh) gross energy output.

(2) When burning liquid fuel exclusively or in combination with solid-derived fuel such that the liquid fuel contributes 50 percent or more of the total heat input to the combined cycle combustion turbine, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain NO_X (expressed as NO_2) in excess of 190 ng/J (1.5 lb/MWh) gross energy output.

(3) In cases when during a 30 boiler operating day rolling average compliance period liquid fuel is burned in such a manner to meet the conditions in paragraph (f)(2) of this section for only a portion of the clock hours in the 30-day period, the owner or operator shall not cause to be discharged into the atmosphere any gases that contain NO_X (expressed as NO_2) in excess of the computed weighted-average emissions limit based on the proportion of gross energy output (in MWh) generated during the compliance period for each of emissions limits in paragraphs (f)(1) and (2) of this section.

(g) Compliance with the emission limitations under this section are determined on a 30-boiler operating day rolling average basis, except as provided under § 60.48Da(j)(1).

(h) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that commenced construction, reconstruction, or modification after May 3, 2011, shall cause to be discharged into the atmosphere from that affected facility any gases that contain NO_X (expressed as NO_2) in excess of 88 ng/J (0.70 lb/MWh) gross energy output.

§ 60.45Da [Removed and Reserved]

14. Remove and reserve § 60.45Da.

15. Section 60.47Da is amended as follows:

a. By adding paragraph (f).

b. By adding paragraph (g).

c. By adding paragraph (h).

d. By adding paragraph (i).

Section 60.47Da Commercial demonstration permit.

* * * * *

(f) An owner or operator of an affected facility that uses a pressurized fluidized bed or a multi-pollutant emissions controls system who is issued a

commercial demonstration permit by the Administrator is not subject to the total PM emission reduction requirements under § 60.42Da but must, as a minimum, reduce PM emissions to less than 15 ng/J (0.034 lb/MMBtu) heat input.

(g) An owner or operator of an affected facility that uses a pressurized fluidized bed or a multi-pollutant emissions controls system who is issued a commercial demonstration permit by the Administrator is not subject to the SO_2 standards or emission reduction requirements under § 60.43Da but must, as a minimum, reduce SO_2 emissions to 5 percent of the potential combustion concentration (95 percent reduction) or to less than 180 ng/J (1.4 lb/MWh) gross output on a 30 boiler operating day rolling average basis.

(h) An owner or operator of an affected facility that uses a pressurized fluidized bed or a multi-pollutant emissions controls system or advanced combustion controls who is issued a commercial demonstration permit by the Administrator is not subject to the NO_X standards or emission reduction requirements under § 60.44Da but must, as a minimum, reduce NO_X emissions to less than 130 ng/J (1.0 lb/MWh) gross output on a 30 boiler operating day rolling average basis.

(i) Commercial demonstration permits may not exceed the following equivalent MW electrical generation capacity for any one technology category.

Technology	Pollutant	Equivalent electrical capacity (MW electrical output)
Multi-pollutant Emission Control	SO_2	1,000
Multi-pollutant Emission Control	NO_X	1,000
Multi-pollutant Emission Control	PM	1,000
Pressurized Fluidized Bed Combustion	SO_2	1,000
Pressurized Fluidized Bed Combustion	NO_X	1,000
Pressurized Fluidized Bed Combustion	PM	1,000
Advanced Combustion Controls	NO_X	1,000

16. Section 60.48Da is amended as follows:

a. By revising paragraph (c).

b. By revising paragraph (g).

c. By revising paragraph (k)(1)(i).

d. By revising paragraph (k)(1)(ii).

e. By revising paragraph (k)(2)(i).

f. By revising paragraph (k)(2)(iv).

g. By removing and reserving paragraph (l).

h. By revising paragraph (n).

i. By revising paragraphs (p)(5), (p)(7), and (p)(8).

j. By adding paragraph (r).

Section 60.48a Compliance provisions.

* * * * *

(c) For affected facilities that commenced construction, modification, or reconstruction before May 4, 2011, the PM emission standards under § 60.42Da, and the NO_X emission standards under § 60.44Da apply at all times except during periods of startup, shutdown, or malfunction. The sulfur dioxide emission standards under § 60.43Da apply at all times except during periods of startup, shutdown, or when both emergency conditions exist and the procedures under paragraph (d) of this section are implemented. For affected facilities that commence construction, modification, or reconstruction after May 3, 2011, the PM emission standards under § 60.42Da, the NO_X emission standards under § 60.44Da, and the sulfur dioxide emission standards under § 60.43Da apply at all times.

* * * * *

(g) The owner or operator of an affected facility subject to emission limitations in this subpart shall determine compliance as follows:

(1) For affected facilities that commenced construction, modification, or reconstruction before May 4, 2011, compliance with applicable 30 boiler operating day rolling average SO_2 and NO_X emission limitations is determined by calculating the arithmetic average of all hourly emission rates for SO_2 and NO_X for the 30 successive boiler operating days, except for data obtained during startup, shutdown, malfunction (NO_X only), or emergency conditions (SO_2 only). For affected facilities that commence construction, modification, or reconstruction after May 3, 2011, compliance with applicable 30 boiler operating day rolling average SO_2 and NO_X emission limitations is determined by dividing the sum of all the SO_2 and NO_X emissions for the 30 successive boiler operating days divided by the sum of all the gross useful output for the 30 successive boiler operating days.

(2) For affected facilities that commenced construction, modification, or reconstruction before May 4, 2011, compliance with applicable SO_2 percentage reduction requirements is determined based on the average inlet and outlet SO_2 emission rates for the 30 successive boiler operating days. For affected facilities that commence construction, modification, or reconstruction after May 3, 2011, compliance with applicable SO_2 percentage reduction requirements is determined based on the "as fired" total potential emissions and the total outlet SO_2 emissions for the 30 successive boiler operating days.

(3) For affected facilities that commenced construction, modification, or reconstruction before May 4, 2011 compliance with applicable daily average PM emission limitations is determined by calculating the arithmetic average of all hourly emission rates for PM each boiler operating day, except for data obtained during startup, shutdown, and malfunction. For affected facilities that commence construction, modification, or reconstruction after May 3, 2011, compliance with applicable daily average PM emission limitations is determined by calculating the sum of all PM emissions for PM each boiler operating day divided by the sum of all the gross useful output for PM each boiler operating day, except for data obtained during malfunction. Averages are only calculated for boiler operating days that have non-out-of-control data for at least 18 hours of unit operation during which the standard applies. Instead, all of the non-out-of-control hourly emission rates of the operating day(s) not meeting the minimum 18 hours non-out-of-control data daily average requirement are averaged with all of the non-out-of-control hourly emission rates of the next boiler operating day with 18 hours or more of non-out-of-control PM CEMS data to determine compliance.

* * * * *

(k) * * *

(1) * * *

(i) The emission rate (E) of NO_X shall be computed using Equation 2 in this section:

$$E = \frac{(C_{sg} \times Q_{sg}) - (C_{te} \times Q_{te})}{(O_{sg} \times h)} \quad \text{(Eq. 2)}$$

Where:

E = Emission rate of NO_X from the duct burner, ng/J (lb/MWh) gross output;

C_{sg} = Average hourly concentration of NO_X exiting the steam generating unit, ng/dscm (lb/dscf);

C_{te} = Average hourly concentration of NO_X in the turbine exhaust upstream from duct burner, ng/dscm (lb/dscf);

Q_{sg} = Average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr);

Q_{te} = Average hourly volumetric flow rate of exhaust gas from combustion turbine, dscm/hr (dscf/hr);

O_{sg} = Average hourly gross energy output from steam generating unit, J/h (MW); and

h = Average hourly fraction of the total heat input to the steam generating unit derived from the combustion of fuel in the affected duct burner.

* * * * *

(2) * * *

(i) The emission rate (E) of NO_X shall be computed using Equation 3 in this section:

$$E = \frac{(C_{sg} \times Q_{sd})}{O_{cc}} \quad \text{(Eq. 3)}$$

Where:

E = Emission rate of NO_X from the duct burner, ng/J (lb/MWh) gross output;

C_{sg} = Average hourly concentration of NO_X exiting the steam generating unit, ng/dscm (lb/dscf);

Q_{sg} = Average hourly volumetric flow rate of exhaust gas from steam generating unit, dscm/hr (dscf/hr); and

O_{cc} = Average hourly gross energy output from entire combined cycle unit, J/h (MW).

* * * * *

(iv) The owner or operator may, in lieu of installing, operating, and recording data from the continuous flow monitoring system specified in § 60.49Da(l), determine the mass rate (lb/hr) of NO_X emissions by installing, operating, and maintaining continuous fuel flowmeters following the appropriate measurements procedures specified in appendix D of part 75 of this chapter. If this compliance option is selected, the emission rate (E) of NO_X shall be computed using Equation 4 in this section:

$$E = \frac{(ER_{sg} \times H_{cc})}{O_{cc}} \quad \text{(Eq. 4)}$$

Where:

E = Emission rate of NO_X from the duct burner, ng/J (lb/MWh) gross output;

ER_{sg} = Average hourly emission rate of NO_X exiting the steam generating unit heat input calculated using appropriate F factor as described in Method 19 of appendix A of this part, ng/J (lb/MMBtu);

H_{cc} = Average hourly heat input rate of entire combined cycle unit, J/hr (MMBtu/hr); and

O_{cc} = Average hourly gross energy output from entire combined cycle unit, J/h (MW).

* * * * *

(n) Compliance provisions for sources subject to § 60.42Da(c)(1). The owner or operator of an affected facility subject to § 60.42Da(c)(1) shall calculate PM emissions by multiplying the average hourly PM output concentration (measured according to the provisions of § 60.49Da(t)), by the average hourly flow rate (measured according to the provisions of § 60.49Da(l) or § 60.49Da(m)), and divided by the average hourly gross energy output (measured according to the provisions of § 60.49Da(k)).

* * * * *

(p) * * *

(5) At a minimum, non-out-of-control valid CEMS hourly averages shall be obtained for 75 percent of all operating hours on a 30 boiler operating day rolling average basis. Beginning on January 1, 2012, non-out-of-control CEMS hourly averages shall be obtained for 90 percent of all operating hours on a 30 boiler operating day rolling average basis.

(i) At least two data points per hour shall be used to calculate each 1-hour arithmetic average.

(ii) [Reserved]

* * * * *

(7) All non-out-of-control CEMS data shall be used in calculating average emission concentrations even if the minimum CEMS data requirements of paragraph (j)(5) of this section are not met.

(8) When PM emissions data are not obtained because of CEMS breakdowns, repairs, calibration checks, and zero and span adjustments, emissions data shall be obtained by using other monitoring systems as approved by the Administrator to provide, as necessary, non-out-of-control emissions data for a minimum of 90 percent (only 75 percent is required prior to January 1, 2012) of all operating hours per 30 boiler operating day rolling average.

* * * * *

(r) *Affirmative Defense for Exceedance of Emission Limit During Malfunction.* In response to an action to enforce the standards set forth in paragraph §§ 60.42Da, 60.43Da, and 60.44Da, you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 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 paragraph (b) 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 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 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 standards in §§ 60.42Da, 60.43Da, and 60.44Da 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.

17. Section 60.49Da is amended as follows:

a. By revising paragraphs (a)(1), (a)(2), and (a)(3) introductory text.

b. By revising paragraphs (b) introductory text and (b)(2).

c. By revising paragraph (e).

d. By revising paragraph (k) introductory text.

e. By revising paragraph (l).

f. By removing and reserving paragraph (p).

g. By removing and reserving paragraph (q).

h. By removing and reserving paragraph (r).

i. By revising paragraph (t).

j. By revising paragraphs (u)(1)(iii) and (u)(4).

§ 60.49Da Emission monitoring.

(a) * * *

(1) Except as provided for in paragraph (a)(2) of this section, the owner or operator of an affected facility subject to an opacity standard, shall install, calibrate, maintain, and operate a COMS, and record the output of the system, for measuring the opacity of emissions discharged to the atmosphere. If opacity interference due to water droplets exists in the stack (for example, from the use of an FGD system), the opacity is monitored upstream of the interference (at the inlet to the FGD system). If opacity interference is experienced at all locations (both at the inlet and outlet of the SO_2 control system), alternate parameters indicative of the PM control system's performance and/or good combustion are monitored (subject to the approval of the Administrator).

(2) As an alternative to the monitoring requirements in paragraph (a)(1) of this section, an owner or operator of an affected facility that meets the conditions in either paragraph (a)(2)(i), (ii), (iii), or (iv) of this section may elect to monitor opacity as specified in paragraph (a)(3) of this section.

(i) The affected facility uses a fabric filter (baghouse) to meet the standards in § 60.42Da and a bag leak detection system is installed and operated according to the requirements in paragraphs § 60.48Da(o)(4)(i) through (v);

(ii) The affected facility burns only gaseous or liquid fuels (excluding residual oil) with potential SO_2 emissions rates of 26 ng/J (0.060 lb/MMBtu) or less, and does not use a post-combustion technology to reduce emissions of SO_2 or PM;

(iii) The affected facility meets all of the conditions specified in paragraphs (a)(2)(iii)(A) through (C) of this section; or

(A) No post-combustion technology (except a wet scrubber) is used for reducing PM, SO_2, or carbon monoxide (CO) emissions;

(B) Only natural gas, gaseous fuels, or fuel oils that contain less than or equal to 0.30 weight percent sulfur are burned; and

(C) Emissions of CO discharged to the atmosphere are maintained at levels less than or equal to 1.4 lb/MWh on a boiler operating day average basis as demonstrated by the use of a CEMS measuring CO emissions according to the procedures specified in paragraph (u) of this section.

(iv) The affected facility uses an ESP and uses an ESP predictive model to monitor the performance of the ESP developed in accordance and operated according to the most current requirements in section § 60.48Da of this part.

(3) The owner or operators of an affected facility that meets the conditions in paragraph (a)(2) of this section may, as an alternative to using a COMS, elect to monitor visible emissions using the applicable procedures specified in paragraphs (a)(3)(i) through (iv) of this section. The opacity performance test requirement in paragraph (a)(3)(i) must be conducted by April 29, 2011, within 45 days after stopping use of an existing COMS, or within 180 days after initial startup of the facility, whichever is later.

* * * * *

(b) The owner or operator of an affected facility shall install, calibrate, maintain, and operate a CEMS, and record the output of the system, for measuring SO_2 emissions, except where natural gas and/or liquid fuels (excluding residual oil) with potential SO_2 emissions rates of 26 ng/J (0.060 lb/MMBtu) or less are the only fuels combusted, as follows:

* * * * *

(2) For a facility that qualifies under the numerical limit provisions of § 60.43Da SO_2 emissions are only monitored as discharged to the atmosphere.

* * * * *

(e) The CEMS under paragraphs (b), (c), and (d) of this section are operated and data recorded during all periods of operation of the affected facility including periods of startup, shutdown, malfunction, and emergency conditions, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments.

* * * * *

(k) The procedures specified in paragraphs (k)(1) through (3) of this section shall be used to determine gross output for sources demonstrating compliance with an output-based standard.

* * * * *

(l) The owner or operator of an affected facility demonstrating compliance with an output-based standard shall install, certify, operate, and maintain a continuous flow monitoring system meeting the requirements of Performance Specification 6 of appendix B of this part and the CD assessment, RATA and reporting provisions of procedure 1 of appendix F of this part, and record the output of the system, for measuring the volumetric flow rate of exhaust gases discharged to the atmosphere; or

* * * * *

(t) The owner or operator of an affected facility demonstrating compliance with the output-based emissions limitation under § 60.42Da shall install, certify, operate, and maintain a CEMS for measuring PM emissions according to the requirements of paragraph (v) of this section. An owner or operator of an affected facility demonstrating compliance with the input-based emission limitation in § 60.42Da may install, certify, operate, and maintain a CEMS for measuring PM emissions according to the requirements of paragraph (v) of this section.

(u) * * *

(1) * * *

(iii) At a minimum, non-out-of-control 1-hour CO emissions averages must be obtained for at least 90 percent of the operating hours on a 30 boiler operating day rolling average basis. The 1-hour averages are calculated using the data points required in § 60.13(h)(2).

* * * * *

(4) As of January 1, 2012 and within 60 days after the date of completing each performance test, as defined in § 63.2, conducted to demonstrate compliance with this subpart, you must submit relative accuracy test audit (i.e., reference method) data and performance test (i.e., compliance test) data, except opacity data, electronically to EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/ert tool.html/*) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFire database.

18. Section 60.50Da is amended as follows:

a. By revising paragraphs (b)(2) and (b)(4).

b. By removing paragraph (g).

c. By removing paragraph (h).

d. By removing paragraph (i).

§ 60.50Da Compliance determination procedures and methods.

* * * * *

(b) * * *

(2) For the filterable particular matter concentration, Method 5 of appendix A of this part shall be used at affected facilities without wet FGD systems and Method 5B of appendix A of this part shall be used after wet FGD systems.

* * * * *

(4) Total particular matter concentration consists of the sum of the filterable and condensable fractions. The condensable fraction shall be measured using Method 202 of appendix M of part 51, and the filterable fraction shall be measured using Method 5 of appendix A of this part.

* * * * *

19. Section 60.51Da is amended as follows:

a. By revising paragraph (a).

b. By removing and reserving paragraph (g).

c. By revising paragraph (k).

§ 60.51 Da Reporting requirements.

(a) For SO_2, NO_X, and PM emissions, the performance test data from the initial and subsequent performance test and from the performance evaluation of the continuous monitors (including the transmissometer) are submitted to the Administrator.

* * * * *

(k) The owner or operator of an affected facility may submit electronic quarterly reports for SO_2 and/or NO_X and/or opacity in lieu of submitting the written reports required under paragraphs (b), (g), and (i) of this section. The format of each quarterly electronic report shall be coordinated with the permitting authority. The electronic report(s) shall be submitted no later than 30 days after the end of the calendar quarter and shall be accompanied by a certification statement from the owner or operator, indicating whether compliance with the applicable emission standards and minimum data requirements of this subpart was achieved during the reporting period.

§ 60.52Da(a) [Removed and reserved]

20. Section 60.52Da is amended by removing and reserving paragraph (a).

Subpart Db—[Amended]

21. Section 60.40b is amended as follows:

a. By revising paragraph (c).

b. By revising paragraph (h).

c. By revising paragraph (i).

d. By adding paragraph (1).

§ 60.40b Applicability and delegation of affected facility.

* * * * *

(c) Affected facilities that also meet the applicability requirements under subpart J or subpart Ja (Standards of performance for petroleum refineries) are subject to the PM and NO_X standards under this subpart and the SO_2 standards under subpart J or subpart Ja.

* * * * *

(h) Any affected facility that meets the applicability requirements and is subject to subpart Ea, subpart Eb, subpart AAAA, or subpart CCCC of this part is not subject to this subpart.

(i) Affected facilities (i.e. heat recovery steam generators) that are associated with stationary combustion turbines and that meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other affected facilities (i.e. heat recovery steam generators with duct burners) that are capable of combusting more than 29 MW (100 MMBtu/hr) heat input of fossil fuel. If the affected facility (i.e. heat recovery steam generator) is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The stationary combustion turbine emissions are subject to subpart GG or KKKK, as applicable, of this part.)

* * * * *

(l) Affected facilities that also meet the applicability requirements under subpart BB (Standards of Performance for Kraft Pulp Mills) are subject to the SO_2 and NO_X standards under this subpart and the PM standards under subpart BB.

* * * * *

22. Section 60.41b is amended by revising the definition of "distillate oil" to read as follows:

§ 60.41b Definitions.

* * * * *

Distillate oil means fuel oils that contain 0.05 weight percent nitrogen or less and comply with the specifications for fuel oil numbers 1 and 2, as defined by the American Society of Testing and Materials in ASTM D396 (incorporated by reference, see § 60.17), diesel fuel oil numbers 1 and 2, as defined by the American Society for Testing and Materials in ASTM D975 (incorporated by reference, see § 60.17), kerosene, as defined by the American Society of Testing and Materials in ASTM D3699 (incorporated by reference, see § 60.17), biodiesel as defined by the American Society of Testing and Materials in ASTM D6751 (incorporated by reference, see § 60.17), or biodiesel blends as defined by the American Society of Testing and Materials in ASTM D7467 (incorporated by reference, see § 60.17).

* * * * *

23. Section 60.44b is amended by revising paragraphs (c) and (d) to read as follows:

§ 60.44b Standard for nitrogen oxides (NO).

* * * * *

(c) Except as provided under paragraph (d) and (l) of this section, on and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts coal or oil, or a mixture of these fuels with natural gas, and wood, municipal-type solid waste, or any other fuel shall cause to be discharged into the atmosphere any gases that contain NO_X in excess of the emission limit for the coal or oil, or mixtures of these fuels with natural gas combusted in the affected facility, as determined pursuant to paragraph (a) or (b) of this section, unless the affected facility has an annual capacity factor for coal or oil, or mixture of these fuels

with natural gas of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less for coal, oil, or a mixture of these fuels with natural gas.

(d) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that simultaneously combusts natural gas or distillate oil with a potential SO_2 emissions rate of 26 ng/J (0.060 lb/MMBtu) or less with wood, municipal-type solid waste, or other solid fuel, except coal, shall cause to be discharged into the atmosphere from that affected facility any gases that contain NO_X in excess of 130 ng/J (0.30 lb/MMBtu) heat input unless the affected facility has an annual capacity factor for natural gas, distillate oil, or a mixture of these fuels of 10 percent (0.10) or less and is subject to a federally enforceable requirement that limits operation of the affected facility to an annual capacity factor of 10 percent (0.10) or less for natural gas, distillate oil, or a mixture of these fuels.

* * * * *

24. Section 60.46b is amended by revising paragraph (j)(14) to read as follows:

§ 60.46b Compliance and performance test methods and procedures for particulate matter and nitrogen oxides.

* * * * *

(j) * * *

(14) As of January 1, 2012, and within 60 days after the date of completing each performance test, as defined in § 63.2, conducted to demonstrate compliance with this subpart, you must submit relative accuracy test audit (i.e., reference method) data and performance test (i.e., compliance test) data, except opacity data, electronically to EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/ert tool.html/*) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

25. Section 60.48b is amended as follows:

a. By revising paragraphs (a) introductory text and (a)(1)(i).

b. By revising paragraph (j) introductory text.

c. By revising paragraph (j)(5).

d. By revising paragraph (j)(6).

e. By adding paragraph (j)(7).

§ 60.48b Emission monitoring for particulate matter and nitrogen oxides.

(a) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility subject to the opacity standard under § 60.43b shall install, calibrate, maintain, and operate a continuous opacity monitoring systems (COMS) for measuring the opacity of emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility subject to an opacity standard under § 60.43b and meeting the conditions under paragraphs (j)(1), (2), (3), (4), (5), or (6) of this section who elects not to use a COMS shall conduct a performance test using Method 9 of appendix A–4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.43b by April 29, 2011, within 45 days of stopping use of an existing COMS, or within 180 days after initial startup of the facility, whichever is later, and shall comply with either paragraphs (a)(1), (a)(2), or (a)(3) of this section. The observation period for Method 9 of appendix A–4 of this part performance tests may be reduced from 3 hours to 60 minutes if all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent during the initial 60 minutes of observation.

(1) * * *

(i) If no visible emissions are observed, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 12 calendar months from the date that the most recent performance test was conducted or within 45 days of the next day that fuel with an opacity standard is combusted, whichever is later;

* * * * *

(j) The owner or operator of an affected facility that meets the conditions in either paragraph (j)(1), (2), (3), (4), (5), (6), or (7) of this section is not required to install or operate a COMS if:

* * * * *

(5) The affected facility uses a bag leak detection system to monitor the performance of a fabric filter (baghouse) according to the most current requirements in section § 60.48Da of this part; or

(6) The affected facility uses an ESP as the primary PM control device and uses an ESP predictive model to monitor the performance of the ESP developed in accordance and operated according to the most current requirements in section § 60.48Da of this part; or

(7) The affected facility burns only gaseous fuels or fuel oils that contain less than or equal to 0.30 weight percent sulfur and operates according to a written site-specific monitoring plan approved by the permitting authority. This monitoring plan must include procedures and criteria for establishing and monitoring specific parameters for the affected facility indicative of compliance with the opacity standard.

* * * * *

Subpart Dc—[Amended]

26. Section 60.40c is amended as follows:

a. By revising paragraph (e).

b. By revising paragraph (f).

c. By revising paragraph (g).

§ 60.40c Applicability and delegation of authority.

* * * * *

(e) Affected facilities (i.e. heat recovery steam generators and fuel heaters) that are associated with stationary combustion turbines and meet the applicability requirements of subpart KKKK of this part are not subject to this subpart. This subpart will continue to apply to all other heat recovery steam generators, fuel heaters, and other affected facilities that are capable of combusting more than or equal to 2.9 MW (10 MMBtu/hr) heat input of fossil fuel but less than or equal to 29 MW (100 MMBtu/hr) heat input of fossil fuel. If the heat recovery steam generator, fuel heater, or other affected facility is subject to this subpart, only emissions resulting from combustion of fuels in the steam generating unit are subject to this subpart. (The stationary combustion turbine emissions are subject to subpart GG or KKKK, as applicable, of this part).

(f) Any facility that meets the applicability requirements of and is subject to subpart AAAA or subpart CCCC of this part is not subject to this subpart.

(g) Any facility that meets the applicability requirements of and is subject to an EPA approved State or Federal section 111(d)/129 plan implementing subpart BBBB of this part is not subject to this subpart.

27. Section 60.41c is amended by removing the definition of "Cogeneration" and revising the definition of "Distillate oil" to read as follows:

§ 60.41c Definitions.

* * * * *

Distillate oil means fuel oil that complies with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and

Materials in ASTM D396 (incorporated by reference, see § 60.17), diesel fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D975 (incorporated by reference, see § 60.17), kerosene, as defined by the American Society of Testing and Materials in ASTM D3699 (incorporated by reference, see § 60.17), biodiesel as defined by the American Society of Testing and Materials in ASTM D6751 (incorporated by reference, see § 60.17), or biodiesel blends as defined by the American Society of Testing and Materials in ASTM D7467 (incorporated by reference, see § 60.17).

* * * * *

28. Section 60.42c is amended as follows:

a. By revising paragraph (d).

b. By revising paragraph (h) introductory text.

c. By revising paragraph (h)(3).

d. By adding paragraph (h)(4).

§ 60.42c Standard for sulfur dioxide (SO_2).

* * * * *

(d) On and after the date on which the initial performance test is completed or required to be completed under § 60.8, whichever date comes first, no owner or operator of an affected facility that combusts oil shall cause to be discharged into the atmosphere from that affected facility any gases that contain SO_2 in excess of 215 ng/J (0.50 lb/MMBtu) heat input from oil; or, as an alternative, no owner or operator of an affected facility that combusts oil shall combust oil in the affected facility that contains greater than 0.5 weight percent sulfur. The percent reduction requirements are not applicable to affected facilities under this paragraph.

* * * * *

(h) For affected facilities listed under paragraphs (h)(1), (2), (3), or (4) of this section, compliance with the emission limits or fuel oil sulfur limits under this section may be determined based on a certification from the fuel supplier, as described under § 60.48c(f), as applicable.

* * * * *

(3) Coal-fired affected facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 MMBtu/hr).

(4) Other fuels-fired affected facilities with heat input capacities between 2.9 and 8.7 MW (10 and 30 MMBtu/hr).

* * * * *

29. Section 60.45c is amended by revising paragraph (c)(14) to read as follows:

§ 60.45c Compliance and performance test methods and procedures for particulate matter.

* * * * *

(c)(14) As of January 1, 2012, and within 60 days after the date of completing each performance test, as defined in § 63.2, conducted to demonstrate compliance with this subpart, you must submit relative accuracy test audit (i.e., reference method) data and performance test (i.e., compliance test) data, except opacity data, electronically to EPA's Central Data Exchange (CDX) by using the Electronic Reporting Tool (ERT) (see *http://www.epa.gov/ttn/chief/ert/ert tool.html/*) or other compatible electronic spreadsheet. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

* * * * *

30. Section 60.47c is amended as follows:

a. By revising paragraphs (a) introductory text and (a)(1)(i).

b. By revising paragraph (f).

c. By revising paragraph (g).

d. By adding paragraph (h).

§ 60.47c Emission monitoring for particulate matter.

(a) Except as provided in paragraphs (c), (d), (e), (f), (g), and (h) of this section, the owner or operator of an affected facility combusting coal, oil, or wood that is subject to the opacity standards under § 60.43c shall install, calibrate, maintain, and operate a continuous opacity monitoring system (COMS) for measuring the opacity of the emissions discharged to the atmosphere and record the output of the system. The owner or operator of an affected facility subject to an opacity standard in § 60.43c(c) that is not required to use a COMS due to paragraphs (c), (d), (e), (f), or (g) of this section that elects not to use a COMS shall conduct a performance test using Method 9 of appendix A–4 of this part and the procedures in § 60.11 to demonstrate compliance with the applicable limit in § 60.43c by April 29, 2011, within 45 days of stopping use of an existing COMS, or within 180 days after initial startup of the facility, whichever is later, and shall comply with either paragraphs (a)(1), (a)(2), or (a)(3) of this section. The observation period for Method 9 of appendix A–4 of this part performance tests may be reduced from 3 hours to 60 minutes if all 6-minute averages are less than 10 percent and all individual 15-second observations are less than or equal to 20 percent during the initial 60 minutes of observation.

(1) * * *

(i) If no visible emissions are observed, a subsequent Method 9 of appendix A–4 of this part performance test must be completed within 12 calendar months from the date that the most recent performance test was conducted or within 45 days of the next day that fuel with an opacity standard is combusted, whichever is later;

* * * * *

(f) Owners and operators of an affected facility that is subject to an opacity standard in § 60.43c(c) and that uses a bag leak detection system to monitor the performance of a fabric filter (baghouse) according to the most current requirements in section § 60.48Da of this part is not required to operate a COMS.

(g) The affected facility uses an ESP as the primary PM control device and uses an ESP predictive model to monitor the performance of the ESP developed in accordance and operated according to the most current requirements in section § 60.48Da of this part.

(h) Owners and operators of an affected facility that is subject to an opacity standard in § 60.43c(c) and that burns only gaseous fuels and/or fuel oils that contain less than or equal to 0.5 weight percent sulfur and operates according to a written site-specific monitoring plan approved by the permitting authority is not required to operate a COMS. This monitoring plan must include procedures and criteria for establishing and monitoring specific parameters for the affected facility indicative of compliance with the opacity standard.

Subpart HHHH—[Removed and Reserved]

31. Subpart HHHH is removed and reserved.

PART 63—[AMENDED]

32. The authority citation for part 63 continues to read as follows:

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

33. Part 63 is amended by adding subpart UUUUU to read as follows:

Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units

Sec.

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Subpart UUUUU—National Emission Standards for Hazardous Air Pollutants: Coal- and Oil-Fired Electric Utility Steam Generating Units

What This Subpart Covers

§ 63.9980 What is the purpose of this subpart?

This subpart establishes national emission limitations and work practice standards for hazardous air pollutants (HAP) emitted from coal- and oil-fired electric utility steam generating units (EGUs). This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.9981 Am I subject to this subpart?

You are subject to this subpart if you own or operate a coal-fired EGU or an oil-fired EGU.

§ 63.9982 What is the affected source of this subpart?

(a) This subpart applies to each individual or group of one or more new, reconstructed, and existing affected source(s) as described in paragraphs (a)(1) and (2) of this section within a contiguous area and under common control.

(1) The affected source of this subpart is the collection of all existing coal- or oil-fired EGUs as defined in § 63.10042.

(2) The affected source of this subpart is each new or reconstructed coal- or oil-fired EGU as defined in § 63.10042.

(b) An EGU is new if you commence construction of the coal- or oil-fired EGU after May 3, 2011, and you meet the applicability criteria at the time you commence construction.

(c) An EGU is reconstructed if you meet the reconstruction criteria as defined in § 63.2, you commence reconstruction after May 3, 2011, and you meet the applicability criteria at the time you commence reconstruction.

(d) An EGU is existing if it is not new or reconstructed. An existing electric utility steam generating unit that has switched completely to burning a different coal rank or fuel type is considered to be an existing affected source under this subpart.

§ 63.9983 Are any EGUs not subject to this subpart?

The types of EGUs listed in paragraphs (a) through (c) of this section are not subject to this subpart.

(a) Any unit designated as a stationary combustion turbine, other than an integrated gasification combined cycle (IGCC), covered by 40 CFR part 63, subpart YYYY.

(b) Any EGU that is not a coal- or oil-fired EGU and combusts natural gas more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years.

(c) Any EGU that has the capability of combusting more than 73 MWe (250 million Btu/hr, MMBtu/hr) heat input (equivalent to 25 MWe output) of coal or oil but did not fire coal or oil for more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years. Heat input means heat derived from combustion of fuel in an EGU and does not include the heat derived from preheated combustion air, recirculated flue gases or exhaust gases from other sources (such as stationary gas turbines, internal combustion engines, and industrial boilers).

§ 63.9984 When do I have to comply with this subpart?

(a) If you have a new or reconstructed EGU, you must comply with this subpart by [DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**] or upon startup of your EGU, whichever is later.

(b) If you have an existing EGU, you must comply with this subpart no later than [3 YEARS AFTER DATE THE FINAL RULE IS PUBLISHED IN THE **FEDERAL REGISTER**].

(c) You must meet the notification requirements in § 63.10030 according to the schedule in § 63.10030 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limits and work practice standards in this subpart.

Emission Limitations and Work Practice Standards

§ 63.9990 What are the subcategories of EGUs?

(a) Coal-fired EGUs are subcategorized as defined in paragraphs (a)(1) through

(a)(2) of this section and as defined in § 63.10042.

(1) EGUs designed for coal ≥ 8,300 Btu/lb, and

(2) EGUs designed for coal < 8,300 Btu/lb. (b) Oil-fired EGUs are subcategorized as noted in paragraphs (b)(1) through (b)(2) of this section and as defined in § 63.10042.

(1) EGUs designed to burn liquid oil, and

(2) EGUs designed to burn solid oil-derived fuel.

(c) IGCC units combusting either gasified coal or gasified solid oil-derived fuel. For purposes of compliance, monitoring, recordkeeping, and reporting requirements in this subpart, IGCC units are subject in the same manner as coal-fired units and solid oil-derived fuel-fired units, unless otherwise indicated.

§ 63.9991 What emission limitations, work practice standards, and operating limits must I meet?

(a) You must meet the requirements in paragraphs (a)(1) and (2) of this section. You must meet these requirements at all times.

(1) You must meet each emission limit and work practice standard in Table 1 through 3 to this subpart that applies to your EGU, for each EGU at your source, except as provided under paragraph (a)(1)(i) and (ii) or under § 63.10009.

(i) You may not use the alternate SO_2 limit if your coal-fired EGU does not have a system using wet or dry flue gas desulfurization technology installed on the unit.

(ii) You may not use the alternate SO_2 limit if your oil-fired EGU does not have a system using wet or dry flue gas desulfurization technology installed on the unit.

(iii) You must operate the wet or dry flue gas desulfurization technology installed on the unit at all times in order to qualify to use the alternate SO_2 limit.

(2) You must meet each operating limit in Table 4 to this subpart that applies to your EGU. If you use a control device or combination of control devices not covered in Table 4 to this subpart, or you wish to establish and monitor an alternative operating limit and alternative monitoring parameters, you must apply to the EPA Administrator for approval of alternative monitoring under § 63.8(f).

(b) As provided in § 63.6(g), EPA may approve use of an alternative to the work practice standards in this section.

General Compliance Requirements

§ 63.10000 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limits and operating limits in this subpart. These limits apply to you at all times.

(b) At all times you must operate and maintain any affected source, including associated air pollution control equipment and monitoring equipment, in a manner consistent with safety and good air pollution control practices for minimizing emissions. Determination of whether such operation and maintenance procedures are being used will be based on information available to the EPA 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.

(c)(1) For coal-fired units and solid oil-derived fuel-fired units, initial performance testing is required for all pollutants. For non-mercury HAP metals, you demonstrate continuous compliance through use of a particulate matter (PM) CEMS; initial compliance is determined by establishing an operational limit for filterable PM obtained during total PM emissions testing. As an alternative to using a PM CEMS, you may demonstrate initial and continuous compliance by conducting total HAP metals testing or individual non-mercury (Hg) metals testing. For acid gases, you demonstrate initial and continuous compliance through use of a continuous hydrogen chloride (HCl) CEMS. As an alternative to HCl CEMS, you may demonstrate initial and continuous compliance by conducting performance testing. As another alternative to HCl CEMS, you may demonstrate initial and continuous compliance through use of a certified sulfur dioxide (SO_2) CEMS, provided the unit has a system using wet or dry flue gas desulfurization technology. For mercury (Hg), if your unit does not qualify as a low emitting EGU (LEE), you must demonstrate initial and continuous compliance through use of a Hg CEMS or a sorbent trap monitoring system.

(2) For liquid oil-fired units, you must demonstrate initial and continuous compliance for HCl, hydrogen fluoride (HF), and individual or total HAP metals by conducting performance testing. As an alternative to conducting performance testing, you may demonstrate compliance with the applicable emissions limit for HCl, HF, and individual or total HAP metals using fuel analysis provided the emission rate calculated according to § 63.10011(c) is less than the applicable emission limit.

(d) If you demonstrate compliance with any applicable emissions limit through use of a continuous monitoring system (CMS), where a CMS includes a continuous parameter monitoring system (CPMS) as well as a continuous emissions monitoring system (CEMS), or through the use of a sorbent trap monitoring system for Hg, you must develop a site-specific monitoring plan and submit this site-specific monitoring plan, if requested, at least 60 days before your initial performance evaluation (where applicable) of your CMS or sorbent trap monitoring system. This requirement also applies to you if you petition the EPA Administrator for alternative monitoring parameters under § 63.8(f). This requirement to develop and submit a site-specific monitoring plan does not apply to affected sources with existing monitoring plans that apply to CEMS and CPMS prepared under Appendix B to part 60 or Part 75 of this chapter, and that meet the requirements of § 63.10010. The monitoring plan must address the provisions in paragraphs (d)(1) through (7) of this section.

(1) Installation of the CMS or sorbent trap monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (e.g., on or downstream of the last control device).

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction systems.

(3) Schedule for conducting initial and periodic performance evaluations.

(4) Performance evaluation procedures and acceptance criteria (e.g., calibrations), including ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d) or Appendix A to this subpart, as applicable.

(5) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1)(ii), (c)(3), and (c)(4)(ii) or Appendix A to this subpart, as applicable.

(6) Conditions that define a continuous monitoring system that is out of control consistent with § 63.8(c)(7)(i) and for responding to out of control periods consistent with §§ 63.8(c)(7)(ii) and (c)(8) or Appendix A to this subpart, as applicable.

(7) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i) and Appendix A to this subpart, as applicable.

(e) You must operate and maintain the CMS or sorbent trap monitoring system according to the site-specific monitoring plan.

§ 63.10001 Affirmative Defense for Exceedence of Emission Limit During Malfunction.

In response to an action to enforce the standards set forth in paragraph § 63.9991 you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, the owners or operators of facilities must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner; and

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) 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.

(b) The owner or operator of the facility experiencing an exceedence of its emission limit(s) during a malfunction shall notify the EPA Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two (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 EPA Administrator within 45 days of the initial occurrence of the exceedence of the standard in § 63.9991 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 exceedances.

Testing, Fuel Analyses, and Initial Compliance Requirements

§ 63.10005 What are my initial compliance requirements and by what date must I conduct them?

(a) *General requirements.* Affected EGUs must demonstrate initial compliance with each of the applicable emissions limits in Tables 1 or 2 of this subpart through performance testing, along with one or more of the following activities: conducting a fuel analysis for each type of fuel combusted, establishing operating limits where applicable according to § 63.10011 and Table 7 to this subpart; conducting CMS performance evaluations where applicable; and conducting sorbent trap monitoring system performance evaluations, where applicable, in conjunction with performance testing. If you use a CMS that measures pollutant concentrations directly (i.e., a CEMS or a sorbent trap monitoring system), the performance test consists of the first 30 operating days of data collected with the certified monitoring system, after the applicable compliance date. If you use a continuous monitoring system that measures a surrogate for a pollutant (e.g., an SO_2 monitor), you must perform initial emission testing during the same compliance test period and under the same process (e.g., fuel) and control device operating conditions of the pollutant and surrogate, in addition to conducting the initial 30-day performance test. If you wish to demonstrate that a unit qualifies as a low emitting EGU (LEE), you must conduct performance testing in accordance with paragraphs (k) and (l) of this section.

(b) *Performance Testing Requirements.* Affected EGUs must demonstrate initial compliance with each of the applicable emissions limits in Tables 1 or 2 of this subpart by conducting performance tests according to § 63.10007 and Table 5 to this subpart.

(1) For affected EGUs that do not rely on CMS, sorbent trap monitoring systems, or 28 to 30 day Method 30B testing to demonstrate initial compliance, performance test data and results from a prior performance test may be used to demonstrate initial compliance, provided the performance tests meet the following conditions:

(i) The performance test was conducted within the last twelve months;

(ii) The performance test was conducted in accordance with all requirements contained in § 63.10007 and Table 5 of this subpart; and

(iii) You certify, and have and keep documentation demonstrating, that the EGU configuration, control devices, and materials/fuel have remained constant since the prior performance test was conducted.

(2) [Reserved]

(c) *Fuel Analysis Requirements.* Affected liquid oil-fired EGUs may choose to demonstrate initial compliance with each of the applicable emissions limits in Tables 1 or 2 of this subpart by conducting a fuel analysis for each type of fuel combusted, except

those affected EGUs that meet the exemptions identified in paragraphs (c)(4) and (5) of this section and those affected EGUs that opt to comply with the individual or total HAP metals limits in Tables 1 or 2 of this subpart which must comply by conducting a fuel analysis as described in paragraph (c)(1) of this section.

(1) For affected liquid oil-fired EGUs demonstrating compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for HCl or individual or total HAP metals through fuel analysis, your initial compliance requirement is to conduct a fuel analysis for each type of fuel burned in your EGU according to § 63.10008 and Table 6 to this subpart and establish operating limits according to § 63.10011 and Table 8 to this subpart.

(2) For affected liquid oil-fired EGUs that elect to demonstrate compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for HF, your initial compliance requirement is to conduct a fuel analysis for each type of fuel burned in your EGU according to § 63.10008 and Table 6 to this subpart and establish operating limits according to § 63.10011 and Table 8 to this subpart.

(3) Fuel analysis data and results from a prior fuel analysis may be used to demonstrate initial compliance, provided the fuel analysis meets the following conditions:

(i) The fuel analysis was conducted within the last twelve months;

(ii) The fuel analysis was conducted in accordance with all requirements contained in § 63.10008 and Table 6 of this subpart; and

(iii) You certify, and have and keep documentation demonstrating, that the EGU configuration, control devices, and materials/fuel have remained constant since the prior fuel analysis was conducted.

(4) For affected EGUs that combust a single type of fuel, you are exempted from the initial compliance requirements of conducting a fuel analysis for each type of fuel burned in your EGU according to § 63.10008 and Table 6 to this subpart.

(5) For purposes of this subpart, EGUs that use a supplemental fuel only for startup, unit shutdown, or transient flame stability purposes qualify as affected EGUs that combust a single type of fuel, the supplemental fuel is not subject to the fuel analysis requirements under § 63.10008 and Table 6 to this subpart, and you are exempted from the initial compliance requirements of conducting a fuel analysis for each type of fuel burned in your EGU according to § 63.10008 and Table 6 to this subpart.

(d) *CMS Requirements.* (1) For affected liquid oil-fired EGUs that elect to demonstrate initial compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for HCl through use of HCl CEMS, initial compliance is determined using the average hourly HCl concentrations obtained during the first 30 day operating period after the monitoring system is certified.

(2) For affected liquid oil-fired EGUs that elect to demonstrate initial compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for HF through use of HF CEMS, initial compliance is determined using the average hourly HF concentrations obtained during the first 30 day operating period after the monitoring system is certified.

(3) For affected solid oil-derived fuel- or coal-fired EGUs that demonstrate initial compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for HCl through use of HCl CEMS, initial compliance is determined using the average hourly HCl concentrations obtained during the first 30 day operating period after the monitoring system is certified.

(4) For affected solid oil-derived fuel- or coal-fired EGUs with installed systems that use wet or dry flue gas desulfurization technology to demonstrate initial compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for SO_2 through use of SO_2 CEMS, initial compliance is determined using the average hourly SO_2 concentrations obtained during the first 30 day operating period after the monitoring system is certified.

(5) For affected solid oil-derived fuel- or coal-fired EGUs that demonstrate initial compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for PM through use of PM CEMS, initial compliance is determined using the average hourly PM concentrations obtained during the first 30 day operating period after the monitoring system is certified.

(6) For affected EGUs that demonstrate initial compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for Hg through use of Hg CEMS, initial compliance is determined using the average hourly Hg concentrations obtained during the first 30 day operating period after the monitoring system is certified.

(7) For affected EGUs that elect to demonstrate initial compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for PM, non-Hg HAP metals, HCl, HF, or Hg through use of CPMS, initial compliance is determined using the average hourly PM, non-Hg HAP metals, HCl, HF, or Hg concentrations obtained during the first 30 day operating period.

(e) *Sorbent Trap Monitoring System Requirements.* For affected EGUs that demonstrate initial compliance with the applicable emissions limits in Tables 1 or 2 of this subpart for Hg through use of Hg sorbent trap monitoring system, initial compliance is determined using the average hourly Hg concentrations obtained during the first 30 day operating period.

(f) *Tune-ups.* For affected EGUs subject to work practice standards in Table 3 of this subpart, your initial compliance requirement is to conduct a tune-up of your EGU according to § 63.10021(a)(16)(i) through (vi).

(g) For existing affected sources, you must demonstrate initial compliance no later than 180 days after the compliance date that is specified for your source in § 63.9984 and according to the applicable provisions in § 63.7(a)(2) as cited in Table 10 to this subpart.

(h) If your new or reconstructed affected source commenced construction or reconstruction between May 3, 2011 and [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must demonstrate initial compliance with either the proposed emission limits or the promulgated emission limits no later than 180 days after [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] or within 180 days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(i) If your new or reconstructed affected source commenced construction or reconstruction between May 3, 2011, and [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], and you chose to comply with the proposed emission limits when demonstrating initial compliance, you must conduct a second compliance demonstration for the promulgated emission limits within 3 years after [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] or within 3 years after startup of the affected source, whichever is later.

(j) If your new or reconstructed affected source commences construction or reconstruction after [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must demonstrate initial compliance with the promulgated emission limits no later than 180 days after startup of the source.

(k) *Low emitting EGU.* Your existing EGU may qualify for low emitting EGU (LEE) status provided that initial performance test data that meet the requirements of § 63.10005(b) and paragraph (l) of this section demonstrate:

(1) With the exception of mercury, emissions less than 50 percent of the appropriate emissions limitation, or

(2) For mercury, emissions less than 10 percent of the mercury emissions limitation or less than 22.0 pounds per year. Only existing affected units may qualify for LEE status for Hg. When qualifying for LEE status for Hg emissions less than 22.0 pounds per year, the affected unit must also demonstrate compliance with the applicable emission limitation.

(3) The following provisions apply in demonstrating that a unit qualifies as a LEE. For all pollutants or surrogates except for Hg, conduct the initial performance tests as described in § 63.10007 but note that the required minimum sampling volume must be increased nominally by a factor of two; follow the instructions in Table 5 to this subpart to convert the test data to the units of the applicable standard. For Hg, you must conduct a 28 to 30 operating day performance test, using Method 30B in appendix A–8 to part 60 of this chapter, to determine Hg concentration. Locate the Method 30B sampling probe tip at a point within the 10 percent centroidal area of the duct at a location that meets Method 1 in appendix A–8 to part 60 of this chapter and conduct at least three nominally equal length test runs over the 28 to 30 day test period. You may not use a pair of sorbent traps to sample the stack gas for more than 10 days. Collect diluent gas data over the corresponding time period, and if preferred for calculation of pounds per year of Hg, stack flow rate data using Method 2 in appendix A–1 to part 60 of this chapter or a certified flow rate monitor and moisture data using Method 4 in appendix A–1 to part 60 of this chapter or a moisture monitor. Record parametric data during each performance test, to establish operating limits, in accordance with the applicable provisions of § 63.10010(k)(3). Calculate the average Hg concentration, in $\mu g/m^3$, for the 28 to 30 day performance test, as the arithmetic average of all sorbent trap results. Calculate the average CO_2 or O_2 concentration for the test period. Use the average Hg concentration and diluent gas values to express the performance test results in units of lb of Hg/TBtu, as described in section 6.2.1 of appendix A to this subpart, and, if elected, pounds of Hg per year, using the expected fuel input over a year period. You may also opt to calculate pounds of Hg per year using the average Hg concentration, average stack gas flow rate, average stack gas moisture, and maximum operating hours per year.

(1) Startup and Shutdown default values for calculations. For the purposes of this rule and only during periods of startup or shutdown, use a default diluent gas concentration value of 10.0 percent O_2 or the corresponding fuel-specific CO_2 concentration in calculating emissions in units of lb/MMBtu or lb/TBtu. For calculating emissions in units of lb/MWh or lb/GWh only during startup or shutdown periods, use a nominal electrical production rate equal to 5 percent of rated capacity.

§ 63.10006 When must I conduct subsequent performance tests, fuel analyses, or tune-ups?

(a) For solid oil-derived fuel- and coal-fired EGUs using total PM emissions as a surrogate for non-Hg HAP metals emissions and using PM CEMS to measure filterable PM emissions as a surrogate for total PM emissions, you must conduct all applicable performance tests for PM and non-Hg HAP metals emissions during the same compliance test period and under the same process (*e.g.,* fuel) and control device operating conditions according to Table 5 and § 63.10007 at least every 5 years.

(b) For solid oil-derived fuel- and coal-fired EGUs with installed systems that use wet or dry flue gas desulfurization technology using sulfur dioxide (SO_2) emissions as a surrogate for HCl emissions and using SO_2 CEMS to measure SO_2 emissions, you must conduct all applicable performance tests for SO_2 and HCl emissions during the same compliance test period and under the same process (*e.g.,* fuel) and control device operating conditions according to Table 5 and § 63.10007 at least every 5 years.

(c) For affected units meeting the LEE requirements of § 63.1005(k), provided that the unit operates within the operating limits established during the initial performance test, you need only repeat the performance test once every 5 years according to Table 5 and § 63.10007 and conduct fuel sampling and analysis according to Table 6 and § 63.10008 at least every month. However, if the unit fails to operate within the operating limits during any 5 year compliance period, LEE status is lost. If this should occur:

(1) For all pollutants or surrogates except for Hg, you must initiate periodic emission testing, as required in the applicable paragraph(s) of this section, within a six month period.

(2) For Hg, you must install, certify, maintain, and operate a Hg CEMS or a sorbent trap monitoring system in accordance with appendix A to this subpart, within a one year period.

(d) For solid oil-derived fuel- and coal-fired EGUs without PM CEMS but with PM emissions control devices, you must conduct all applicable performance tests for PM and non-Hg HAP metals emissions during the same compliance test period and under the same process (*e.g.,* fuel) and control device operating conditions according to Table 5 and § 63.10007 at least every year and you must conduct non-Hg HAP metals emissions testing according to Table 5 and § 63.10007 at least every other month.

(e) For solid oil-derived fuel- and coal-fired EGUs without PM CEMS and without PM emissions control devices, you must conduct all applicable performance tests for non-Hg HAP metals emissions according to Table 5 and § 63.10007 at least every month.

(f) For liquid oil-fired EGUs with non-Hg HAP metals control devices, you must conduct all applicable performance tests for individual or total HAP metals emissions according to Table 5 and § 63.10007 at least every other month.

(g) For liquid oil-fired EGUs without non-Hg HAP metals control devices, you must conduct all applicable performance tests for individual or total HAP metals emissions according to Table 5 and § 63.10007 at least every month.

(h) For solid oil-derived fuel- and coal-fired EGUs without SO_2 CEMS but with installed systems that use wet or dry flue gas desulfurization technology, you must conduct all applicable performance tests for SO_2 and HCl emissions during the same compliance test period and under the same process (*e.g.,* fuel) and control device operating conditions according to Table 5 and § 63.10007 at least every year and you must conduct SO_2 emissions testing according to § 63.10007 at least every other month.

(i) For solid oil-derived fuel- and coal-fired EGUs without SO_2 CEMS and without installed systems that use wet or dry flue gas desulfurization technology, you must conduct all applicable performance tests for SO_2 and HCl emissions during the same compliance test period and under the same process (*e.g.,* fuel) and control device operating conditions according to Table 5 and § 63.10007 at least every year and you must conduct HCl

emissions testing according to Table 5 and § 63.10007 at least every month.

(j) For solid oil-derived fuel- and coal-fired EGUs without HCl CEMS but with HCl emissions control devices, you must conduct all applicable performance tests for HCl emissions according to Table 5 and § 63.10007 at least every other month.

(k) For solid oil-derived fuel- and coal-fired EGUs without HCl CEMS and without HCl emissions control devices, you must conduct all applicable performance tests for HCl emissions according to Table 5 and § 63.10007 at least every month.

(l) For liquid oil-fired EGUs without HCl and HF CEMS but with HCl and HF emissions control devices, you must conduct all applicable performance tests for HCl and HF emissions according to Table 5 and § 63.10007 at least every other month.

(m) For liquid oil-fired EGUs without HCl and HF CEMS and without HCl and HF emissions control devices, you must conduct all applicable performance tests for HCl and HF emissions according to Table 5 and § 63.10007 at least every month.

(n) Unless you follow the requirements listed in paragraphs (o) through (q) of this section, performance tests required at least every 5 years must be completed within 58 to 62 months after the previous performance test; performance tests required at least every year must be completed no more than 13 months after the previous performance test; performance tests required at least every 2 months must be completed between 52 and 69 days after the previous performance test; and performance tests required at least every month must be completed between 21 and 38 days after the previous performance test.

(o) For EGUs with annual or more frequent performance testing requirements, you can conduct performance stack tests less often for a given pollutant if your performance stack tests for the pollutant for at least 3 consecutive years show that your emissions are at or below 50 percent of the emissions limit, and if there are no changes in the operation of the affected source or air pollution control equipment that could increase emissions. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no more than 37 months after the previous performance test. If you elect to demonstrate compliance using emission averaging under § 63.10009, you must continue to conduct performance stack tests at the appropriate frequency given in section (c) through (m) of this paragraph.

(p) If your EGU continues to meet the emissions limit for the pollutant, you may choose to conduct performance stack tests for the pollutant every third year if your emissions are at or below the emission limit, and if there are no changes in the operation of the affected source or air pollution control equipment that could increase emissions, but each such performance test must be conducted no more than 37 months after the previous performance test. If you elect to demonstrate compliance using emission averaging under § 63.10009, you must continue to conduct performance stack tests at the appropriate frequency given in section (c) through (m) of this paragraph.

(q) If a performance test shows emissions in excess of 50 percent of the emission limit, you must conduct performance tests at the appropriate frequency given in section (c) through (m) of this paragraph for that pollutant until all performance tests over a consecutive 3-year period show compliance.

(r) If you are required to meet an applicable tune-up work practice standard, you must conduct a performance tune-up according to § 63.10007. Each performance tune-up specified in § 63.10007 must be no more than 18 months after the previous performance tune-up.

(s) If you demonstrate compliance with the Hg, individual or total non-Hg HAP metals, HCl, or HF emissions limit based on fuel analysis, you must conduct a monthly fuel analysis according to § 63.10008 for each type of fuel burned. If you burn a new type of fuel, you must conduct a fuel analysis before burning the new type of fuel in your EGU. You must still meet all applicable continuous compliance requirements in § 63.10021.

(t) You must report the results of performance tests, performance tune-ups, and fuel analyses within 60 days after the completion of the performance tests, performance tune-ups, and fuel analyses. This report must also verify that the operating limits for your affected EGU have not changed or provide documentation of revised operating parameters established according to § 63.10011 and Table 7 to this subpart, as applicable. The reports for all subsequent performance tests must include all applicable information required in § 63.10031.

§ 63.10007 What methods and other procedures must I use for the performance tests?

(a) You must conduct all performance tests according to § 63.7(c), (d), (f), and (h). You must also develop a site-specific test plan according to the requirements in § 63.7(c).

(b) You must conduct each performance test according to the requirements in Table 5 to this subpart.

(c) You must conduct each performance test under the specific conditions listed in Tables 5 and 7 to this subpart. You must conduct performance tests at the maximum normal operating load while burning the type of fuel or mixture of fuels that has the highest content of chlorine, fluorine, non-Hg HAP metals, and Hg, and you must demonstrate initial compliance and establish your operating limits based on these tests. These requirements could result in the need to conduct more than one performance test. Moreover, should you desire to have differing operating limits which correspond to loads other than maximum normal operating load, you should conduct testing at those other loads to determine those other operating limits. Following each performance test and until the next performance test, you must comply with the operating limit for operating load conditions specified in Table 4 of this subpart.

(d) For performance testing that does not involve CMS or a sorbent trap monitoring system, you must conduct three separate test runs for each performance test required, as specified in § 63.7(e)(3). Each test run must comply with the minimum applicable sampling times or volumes specified in Tables 1 and 2 to this subpart. For performance testing that involves CMS or a sorbent trap monitoring system, compliance shall be determined as described in § 63.10005(d) and (e).

(e) To determine compliance with the emission limits, you must use the F–Factor methodology and equations in sections 12.2 and 12.3 of EPA Method 19 at 40 CFR part 60, Appendix A–7 of this chapter to convert the measured PM concentrations, the measured HCl and HF concentrations, the measured SO_2 concentrations, the measured individual and total non-Hg HAP metals concentrations, and the measured Hg concentrations that result from the initial performance test to pounds per million Btu (lb/MMBtu) (pounds per trillion Btu, lb/TBtu, for Hg) heat input emission rates using F-factors.

(f) Performance tests shall be conducted under such conditions as the EPA Administrator specifies to the owner or operator based on

representative performance of the affected source for the period being tested. Upon request, the owner or operator shall make available to the EPA Administrator such records as may be necessary to determine the conditions of performance tests.

§ 63.10008 What fuel analyses and procedures must I use for the performance tests?

(a) You must conduct performance fuel analysis tests according to the procedures in paragraphs (b) through (e) of this section and Table 6 to this subpart, as applicable. You are not required to conduct fuel analyses for fuels used only for startup, unit shutdown, or transient flame stability purposes.

(b) You must develop and submit a site-specific fuel analysis plan to the EPA Administrator for review and approval according to the following procedures and requirements in paragraphs (b)(1) and (2) of this section.

(1) You must submit the fuel analysis plan no later than 60 days before the date that you intend to demonstrate compliance.

(2) You must include the information contained in paragraphs (b)(2)(i) through (vi) of this section in your fuel analysis plan.

(i) The identification of all fuel types anticipated to be burned in each EGU.

(ii) For each fuel type, the notification of whether you or a fuel supplier will be conducting the fuel analysis.

(iii) For each fuel type, a detailed description of the sample location and specific procedures to be used for collecting and preparing the composite samples if your procedures are different from paragraph (c) or (d) of this section. Samples should be collected at a location that most accurately represents the fuel type, where possible, at a point prior to mixing with other dissimilar fuel types.

(iv) For each fuel type, the analytical methods from Table 6, with the expected minimum detection levels, to be used for the measurement of chlorine, fluorine, non-Hg HAP metals, or Hg.

(v) If you request to use an alternative analytical method other than those required by Table 6 to this subpart, you must also include a detailed description of the methods and procedures that you are proposing to use. Methods in Table 6 shall be used until the requested alternative is approved.

(vi) If you will be using fuel analysis from a fuel supplier in lieu of site-specific sampling and analysis, the fuel supplier must use the analytical methods required by Table 6 to this subpart.

(c) At a minimum, you must obtain three composite fuel samples for each fuel type according to the procedures in paragraph (c)(1) or (2) of this section.

(1) If sampling from a belt (or screw) feeder, collect fuel samples according to paragraphs (c)(1)(i) and (ii) of this section.

(i) Stop the belt and withdraw a 6-inch wide sample from the full cross-section of the stopped belt to obtain a minimum two pounds of sample. You must collect all the material (fines and coarse) in the full cross-section. You must transfer the sample to a clean plastic bag.

(ii) Each composite sample will consist of a minimum of three samples collected at approximately equal 1-hour intervals during the testing period.

(2) If sampling from a fuel pile or truck, you must collect fuel samples according to paragraphs (c)(2)(i) through (iii) of this section.

(i) For each composite sample, you must select a minimum of five sampling locations uniformly spaced over the surface of the pile.

(ii) At each sampling site, you must dig into the pile to a depth of 18 inches. You must insert a clean flat square shovel into the hole and withdraw a sample, making sure that large pieces do not fall off during sampling.

(iii) You must transfer all samples to a clean plastic bag for further processing.

(d) You must prepare each composite sample according to the procedures in paragraphs (d)(1) through (7) of this section.

(1) You must thoroughly mix and pour the entire composite sample over a clean plastic sheet.

(2) You must break sample pieces larger than 3 inches into smaller sizes.

(3) You must make a pie shape with the entire composite sample and subdivide it into four equal parts.

(4) You must separate one of the quarter samples as the first subset.

(5) If this subset is too large for grinding, you must repeat the procedure in paragraph (d)(3) of this section with the quarter sample and obtain a one-quarter subset from this sample.

(6) You must grind the sample in a mill.

(7) You must use the procedure in paragraph (d)(3) of this section to obtain a one-quarter subsample for analysis. If the quarter sample is too large, subdivide it further using the same procedure.

(e) You must determine the concentration of pollutants in the fuel (Hg, HAP metals, and/or chlorine) in units of lb/MMBtu of each composite sample for each fuel type according to the procedures in Table 6 to this subpart.

§ 63.10009 May I use emission averaging to comply with this subpart?

(a) As an alternative to meeting the requirements of § 63.9991 for PM, HF, HCl, non-Hg HAP metals, or Hg on an EGU-specific basis, if you have more than one existing EGU in the same subcategory located at one or more contiguous properties, belonging to a single major industrial grouping, which are under common control of the same person (or persons under common control), you may demonstrate compliance by emission averaging among the existing EGUs in the same subcategory, if your averaged emissions for such EGUs are equal to or less than the applicable emission limit, according to the procedures in this section.

(b) Separate stack requirements. For a group of two or more existing EGUs in the same subcategory that each vent to a separate stack, you may average PM, HF, HCl, non-Hg HAP metals, or Hg emissions to demonstrate compliance with the limits in Table 2 to this subpart if you satisfy the requirements in paragraphs (c), (d), (e), (f), and (g) of this section.

(c) For each existing EGU in the averaging group, the emission rate achieved during the initial compliance test for the HAP being averaged must not exceed the emission level that was being achieved on [*THE DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* ***FEDERAL REGISTER***] or the control technology employed during the initial compliance test must not be less effective for the HAP being averaged than the control technology employed on [*THE DATE 30 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE* ***FEDERAL REGISTER***].

(d) The averaged emissions rate from the existing EGUs participating in the emissions averaging option must be in compliance with the limits in Table 2 to this subpart at all times following the compliance date specified in § 63.9984.

(e) You must demonstrate initial compliance according to paragraph (e)(1) or (2) of this section using the maximum normal operating load of each EGU and the results of the initial performance tests or fuel analysis.

(1) You must use Equation 1 of this section to demonstrate that the PM, HF, SO_2, HCl, non-Hg HAP metals, or Hg emissions from all existing units participating in the emissions averaging option do not exceed the emission limits in Table 2 to this subpart.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Hm}) \div \sum_{i=1}^{n}\text{Hm} \qquad \text{(Eq. 1)}$$

Where:

Ave Weighted Emissions = Average weighted emissions for PM, HF, SO_2, HCl, non-Hg HAP metals, or Hg, in units of lb/MMBtu (lb/TBtu for Hg) of heat input.

Er = Emissions rate (as determined during the most recent performance test, according to Table 5 to this subpart) for PM, HF, HCl, non-Hg HAP metals, or Hg or by fuel analysis for Cl, F, non-Hg HAP metals, or Hg as calculated by the applicable equation in § 63.10011(c) for unit, i, for PM, HF, SO_2, HCl, non-Hg HAP metals, or Hg, in units of lb/MMBtu (lb/TBtu for Hg) of heat input.

Hm = Maximum rated heat input capacity of unit, i, in units of million Btu per hour.

n = Number of units participating in the emissions averaging option.

(2) If you are not capable of monitoring heat input, and the EGU generates steam for purposes other than generating electricity, you may use Equation 2 of this section as an alternative to using Equation 1 of this section to demonstrate that the PM, HF, HCl, non-Hg HAP metals, and Hg emissions from all existing units participating in the emissions averaging option do not exceed the emission limits in Table 2 to this subpart.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Sm} \times \text{Cfi}) \div \sum_{i=1}^{n}\text{Sm} \times \text{Cfi} \qquad \text{(Eq. 2)}$$

Where:

Ave Weighted Emissions = Average weighted emission level for PM, HF, HCl, non-Hg HAP metals, or Hg, in units of lb/MMBtu (lb/TBtu for Hg) of heat input.

Er = Emissions rate (as determined during the most recent performance test, according to Table 5 to this subpart) for PM, HF, HCl, non-Hg HAP metals, or Hg or by fuel analysis for Cl, F, non-Hg HAP metals, or Hg as calculated by the applicable equation in § 63.10011(c)) for unit, i, for PM, HCl, HF, HAP metals, or Hg, in units of lb/MMBtu (lb/TBtu for Hg) of heat input.

Sm = Maximum steam generation by unit, i, in units of pounds.

Cf = Conversion factor, calculated from the most recent compliance test, in units of million Btu of heat input per pounds of steam generated for unit, i.

n = Number of units participating in the emissions averaging option.

(f) You must demonstrate compliance on a monthly basis determined at the end of every month (12 times per year) according to paragraphs (f)(1) through (3) of this section. The first monthly period begins on the compliance date specified in § 63.9984.

(1) For each calendar month, you must use Equation 3 of this section to calculate the monthly average weighted emission rate using the actual heat capacity for each existing unit participating in the emissions averaging option.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Hb}) \div \sum_{i=1}^{n}\text{Hb} \qquad \text{(Eq. 3)}$$

Where:

Ave Weighted Emissions = Monthly average weighted emission level for PM, HCl, HF, non-Hg HAP metals, or Hg, in units of lb/MMBtu (lb/TBtu for Hg) of heat input.

Er = Emissions rate, (as determined during the most recent performance test, according to Table 5 to this subpart) for PM, HCl, HF, non-Hg HAP metals, or Hg or by fuel analysis for Cl, F, non-Hg HAP metals, or Hg as calculated by the applicable equation in § 63.10011(c)) for unit, i, for PM, HCl, HF, non-Hg HAP metals, or Hg, in units of lb/MMBtu (lb/TBtu for Hg) of heat input.

Hb = The average heat input for each calendar month of EGU, i, in units of million Btu.

n = Number of units participating in the emissions averaging option.

(2) If you are not capable of monitoring heat input, you may use Equation 4 of this section as an alternative to using Equation 3 of this section to calculate the monthly weighted emission rate using the actual steam generation from the units participating in the emissions averaging option.

$$\text{Ave Weighted Emissions} = \sum_{i=1}^{n}(\text{Er} \times \text{Sa} \times \text{Cfi}) \div \sum_{i=1}^{n}\text{Sa} \times \text{Cfi} \qquad \text{(Eq. 4)}$$

Where:

Ave Weighted Emissions = Monthly average weighted emission level for PM, HCl, HF, HAP metals, or Hg, in units of lb/MMBtu (lb/TBtu for Hg) of heat input.

Er = Emissions rate, (as determined during the most recent performance test, as calculated according to Table 5 to this subpart) for PM, HCl, HF, non-Hg HAP metals, or Hg or by fuel analysis for Cl, F, and non-Hg HAP metals, or Hg as calculated by the applicable equation in § 63.10011(c)) for unit, i, for PM, HCl, HF, non-Hg HAP metals, or Hg, in units of lb/MMBtu (lb/TBtu for Hg) of heat input.

Sa = Actual steam generation for each calendar month by EGU, i, in units of pounds.

Cf = Conversion factor, as calculated during the most recent compliance test, in units of million Btu of heat input per pounds of steam generated for unit, i.

n = Number of units participating in the emissions averaging option.

(3) Until 12 monthly weighted average emission rates have been accumulated, calculate and report only the monthly

average weighted emission rate determined under paragraph (f)(1) or (2) of this section. After 12 monthly weighted average emission rates have been accumulated, for each subsequent calendar month, use Equation 5 of this section to calculate the 12-month rolling average of the monthly weighted average emission rates for the current month and the previous 11 months.

$$Eavg = \sum_{i=1}^{n} ERi \div 12 \qquad \text{(Eq. 5)}$$

Where:

Eavg = 12-month rolling average emissions rate, (lb/MMBtu heat input; lb/TBtu for Hg).

ERi = Monthly weighted average, for month "i" (lb/MMBtu (lb/TBtu for Hg) heat input)(as calculated by (f)(1) or (2)).

(g) You must develop, and submit to the applicable regulatory authority for review and approval upon request, an implementation plan for emission averaging according to the following procedures and requirements in paragraphs (g)(1) through (4) of this section.

(1) You must submit the implementation plan no later than 180 days before the date that the facility intends to demonstrate compliance using the emission averaging option.

(2) You must include the information contained in paragraphs (g)(2)(i) through (vii) of this section in your implementation plan for all emission sources included in an emissions average:

(i) The identification of all existing EGUs in the averaging group, including for each either the applicable HAP emission level or the control technology installed as of [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and the date on which you are requesting emission averaging to commence;

(ii) The process parameter (heat input or steam generated) that will be monitored for each averaging group;

(iii) The specific control technology or pollution prevention measure to be used for each emission EGU in the averaging group and the date of its installation or application. If the pollution prevention measure reduces or eliminates emissions from multiple EGUs, the owner or operator must identify each EGU;

(iv) The test plan for the measurement of PM, HF, HCl, individual or total non-Hg HAP metals, or Hg emissions in accordance with the requirements in § 63.10007;

(v) The operating parameters to be monitored for each control system or device consistent with § 63.9991 and Table 4, and a description of how the operating limits will be determined;

(vi) If you request to monitor an alternative operating parameter pursuant to § 63.10010, you must also include:

(A) A description of the parameter(s) to be monitored and an explanation of the criteria used to select the parameter(s); and

(B) A description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation of the control device; the frequency and content of monitoring, reporting, and recordkeeping requirements; and a demonstration, to the satisfaction of the applicable regulatory authority, that the proposed monitoring frequency is sufficient to represent control device operating conditions; and

(vii) A demonstration that compliance with each of the applicable emission limit(s) will be achieved under representative operating conditions.

(3) The regulatory authority shall review and approve or disapprove the plan according to the following criteria:

(i) Whether the content of the plan includes all of the information specified in paragraph (g)(2) of this section; and

(ii) Whether the plan presents sufficient information to determine that compliance will be achieved and maintained.

(4) The applicable regulatory authority shall not approve an emission averaging implementation plan containing any of the following provisions:

(i) Any averaging between emissions of differing pollutants or between differing sources; or

(ii) The inclusion of any emission source other than an existing unit in the same subcategory.

(h) *Common stack requirements.* For a group of two or more existing affected units, each of which vents through a single common stack, you may average PM, HF, HCl, individual or total non-Hg HAP metals, or Hg emissions to demonstrate compliance with the limits in Table 2 to this subpart if you satisfy the requirements in paragraph (i) or (j) of this section.

(i) For a group of two or more existing units in the same subcategory, each of which vents through a common emissions control system to a common stack, that does not receive emissions from units in other subcategories or categories, you may treat such averaging group as a single existing unit for purposes of this subpart and comply with the requirements of this subpart as if the group were a single unit.

(j) For all other groups of units subject to paragraph (h) of this section, the owner or operator may elect to:

(1) Conduct performance tests according to procedures specified in § 63.10007 in the common stack if affected units from other subcategories vent to the common stack. The emission limits that the group must comply with are determined by the use of equation 6.

$$En = \sum_{i=1}^{n} (ELi \times Hi) \div \sum_{i=1}^{n} Hi \qquad \text{(Eq. 6)}$$

Where:

En = HAP emissions limit, lb/MMBtu (lb/TBtu for Hg), ppm, or ng/dscm.

ELi = Appropriate emissions limit from Table 2 to this subpart for unit i, in units of lb/MMBtu (lb/TBtu for Hg), ppm, or ng/dscm.

Hi = Heat input from unit i, MMBtu.

n = Number of units.

(2) Conduct performance tests according to procedures specified in § 63.10007 in the common stack. If affected units from nonaffected units vent to the common stack,the units from nonaffected units must be shut down or vented to a different stack during the performance test or each affected and each nonaffected unit must meet the most stringent emissions limit; and

(3) Meet the applicable operating limit specified in § 63.10021 and Table 8 to this subpart for each emissions control system (except that, if each unit venting to the common stack has an applicable opacity operating limit, then a single continuous opacity monitoring system may be located in the common stack instead of in each duct to the common stack).

(k) Combination requirements. The common stack of a group of two or more existing EGUs in the same subcategory subject to paragraph (h) of this section may be treated as a single stack for purposes of paragraph (b) of this section and included in an emissions averaging group subject to paragraph (b) of this section.

§ 63.10010 What are my monitoring, installation, operation, and maintenance requirements?

(a) In some cases, existing affected units may exhaust through a common stack configuration or may include a bypass stack. Emission monitoring system installation provisions for possible stack configurations are as follows.

(1) *Single Unit-Single Stack Configuration.* For an affected unit that exhausts to the atmosphere through a single, dedicated stack, the owner or operator shall install CEMS and sorbent trap monitoring systems in accordance

with the applicable performance specification or Appendix A to this subpart.

(2) *Unit Utilizing Common Stack with Other Affected Unit(s).* When an affected unit utilizes a common stack with one or more other affected units, but no non-affected units, the owner or operator shall either:

(i) Install CEMS and sorbent trap monitoring systems described in this section in the duct to the common stack from each unit; or

(ii) Install CEMS and sorbent trap monitoring systems described in this section in the common stack.

(3) *Unit Utilizing Common Stack with Non-affected Units.* When one or more affected units shares a common stack with one or more non-affected units, the owner or operator shall either:

(i) Install CEMS and sorbent trap monitoring systems described in this section in the duct to the common stack from each affected unit; or

(ii) Install CEMS and sorbent trap monitoring systems described in this section in the common stack and attribute all of the emissions measured at the common stack to the affected unit(s).

(4) *Unit with a Main Stack and a Bypass Stack.* If the exhaust configuration of an affected unit consists of a main stack and a bypass stack, the owner and operator shall install CEMS and the monitoring systems described in paragraph 2.1 of this section on both the main stack and the bypass stack.

(5) *Unit with Multiple Stack or Duct Configuration.* If the flue gases from an affected unit either: are discharged to the atmosphere through more than one stack; or are fed into a single stack through two or more ducts and the owner or operator chooses to monitor in the ducts rather than in the stack, the owner or operator shall either:

(i) Install CEMS and sorbent trap monitoring systems described in this section in each of the multiple stacks; or

(ii) Install CEMS and sorbent trap monitoring systems described in this section in each of the ducts that feed into the stack.

(b) If you use an oxygen (O_2) or carbon dioxide (CO_2) continuous emissions monitoring system (CEMS), install, operate, and maintain a CEMS for oxygen or carbon dioxide according to the procedures in paragraphs (b)(1) through (5) of this section by the compliance date specified in § 63.9984. The oxygen or carbon dioxide shall be monitored at the same location as the other pollutant CEMS, i.e., at the outlet of the EGU. Alternatively, an owner or operator may install, certify, maintain, operate and quality assure the data from an O_2 or CO_2 CEMS according to Appendix A of this subpart in lieu of the procedures in paragraphs (a)(1) through (a)(3) of this section.

(1) Install, operate, and maintain the O_2 or CO_2 CEMS according to the applicable procedures under Performance Specification (PS) 3 of 40 CFR part 60, Appendix B; and according to the applicable procedures under Quality Assurance Procedure 1 of 40 CFR part 60, Appendix F; and according to the site-specific monitoring plan developed according to § 63.10000(d).

(2) Conduct a performance evaluation of the CEMS according to the requirements in § 63.8 and according to PS 3 of 40 CFR part 60, Appendix B.

(3) Design and operate the CEMS to complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) Reduce the CEMS data as specified in § 63.8(g)(2) and (4).

(5) Consistent with § 63.10020, calculate and record a 30 boiler operating day rolling average emissions rate on a daily basis. Daily, calculate a new 30 boiler operating day rolling average emissions rate as the average of all of the hourly oxygen emissions data for the preceding 30 boiler operating days.

(c) If you use an HCl CEMS, install, operate, and maintain a CEMS for HCl according to the procedures in paragraphs (c)(1) through (5) of this section by the compliance date specified in § 63.9984. The HCl shall be monitored at the outlet of the EGU.

(1) Install, operate, and maintain the CEMS according to the applicable procedures under Performance Specification (PS) 15 or 6 of 40 CFR part 60, Appendix B; and according to the applicable procedures under Quality Assurance Procedure 1 of 40 CFR part 60, Appendix F; and according to the site-specific monitoring plan developed according to § 63.10000(d).

(2) Conduct a performance evaluation of the CEMS according to the requirements in § 63.8 and according to PS 15 or 6 of 40 CFR part 60, Appendix B.

(3) Design and operate the CEMS to complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) Reduce the CEMS data as specified in § 63.8(g)(2) and (4).

(5) Consistent with § 63.10020, calculate and record a 30 boiler operating day rolling average emissions rate on a daily basis. Daily, calculate a new 30 boiler operating day rolling average emissions rate as the average of all of the hourly HCl emissions data for the preceding 30 boiler operating days.

(d) If you use an HF CEMS, install, operate, and maintain a CEMS for HF according to the procedures in paragraphs (d)(1) through (5) of this section by the compliance date specified in § 63.9984. The HF shall be monitored at the outlet of the EGU.

(1) Install, operate, and maintain the CEMS according to the applicable procedures under Performance Specification (PS) 15 of 40 CFR part 60, Appendix B; and according to the applicable procedures under Quality Assurance Procedure 1 of 40 CFR part 60, Appendix F; and according to the site-specific monitoring plan developed according to § 63.10000(d).

(2) Conduct a performance evaluation of the CEMS according to the requirements in § 63.8 and according to PS 15 or 6 of 40 CFR part 60, Appendix B.

(3) Design and operate the CEMS to complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) Reduce the CEMS data as specified in § 63.8(g)(2) and (4).

(5) Consistent with § 63.10020, calculate and record a 30 boiler operating day rolling average emissions rate on a daily basis. Daily, calculate a new 30 boiler operating day rolling average emissions rate as the average of all of the hourly HF emissions data for the preceding 30 boiler operating days.

(e) If you use an SO_2 CEMS, install, operate, and maintain a CEMS for SO_2 according to the procedures in paragraphs (e)(1) through (5) of this section by the compliance date specified in § 63.9984. The SO_2 shall be monitored at the outlet of the EGU. Alternatively, for an affected source that is also subject to the SO_2 monitoring requirements of Part 75 of this chapter, the or operator may install, certify, maintain, operate and quality assure the data from an SO_2 CEMS according to Part 75 of this chapter in lieu of the procedures in paragraphs (g)(1) through (g)(3) of this section with the additional provisions of paragraph (g)(6).

(1) Install, operate, and maintain the CEMS according to the applicable procedures under Performance Specification (PS) 2 of 40 CFR part 60, Appendix B; and according to the applicable procedures under Quality Assurance Procedure 1 of 40 CFR part 60, Appendix F; and according to the site-specific monitoring plan developed according to § 63.10000(d).

(2) Conduct a performance evaluation of the CEMS according to the

requirements in § 63.8 and according to PS 2 or 6 of 40 CFR part 60, Appendix B.

(3) Design and operate the CEMS to complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) Reduce the CEMS data as specified in § 63.8(g)(2) and (4).

(5) Consistent with § 63.10020, calculate and record a 30 boiler operating day rolling average emissions rate on a daily basis. Daily, calculate a new 30 boiler operating day rolling average emissions rate is calculated as the average of all of the hourly SO_2 emissions data for the preceding 30 boiler operating days.

(6) When electing to use a Part 75 certified SO_2 CEMS to meet the requirements of this subpart, you must additionally meet the provisions listed in paragraphs (6)(i) through (6)(iii) below.

(i) You must perform the 7-day calibration error test required in appendix A to Part 75 on the SO_2 CEMS whether or not it has a span of 50 ppm or less.

(ii) You must perform the linearity check test required in appendix A to Part 75 on the SO_2 CEMS whether or not it has a span of 30 ppm or less.

(iii) The initial and quarterly linearity checks required under appendix A and appendix B of Part 75 must include a calibration gas (at a fourth level, if necessary) nominally at a concentration level equivalent to the applicable emission limit.

(f) If you use a Hg CEMS or a sorbent trap monitoring system for Hg, install, operate, and maintain the monitoring system in accordance with Appendix A to this subpart.

(g) If you use a PM CEMS, install, operate, and maintain a CEMS for PM according to the procedures in paragraphs (g)(1) through (6) of this section by the compliance date specified in § 63.9984. The PM shall be monitored at the outlet of the EGU.

(1) Install, operate, and maintain according to the applicable procedures under Performance Specification (PS) 11 of 40 CFR part 60, Appendix B; and according to the applicable procedures under Quality Assurance Procedure 2 of 40 CFR part 60, Appendix F; and according to the site-specific monitoring plan developed according to § 63.10000(d).

(2) Conduct a performance evaluation of the CEMS according to the requirements in § 63.8 and according to PS 11 of 40 CFR part 60, Appendix B.

(3) Design and operate the CEMS to complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.

(4) Reduce the CEMS data as specified in § 63.8(g)(2) and (4).

(5) Consistent with § 63.10020, calculate and record a 30 boiler operating-day rolling average emissions rate on a daily basis. Daily, calculate a new 30 boiler operating day rolling average emissions rate is calculated as the average of all of the hourly particulate emissions data for the preceding 30 boiler operating days.

(h) If you are required to install a continuous parameter monitoring system (CPMS) as specified in Table 5 of this subpart, you must install, operate, and maintain each CPMS according to the requirements in paragraphs (h)(1) through (3) of this section by the compliance date specified in § 63.9984.

(1) Install, operate, and maintain each CPMS according to the procedures in your approved site-specific monitoring plan developed in accordance with § 63.10000(d) of this subpart and the design criteria and quality assurance and quality control procedures specified in paragraphs (h)(1) through (3) of this section. You may request approval of monitoring system quality assurance and quality control procedures alternative to those specified in paragraphs (h)(1) through (3) of this section in your site-specific monitoring plan.

(2) Design and operate the CPMS to collect and record data measurements at least once every 15 minutes (see also § 63.10020), to reduce the measured values to a hourly averages or other appropriate period (e.g., instantaneous alarms) for calculating operating values in terms of the applicable averaging period, and to meet the specific CPMS requirements given in (i) through (v) of this section.

(i) If you have an operating limit that requires the use of a flow monitoring system, you must meet the requirements in (i)(A) through (D) of this section.

(A) Install the flow sensor and other necessary equipment in a position that provides a representative flow.

(B) Use a flow sensor with a measurement sensitivity of no greater than 2 percent of the expected flow rate.

(C) Minimize the effects of swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(D) Conduct a flow monitoring system performance evaluation in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(ii) If you have an operating limit that requires the use of a pressure monitoring system, you must meet the requirements in (ii)(A) through (F) of this section.

(A) Install the pressure sensor(s) in a position that provides a representative measurement of the pressure (e.g., PM scrubber pressure drop).

(B) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(C) Use a pressure sensor with a minimum tolerance of 1.27 centimeters of water or a minimum tolerance of 1 percent of the pressure monitoring system operating range, whichever is less.

(D) Perform checks at least once each boiler operating day to ensure pressure measurements are not obstructed (e.g., check for pressure tap pluggage daily).

(E) Conduct a performance evaluation of the pressure measurement monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(F) If at any time the measured pressure exceeds the manufacturer's specified maximum operating pressure range, conduct a performance evaluation of the pressure monitoring system in accordance with your monitoring plan and confirm that the pressure monitoring system continues to meet the performance requirements in your monitoring plan. Alternatively, install and verify the operation of a new pressure sensor.

(iii) If you have an operating limit that requires a total secondary electric power monitoring system for an electrostatic precipitator (ESP), you must meet the requirements in (iii)(A) through (B) of this section.

(A) Install sensors to measure (secondary) voltage and current to the precipitator plates.

(B) Conduct a performance evaluation of the electric power monitoring system in accordance with your monitoring plan at the time of each performance test but no less frequently than annually.

(iv) If you have an operating limit that requires the use of a monitoring system to measure sorbent injection rate (e.g., weigh belt, weigh hopper, or hopper flow measurement device), you must meet the requirements in (iv)(A) through (B) of this section.

(A) Install each system in a position that provides a representative measurement of the total sorbent injection rate.

(B) Conduct a performance evaluation of the sorbent injection rate monitoring system in accordance with your

monitoring plan at the time of each performance test but no less frequently than annually.

(v) If you have an operating limit that requires the use of a fabric filter bag leak detection system to comply with the requirements of this subpart, you must install, calibrate, maintain, and continuously operate a bag leak detection system as specified in (v)(A) through (F) of this section.

(A) Install a bag leak detection sensor(s) in a position(s) that will be representative of the relative or absolute PM loadings for each exhaust stack, roof vent, or compartment (e.g., for a positive pressure fabric filter) of the fabric filter.

(B) Use a bag leak detection system certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter or less.

(C) Conduct a performance evaluation of the bag leak detection system in accordance with your monitoring plan and consistent with the guidance provided in EPA–454/R–98–015 (incorporated by reference, see § 63.14).

(D) Use a bag leak detection system equipped with a device to continuously record the output signal from the sensor.

(E) Use a bag leak detection system equipped with a system that will alert when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it can be detected and recognized easily by an operator.

(F) Where multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors.

(3) Conduct the CPMS equipment performance evaluations as specified in your site-specific monitoring plan.

§ 63.10011 How do I demonstrate initial compliance with the emission limits and work practice standards?

(a) You must demonstrate initial compliance with each emission limit that applies to you by conducting initial performance tests and fuel analyses and establishing operating limits, as applicable, according to § 63.10007, paragraph (c) of this section, and Tables 5 and 7 to this subpart.

(b) If you demonstrate compliance through performance testing, you must establish each site-specific operating limit in Table 4 to this subpart that applies to you according to the requirements in § 63.10007, Table 7 to this subpart, and paragraph (c)(6) of this section, as applicable. You must also conduct fuel analyses according to § 63.10008 and establish maximum fuel pollutant input levels according to paragraphs (c)(1) through (5) of this section, as applicable.

(1) You must establish the maximum chlorine fuel input (C_{input}) during the initial performance testing according to the procedures in paragraphs (c)(1)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in your EGU that has the highest content of chlorine.

(ii) During the performance testing for HCl, you must determine the fraction of the total heat input for each fuel type burned (Q_i) based on the fuel mixture that has the highest content of chlorine, and the average chlorine concentration of each fuel type burned (C_i).

(iii) You must establish a maximum chlorine input level using Equation 7 of this section.

$$\text{Clinput} = \sum_{i=1}^{n} (\text{Ci} \times \text{Qi}) \qquad \text{(Eq. 7)}$$

Where:

Clinput = Maximum amount of chlorine entering the EGU through fuels burned in units of lb/MMBtu.

Ci = Arithmetic average concentration of chlorine in fuel type, i, analyzed according to § 63.10008, in units of lb/MMBtu.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of chlorine. If you do not burn multiple fuel types during the performance testing, it is not necessary to determine the value of this term. Insert a value of "1" for Qi.

n = Number of different fuel types burned in your EGU for the mixture that has the highest content of chlorine.

(2) You must establish the maximum Hg fuel input level ($Mercury_{input}$) during the initial performance testing using the procedures in paragraphs (c)(3)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in your EGU that has the highest content of Hg.

(ii) During the compliance demonstration for Hg, you must determine the fraction of total heat input for each fuel burned (Q_i) based on the fuel mixture that has the highest content of Hg, and the average Hg concentration of each fuel type burned (HG_i).

(iii) You must establish a maximum Hg input level using Equation 8 of this section.

$$\text{Mercuryinput} = \sum_{i=1}^{n} (\text{HGi} \times \text{Qi}) \qquad \text{(Eq. 8)}$$

Where:

Mercuryinput = Maximum amount of Hg entering the EGU through fuels burned in units of lb/TBtu.

HGi = Arithmetic average concentration of Hg in fuel type, i, analyzed according to § 63.10008, in units of lb/TBtu.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest Hg content. If you do not burn multiple fuel types during the performance test, it is not necessary to determine the value of this term. Insert a value of "1" for Qi.

n = Number of different fuel types burned in your EGU for the mixture that has the highest content of Hg.

(3) You must establish the maximum non-Hg HAP metals fuel input level ($HAP\ metal_{input}$) during the initial performance testing using the procedures in paragraphs (c)(3)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in your EGU that has the highest content of non-Hg HAP metals.

(ii) During the compliance demonstration for non-Hg HAP metals, you must determine the fraction of total heat input for each fuel burned (Q_i) based on the fuel mixture that has the highest content of non-Hg HAP metals, and the average non-Hg HAP metals concentration of each fuel type burned ($HAP\ metal_i$).

(iii) You must establish a maximum non-Hg HAP metal input level using Equation 9 of this section.

$$\text{HAP metalinput} = \sum_{i=1}^{n} (\text{HAP metali} \times \text{Qi}) \qquad \text{(Eq. 9)}$$

Where:

HAP metalinput = Maximum amount of non-Hg HAP metals entering the EGU through fuels burned in units of lb/MMBtu.

HAP metali = Arithmetic average concentration of non-Hg HAP metals in fuel type, i, analyzed according to § 63.10008, in units of lb/MMBtu.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that

has the highest non-Hg HAP metal content. If you do not burn multiple fuel types during the performance test, it is not necessary to determine the value of this term. Insert a value of "1" for Qi.

n = Number of different fuel types burned in your EGU for the mixture that has the highest content of non-Hg HAP metals.

(4) You must establish the maximum fluorine fuel input (F_{input}) during the initial performance testing according to the procedures in paragraphs (c)(1)(i) through (iii) of this section.

(i) You must determine the fuel type or fuel mixture that you could burn in your EGU that has the highest content of fluorine.

(ii) During the performance testing for HF, you must determine the fraction of the total heat input for each fuel type burned (Q_i) based on the fuel mixture that has the highest content of fluorine, and the average fluorine concentration of each fuel type burned (F_i).

(iii) You must establish a maximum fluorine input level using Equation 10 of this section.

$$\text{Flinput} = \sum_{i=1}^{n} (\text{Fi} \times \text{Qi}) \qquad \text{(Eq. 10)}$$

Where:

Fl input = Maximum amount of fluorine entering the EGU through fuels burned in units of lb/MMBtu.

Fi = Arithmetic average concentration of fluorine in fuel type, i, analyzed according to § 63.10008, in units of lb/MMBtu.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of chlorine. If you do not burn multiple fuel types during the performance testing, it is not necessary to determine the value of this term. Insert a value of "1" for Qi.

n = Number of different fuel types burned in your EGU for the mixture that has the highest content of fluorine.

(6) You must establish parameter operating limits according to paragraphs (c)(4)(i) through (v) of this section.

(i) For a wet PM scrubber, you must establish the minimum liquid flow rate and pressure drop as defined in § 63.10042, as your operating limits during the three-run performance test. If you use a wet PM scrubber and you conduct separate performance tests for PM, non-Hg HAP metals, or Hg emissions, you must establish one set of minimum liquid flow rate and pressure drop operating limits. If you conduct multiple performance tests, you must set the minimum liquid flow rate and pressure drop operating limits at the highest minimum hourly average values established during the performance tests.

(ii) For a wet acid gas scrubber, you must establish the minimum liquid flow rate and pH as defined in § 63.10042, as your operating limits during the three-run performance test. If you use a wet acid gas scrubber and you conduct separate performance tests for HCl, HF, or SO_2 emissions, you must establish one set of minimum liquid flow rate and pH operating limits. If you conduct multiple performance tests, you must set the minimum liquid flow rate and pH operating limits at the highest minimum hourly average values established during the performance tests.

(iii) For an electrostatic precipitator, you must establish the minimum hourly average secondary voltage and secondary amperage and calculate the total secondary power input as measured during the three-run performance test and as defined in § 63.10042, as your operating limit.

(iv) For a dry scrubber or dry sorbent injection (DSI) system, you must establish the minimum hourly average sorbent injection rate for each sorbent, as measured during the three-run performance test and as defined in § 63.10042, as your operating.

(v) The operating limit for EGUs with fabric filters that choose to demonstrate continuous compliance through bag leak detection systems is that a bag leak detection system be installed according to the requirements in § 63.10010, and that the sum duration of bag leak detection system alarms does not exceed 5 percent of the process operating time during a 6-month period.

(c) If you elect to demonstrate compliance with an applicable emission limit through fuel analysis, you must conduct fuel analyses according to § 63.10008 and follow the procedures in paragraphs (c)(1) through (7) of this section.

(1) If you burn more than one fuel type, you must determine the fuel mixture you could burn in your EGU that would result in the maximum emission rates of the pollutants that you elect to demonstrate compliance through fuel analysis.

(2) You must determine the 90th percentile confidence level fuel pollutant concentration of the composite samples analyzed for each fuel type using the one-sided z-statistic test described in Equation 11 of this section.

$$\text{P90} = \text{mean} + (\text{SD} \times \text{t}) \qquad \text{(Eq. 11)}$$

Where:

P90 = 90th percentile confidence level pollutant concentration, in lb/MMBtu (lb/TBtu for Hg).

mean = Arithmetic average of the fuel pollutant concentration in the fuel samples analyzed according to § 63.10008, in units of lb/MMBtu (lb/TBtu for Hg).

SD = Standard deviation of the pollutant concentration in the fuel samples analyzed according to § 63.10008, in units of lb/MMBtu (lb/TBtu for Hg).

t = t distribution critical value for 90th percentile (0.1) probability for the appropriate degrees of freedom (number of samples minus one) as obtained from a Distribution Critical Value Table.

(3) To demonstrate compliance with the applicable emission limit for HCl, the HCl emission rate that you calculate for your EGU using Equation 12 of this section must not exceed the applicable emission limit for HCl.

$$\text{HCl} = \sum_{i=1}^{n} (\text{Ci90} \times \text{Qi} \times 1.028) \qquad \text{(Eq. 12)}$$

Where:

HCl = HCl emissions rate from the EGU in units of lb/MMBtu.

Ci90 = 90th percentile confidence level concentration of chlorine in fuel type, i, in units of lb/MMBtu as calculated according to Equation 12 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of chlorine. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for Qi.

n = Number of different fuel types burned in your EGU for the mixture that has the highest content of chlorine.

1.028 = Molecular weight ratio of HCl to chlorine.

(4) To demonstrate compliance with the applicable emission limit for Hg, the Hg emissions rate that you calculate for your EGU using Equation 13 of this section must not exceed the applicable emission limit for Hg.

$$\text{Mercury} = \sum_{i=1}^{n} (\text{HGi90} \times \text{Qi}) \qquad \text{(Eq. 13)}$$

Where:

Mercury = Hg emissions rate from the EGU in units of lb/TBtu.

HGi90 = 90th percentile confidence level concentration of Hg in fuel, i, in units of lb/TBtu as calculated according to Equation 8 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest Hg content. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for Qi.

n = Number of different fuel types burned in your EGU for the mixture that has the highest Hg content.

(5) To demonstrate compliance with the applicable emission limit for non-Hg HAP metals, the non-Hg HAP metal emissions rate that you calculate for your EGU using Equation 14 of this

section must not exceed the applicable emissions limit for non-Hg HAP metals.

$$HAPmetals = \sum_{i=1}^{n} (HAPmetalsi90 \times Qi) \qquad (Eq.\ 14)$$

Where:

HAPmetals = Non-Hg HAP metals emission rate from the EGU in units of lb/MMBtu.

HAPmetalsi90 = 90th percentile confidence level concentration of non-Hg HAP metals in fuel, i, in units of lb/MMBtu as calculated according to Equation 9 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest non-Hg HAP metals content. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for Qi.

n = Number of different fuel types burned in your EGU for the mixture that has the highest non-Hg HAP metals content.

(6) To demonstrate compliance with the applicable emission limit for HF, the HF emissions rate that you calculate for your EGU using Equation 15 of this section must not exceed the applicable emission limit for HF.

$$HF = \sum_{i=1}^{n} (Fi90 \times Qi \times 1.053) \qquad (Eq.\ 15)$$

Where:

HF = HF emissions rate from the EGU in units of lb/MMBtu.

Fi90 = 90th percentile confidence level concentration of fluorine in fuel type, i, in units of lb/MMBtu as calculated according to Equation 7 of this section.

Qi = Fraction of total heat input from fuel type, i, based on the fuel mixture that has the highest content of fluorine. If you do not burn multiple fuel types, it is not necessary to determine the value of this term. Insert a value of "1" for Qi.

n = Number of different fuel types burned in your EGU for the mixture that has the highest content of fluorine.

1.053 = Molecular weight ratio of HF to fluorine.

(d) For units combusting coal or solid oil-derived fuel and electing to use PM as a surrogate for non-Hg HAP metals, you must install, certify, and operate PM CEMS in accordance with Performance Specification (PS) 11 in Appendix B to 40 CFR part 60, and to perform periodic, ongoing quality assurance (QA) testing of the CEMS according to QA Procedure 2 in Appendix F to 40 CFR Part 60. You must determine an operating limit (PM concentration in mg/dscm) during performance testing for initial PM compliance. The operating limit will be the average of the PM filterable results of the three Method 5 performance test runs. To determine continuous compliance, the hourly average PM concentrations will be averaged on a rolling 30 boiler operating day basis. Each 30 boiler operating day average would have to meet the PM operating limit.

(e) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.10030(e).

(f) If you are a LEE, the results of your initial performance test demonstrate your initial compliance.

Continuous Compliance Requirements

§ 63.10020 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section and the site-specific monitoring plan required by § 63.10000(d).

(b) You must operate the monitoring system and collect data at all required intervals at all times that the affected EGU is operating, except for periods of monitoring system malfunctions or out-of-control periods (see § 63.8(c)(7) of this part), and required monitoring system quality assurance or quality control activities, including, as applicable, calibration checks and required zero and span adjustments. 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. You are required to affect monitoring system repairs in response to monitoring system malfunctions and to return the monitoring system to operation as expeditiously as practicable.

(c) You may not use data recorded during monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, or required monitoring system quality assurance or control activities in calculations used to report emissions or operating levels. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(d) Except for periods of monitoring system malfunctions or out-of-control periods, repairs associated with monitoring system malfunctions or out-of-control periods, and required monitoring system quality assurance or quality control activities including, as applicable, calibration checks and required zero and span adjustments), failure to collect required data is a deviation of the monitoring requirements.

§ 63.10021 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit, operating limit, and work practice standard in Tables 1 through 4 to this subpart that applies to you according to the methods specified in Table 8 to this subpart and paragraphs (a)(1) through (17) of this section.

(1) Following the date on which the initial performance test is completed or is required to be completed under §§ 63.7 and 63.10005, whichever date comes first, you must not operate above any of the applicable maximum operating limits or below any of the applicable minimum operating limits listed in Table 4 to this subpart at any time. Operation above the established maximum or below the established minimum operating limits shall constitute a deviation of established operating limits. Operating limits must be confirmed or reestablished during performance tests.

(2) As specified in § 63.10031(c), you must keep records of the type and amount of all fuels burned in each EGU during the reporting period to demonstrate that all fuel types and mixtures of fuels burned would either result in lower emissions of HCl, HF, SO_2, non-Hg HAP metals, or Hg, than the applicable emission limit for each pollutant (if you demonstrate compliance through fuel analysis), or result in lower fuel input of chlorine, fluorine, sulfur, non-Hg HAP metals, or Hg than the maximum values calculated during the last performance tests (if you demonstrate compliance through performance stack testing).

(3) If you demonstrate compliance with an applicable HCl emissions limit through fuel analysis and you plan to burn a new type of fuel, you must recalculate the HCl emissions rate using Equation 15 of § 63.10011 according to paragraphs (a)(3)(i) through (iii) of this section.

(i) You must determine the chlorine concentration for any new fuel type in units of lb/MMBtu, based on supplier data or your own fuel analysis, according to the provisions in your site-specific fuel analysis plan developed according to § 63.10008(b).

(ii) You must determine the new mixture of fuels that will have the highest content of chlorine.

(iii) Recalculate the HCl emissions rate from your EGU under these new conditions using Equation 15 of § 63.10011. The recalculated HCl emissions rate must be less than the applicable emission limit.

(4) If you demonstrate compliance with an applicable HCl emissions limit through performance testing and you plan to burn a new type of fuel or a new mixture of fuels, you must recalculate the maximum chlorine input using Equation 7 of § 63.10011. If the results of recalculating the maximum chlorine input using Equation 7 of § 63.10011 are higher than the maximum chlorine input level established during the previous performance test, then you must conduct a new performance test within 60 days of burning the new fuel type or fuel mixture according to the procedures in § 63.10007 to demonstrate that the HCl emissions do not exceed the emissions limit. You must also establish new operating limits based on this performance test according to the procedures in § 63.10011(b).

(5) If you are a liquid oil-fired EGU and demonstrate compliance with an applicable individual Hg emissions limit (rather than the total HAP metal emission limit) through fuel analysis, and you plan to burn a new type of fuel, you must recalculate the Hg emissions rate using Equation 11 of § 63.10011 according to the procedures specified in paragraphs (a)(5)(i) through (iii) of this section.

(i) You must determine the Hg concentration for any new fuel type in units of lb/TBtu, based on supplier data or your own fuel analysis, according to the provisions in your site-specific fuel analysis plan developed according to § 63.10008(b).

(ii) You must determine the new mixture of fuels that will have the highest content of Hg.

(iii) Recalculate the Hg emissions rate from your EGU under these new conditions using Equation 11 of § 63.10011. The recalculated Hg emission rate must be less than the applicable emission limit.

(6) If you demonstrate compliance with an applicable Hg emissions limit through performance testing, and you plan to burn a new type of fuel or a new mixture of fuels, you must recalculate the maximum Hg input using Equation 8 of § 63.10011. If the results of recalculating the maximum Hg input using Equation 8 of § 63.10011 are higher than the maximum Hg input level established during the previous performance test, then you must conduct a new performance test within 60 days of burning the new fuel type or fuel mixture according to the procedures in § 63.10007 to demonstrate that the Hg emissions do not exceed the emissions limit. You must also establish new operating limits based on this performance test according to the procedures in § 63.10011(b).

(7) If you are a liquid oil-fired EGU and demonstrate compliance with an applicable HAP metals emission limit through fuel analysis, and you plan to burn a new type of fuel, you must recalculate the HAP metals emission rate using Equation 14 of § 63.10011 according to the procedures specified in paragraphs (a)(7)(i) through (iii) of this section.

(i) You must determine the HAP metals concentration for any new fuel type in units of lb/MMBtu, based on supplier data or your own fuel analysis, according to the provisions in your site-specific fuel analysis plan developed according to § 63.10008(b).

(ii) You must determine the new mixture of fuels that will have the highest content of HAP metals.

(iii) Recalculate the HAP metals emission rate from your EGU under these new conditions using Equation 14 of § 63.10011. The recalculated HAP metals emission rate must be less than the applicable emissions limit.

(8) If you demonstrate compliance with an applicable HAP metals emissions limit through performance testing, and you plan to burn a new type of fuel or a new mixture of fuels, you must recalculate the maximum HAP metals input using Equation 9 of § 63.10011. If the results of recalculating the maximum Hg input using Equation 9 of § 63.10011 are higher than the maximum HAP metals input level established during the previous performance test, then you must conduct a new performance test within 60 days of burning the new fuel type or fuel mixture according to the procedures in § 63.10007 to demonstrate that the HAP metal emissions do not exceed the emissions limit. You must also establish new operating limits based on this performance test according to the procedures in § 63.10011(b).

(9) If your unit is controlled with a fabric filter, and you demonstrate continuous compliance using a bag leak detection system, you must initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions as soon as practical, and operate and maintain the fabric filter system such that the sum duration of alarms does not exceed 5 percent of the process operating time during a 6-month period. You must also keep records of the date, time, and duration of each alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of the operating time during each 6-month period that the alarm sounds. In calculating this operating time percentage, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken to initiate corrective action.

(10) If you are required to install a CEMS according to § 63.10010(a), then you must meet the requirements in paragraphs (a)(10)(i) through (iii) of this section.

(i) You must continuously monitor oxygen according to §§ 63.10010(a) and 63.10020.

(ii) Keep records of oxygen levels according to § 63.10032(b).

(11) The owner or operator of an affected source using a CEMS measuring PM emissions to meet requirements of this subpart shall install, certify, operate, and maintain the CEMS as specified in paragraphs (a)(11)(i) through (iv) of this section.

(i) The owner or operator shall conduct a performance evaluation of the CEMS according to the applicable requirements of § 60.13 of 40 CFR, Performance Specification 11 in Appendix B of 40 CFR part 60, and procedure 2 in Appendix F of 40 CFR part 60.

(ii) During each PM correlation testing run of the CEMS required by Performance Specification 11 in Appendix B of 40 CFR part 60, PM and O_2 (or CO_2) data shall be collected concurrently (or within a 30- to 60-minute period) by both the CEMS and conducting performance tests using

Method 5 or 5D of Appendix A–3 of 40 CFR part 60.

(iii) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 2 in Appendix F of this chapter. Relative Response Audits must be performed annually and Response Correlation Audits must be performed every 3 years.

(iv) 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 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 EPA's WebFIRE database.

(v) Within 60 days after the date of completing each CEMS performance evaluation test, as defined in § 63.2 and required by this subpart, you must submit the relative accuracy test audit data electronically into EPA's Central Data Exchange by using the Electronic Reporting Tool as mentioned in paragraph (11)(iv) of this section. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(vi) All reports required by this subpart not subject to the requirements in paragraphs (11)(iv) and (v) 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 (11)(iv) and (v) of this section in paper format.

(12) The owner or operator of an affected source using a CEMS measuring HCl emissions to meet requirements of this subpart shall install, certify, operate, and maintain the CEMS as specified in paragraphs (a)(12)(i) through (iii) of this section.

(i) The owner or operator shall conduct a performance evaluation of the CEMS according to the applicable requirements of § 60.13 of 40 CFR, Performance Specifications 6 or 15 in Appendix B of 40 CFR part 60, and procedure 2 in Appendix F of 40 CFR part 60.

(ii) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 1 in Appendix F of 40 CFR part 60.

(13) The owner or operator of an affected source using a CEMS measuring SO_2 emissions to meet requirements of this subpart shall install, certify, operate, and maintain the CEMS as specified in paragraphs (a)(13)(i) through (iii) of this section.

(i) The owner or operator shall conduct a performance evaluation of the CEMS according to the applicable requirements of § 60.13 of 40 CFR part 60, Performance Specification 2 or 6 in Appendix B of 40 CFR part 60, and procedure 1 in Appendix F of 40 CFR part 60.

(ii) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 1 in Appendix F of 40 CFR part 60.

(14) The owner or operator of an affected source using a CEMS measuring Hg emissions to meet requirements of this subpart shall install, certify, operate, and maintain the CEMS as specified in paragraphs (a)(14)(i) through (iii) of this section.

(i) The owner or operator shall conduct a performance evaluation of the CEMS according to the applicable requirements of Appendix A of this subpart.

(ii) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with procedure 5 in Appendix F of 40 CFR part 60.

(15) As an alternative to measuring Hg emissions using Hg CEMS, the owner or operator of an affected source using a sorbent trap monitoring system to meet requirements of this subpart shall install, certify, operate, and maintain the sorbent trap monitoring system in accordance with Appendix A to this subpart.

(16) You must conduct a performance tune-up of the EGU to demonstrate continuous compliance as specified in paragraphs (a)(16)(i) through (a)(16)(vii) of this section.

(i) As applicable, inspect the burner, and clean or replace any components of the burner as necessary (you may delay the burner inspection until the next scheduled unit shutdown, but you must inspect each burner at least once every 18 months);

(ii) Inspect the flame pattern, as applicable, and make any adjustments to the burner necessary to optimize the flame pattern. The adjustment should be consistent with the manufacturer's specifications, if available;

(iii) Inspect the system controlling the air-to-fuel ratio, as applicable, and ensure that it is correctly calibrated and functioning properly;

(iv) Optimize total emissions of CO and NO_X. This optimization should be consistent with the manufacturer's specifications, if available;

(v) Measure the concentration in the effluent stream of CO and NO_X in ppm, by volume, and oxygen in volume percent, before and after the adjustments are made (measurements may be either on a dry or wet basis, as long as it is the same basis before and after the adjustments are made); and

(vi) Maintain on-site and submit, if requested by the Administrator, an annual report containing the information in paragraphs (a)(16)(vi)(A) through (C) of this section,

(A) The concentrations of CO and NO_X in the effluent stream in ppm by volume, and oxygen in volume percent, measured before and after the adjustments of the EGU;

(B) A description of any corrective actions taken as a part of the combustion adjustment; and

(C) The type and amount of fuel used over the 12 months prior to an adjustment, but only if the unit was physically and legally capable of using more than one type of fuel during that period.

(vii) After December 31, 2011, and within 60 days after the date of completing each performance tune-up conducted to demonstrate compliance with this subpart, you must submit a notice of completion of the performance tune-up to EPA by successfully submitting the data electronically into an EPA database.

(17) For LEEs, the results of your initial and subsequent emissions tests, along with records of your fuel analyses, demonstrate your continuous compliance and continued eligibility as a LEE.

(i) 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 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 EPA's WebFIRE database.

(ii) Within 60 days after the date of completing each CEMS performance evaluation test, as defined in 63.2 and required by this subpart, you must submit the relative accuracy test audit data electronically into EPA's Central Data Exchange by using the Electronic

Reporting Tool as mentioned in paragraph (17)(i) of this section. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(iii) All reports required by this subpart not subject to the requirements in paragraphs (17)(i) and (ii) 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 (17)(i) and (ii) of this section in paper format.

(b) You must report each instance in which you did not meet each emission limit and operating limit in Tables 1 through 4 to this subpart that apply to you. These instances are deviations from the emission limits in this subpart. These deviations must be reported according to the requirements in § 63.10031.

(c) Consistent with § 63.10010, § 63.10020, and your site-specific monitoring plan, you must determine the 3-hour rolling average of the CPMS data collected for all periods the process is operating.

§ 63.10022 How do I demonstrate continuous compliance under the emission averaging provision?

(a) Following the compliance date, the owner or operator must demonstrate compliance with this subpart on a continuous basis by meeting the requirements of paragraphs (a)(1) through (8) of this section.

(1) For each calendar month, demonstrate compliance with the average weighted emissions limit for the existing units participating in the emissions averaging option as determined in § 63.10009(f) and (g);

(2) For each existing unit participating in the emissions averaging option that is equipped with a wet scrubber for PM control, maintain the 3-hour average parameter values at or below the operating limits established during the most recent performance test;

(3) For each existing unit participating in the emissions averaging option that is equipped with a fabric filter but without PM CEMS, maintain the 3-hour average parameter values at or below the operating limits established during the most recent performance test;

(4) For each existing unit participating in the emissions averaging option that is equipped with dry sorbent injection, maintain the 3-hour average parameter values at or below the operating limits established during the most recent performance test;

(5) For each existing unit participating in the emissions averaging option that is equipped with an ESP, maintain the 3-hour average parameter values at or below the operating limits established during the most recent performance test;

(6) For each existing unit participating in the emissions averaging option that is equipped with an ESP, maintain the monthly fuel content values at or below the operating limits established during the most recent performance test;

(7) For each existing unit participating in the emissions averaging option that has an approved alternative operating plan, maintain the 3-hour average parameter values at or below the operating limits established in the most recent performance test.

(8) For each existing unit participating in the emissions averaging option venting to a common stack configuration containing affected units from other subcategories, maintain the appropriate operating limit for each unit as specified in Table 4 to this subpart that applies.

(b) Any instance where the owner or operator fails to comply with the continuous monitoring requirements in paragraphs (a)(1) through (8) of this section is a deviation.

Notification, Reports, and Records

§ 63.10030 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(e), (f)(4) and (6), and 63.9(b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you startup your affected source before [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must submit an Initial Notification not later than 120 days after [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(c) As specified in § 63.9(b)(4) and (b)(5), if you startup your new or reconstructed affected source on or after [DATE 60 DAYS AFTER PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], you must submit an Initial Notification not later than 15 days after the actual date of startup of the affected source.

(d) If you are required to conduct a performance test you must submit a Notification of Intent to conduct a performance test at least 30 days before the performance test is scheduled to begin.

(e) If you are required to conduct an initial compliance demonstration as specified in § 63.10011(a), you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). For each initial compliance demonstration, you must submit the Notification of Compliance Status, including all performance test results and fuel analyses, before the close of business on the 60th day following the completion of the performance test and/or other initial compliance demonstrations according to § 63.10(d)(2). The Notification of Compliance Status report must contain all the information specified in paragraphs (e)(1) through (6), as applicable.

(1) A description of the affected source(s) including identification of which subcategory the source is in, the design capacity of the source, a description of the add-on controls used on the source, description of the fuel(s) burned, including whether the fuel(s) were determined by you or EPA through a petition process to be a non-waste under 40 CFR 241.3, whether the fuel(s) were processed from discarded non-hazardous secondary materials within the meaning of 40 CFR 241.3, and justification for the selection of fuel(s) burned during the performance test.

(2) Summary of the results of all performance tests and fuel analyses and calculations conducted to demonstrate initial compliance including all established operating limits.

(3) Identification of whether you plan to demonstrate compliance with each applicable emission limit through performance testing and fuel analysis; performance testing with operational limits (e.g., CEMS for surrogates or CPMS); CEMS; or sorbent trap monitoring system.

(4) Identification of whether you plan to demonstrate compliance by emissions averaging.

(5) A signed certification that you have met all applicable emission limits and work practice standards.

(6) If you had a deviation from any emission limit, work practice standard, or operating limit, you must also submit a description of the deviation, the duration of the deviation, and the corrective action taken in the Notification of Compliance Status report.

(7) In addition to the information required in § 63.9(h)(2), your notification of compliance status must include the following certification of compliance and must be signed by a responsible official:

(i) "This EGU complies with the requirement in § 63.10021(a)(16)(i) through (vi)."

§ 63.10031 What reports must I submit and when?

(a) You must submit each report in Table 9 to this subpart that applies to you.

(b) Unless the EPA Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 9 to this subpart and according to the requirements in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9984 and ending on June 30 or December 31, whichever date is the first date that occurs at least 180 days after the compliance date that is specified for your source in § 63.9984.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.9984.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information required in paragraphs (c)(1) through (9) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) The total fuel use by each affected source subject to an emission limit, for each calendar month within the semiannual reporting period, including, but not limited to, a description of the fuel, whether the fuel has received a non-waste determination by EPA or your basis for concluding that the fuel is not a waste, and the total fuel usage amount with units of measure.

(5) A summary of the results of the annual performance tests and documentation of any operating limits that were reestablished during this test, if applicable. If you are conducting stack tests once every three years consistent with § 63.10006(o) or (p), the date of the last three stack tests, a comparison of the emission level you achieved in the last three stack tests to the 50 percent emission limit threshold required in § 63.10006(o) or (p), and a statement as to whether there have been any operational changes since the last stack test that could increase emissions.

(6) A signed statement indicating that you burned no new types of fuel. Or, if you did burn a new type of fuel, you must submit the calculation of chlorine input, using Equation 7 of § 63.10011, that demonstrates that your source is still within its maximum chlorine input level established during the previous performance testing (for sources that demonstrate compliance through performance testing) or you must submit the calculation of HCl emission rate using Equation 15 of § 63.10011 that demonstrates that your source is still meeting the emission limit for HCl emissions (for EGUs that demonstrate compliance through fuel analysis). If you burned a new type of fuel, you must submit the calculation of Hg input, using Equation 8 of § 63.10011, that demonstrates that your source is still within its maximum Hg input level established during the previous performance testing (for sources that demonstrate compliance through performance testing), or you must submit the calculation of Hg emission rate using Equation 11 of § 63.10011 that demonstrates that your source is still meeting the emission limit for Hg emissions (for EGUs that demonstrate compliance through fuel analysis).

(7) If you wish to burn a new type of fuel and you cannot demonstrate compliance with the maximum chlorine input operating limit using Equation 7 of § 63.10011 or the maximum Hg input operating limit using Equation 8 of § 63.10011, you must include in the compliance report a statement indicating the intent to conduct a new performance test within 60 days of starting to burn the new fuel.

(8) If there are no deviations from any emission limits or operating limits in this subpart that apply to you, a statement that there were no deviations from the emission limits or operating limits during the reporting period.

(9) If there were no deviations from the monitoring requirements including no periods during which the CMSs, including CEMS, and CPMS, were out of control as specified in § 63.8(c)(7), a statement that there were no deviations and no periods during which the CMS were out of control during the reporting period.

(10) Include the date of the most recent tune-up for each unit subject to the requirement to conduct a performance tune-up according to § 63.10021(a)(16)(i) through (vi). Include the date of the most recent burner inspection if it was not done annually and was delayed until the next scheduled unit shutdown.

(d) For each deviation from an emission limit or operating limit in this subpart that occurs at an affected source where you are not using a CMS to comply with that emission limit or operating limit, the compliance report must additionally contain the information required in paragraphs (d)(1) through (4) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) A description of the deviation and which emission limit or operating limit from which you deviated.

(3) Information on the number, duration, and cause of deviations (including unknown cause), as applicable, and the corrective action taken.

(4) A copy of the test report if the annual performance test showed a deviation from the emission limits.

(e) For each deviation from an emission limit, operating limit, and monitoring requirement in this subpart occurring at an affected source where you are using a CMS to comply with that emission limit or operating limit, you must include the information required in paragraphs (e)(1) through (12) of this section. This includes any deviations from your site-specific monitoring plan as required in § 63.10000(d).

(1) The date and time that each deviation started and stopped and description of the nature of the deviation (i.e., what you deviated from).

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out of control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during

a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) An analysis of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMSs downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each parameter that was monitored at the affected source for which there was a deviation.

(9) A brief description of the source for which there was a deviation.

(10) A brief description of each CMS for which there was a deviation.

(11) The date of the latest CMS certification or audit for the system for which there was a deviation.

(12) A description of any changes in CMSs, processes, or controls since the last reporting period for the source for which there was a deviation.

(f) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 9 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limit, operating limit, or work practice requirement in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(g) In addition to the information required in § 63.9(h)(2), your notification must include the following certification(s) of compliance, as applicable, and signed by a responsible official:

(1) "This facility complies with the requirements in § 63.10021(a)(10) to conduct an annual performance test of the unit".

(2) "No secondary materials that are solid waste were combusted in any affected unit."

(h)(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 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 EPA's WebFIRE database.

(2) Within 60 days after the date of completing each CEMS performance evaluation test, as defined in 63.2 and required by this subpart, you must submit the relative accuracy test audit data electronically into EPA's Central Data Exchange by using the Electronic Reporting Tool as mentioned in paragraph (h)(1) of this section. Only data collected using test methods compatible with ERT are subject to this requirement to be submitted electronically into EPA's WebFIRE database.

(3) All reports required by this subpart not subject to the requirements in paragraphs (h)(1) and (2) 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 (h)(1) and (2) of this section in paper format.

(i) If you had a malfunction during the reporting period, the report must include the number, duration, and a brief description for each type of malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with § 63.10000(b), including actions taken to correct a malfunction.

§ 63.10032 What records must I keep?

(a) You must keep records according to paragraphs (a)(1) through (2) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status or semiannual compliance report that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) Records of performance stack tests, fuel analyses, or other compliance demonstrations and performance evaluations, as required in § 63.10(b)(2)(viii).

(b) For each CEMS and CPMS, you must keep records according to paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (i.e., superseded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to relative accuracy test for CEMS as required in § 63.8(f)(6)(i).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records required in Table 8 to this subpart including records of all monitoring data and calculated averages for applicable operating limits such as pressure drop and pH to show continuous compliance with each emission limit and operating limit that applies to you.

(d) For each EGU subject to an emission limit, you must also keep the records in paragraphs (d)(1) through (5) of this section.

(1) You must keep records of monthly fuel use by each EGU, including the type(s) of fuel and amount(s) used.

(2) If you combust non-hazardous secondary materials that have been determined not to be solid waste pursuant to 40 CFR 241.3(b)(1), you must keep a record which documents how the secondary material meets each of the legitimacy criteria. If you combust a fuel that has been processed from a discarded non-hazardous secondary material pursuant to 40 CFR 241.3(b)(2), you must keep records as to how the operations that produced the fuel satisfies the definition of processing in 40 CFR 241.2. If the fuel received a non-waste determination pursuant to the petition process submitted under 40 CFR 241.3(c), you must keep a record which documents how the fuel satisfies the requirements of the petition process.

(3) A copy of all calculations and supporting documentation of maximum chlorine fuel input, using Equation 7 of § 63.10011, that were done to demonstrate continuous compliance with the HCl emission limit, for sources

that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of HCl emission rates, using Equation 15 of § 63.10011, that were done to demonstrate compliance with the HCl emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum chlorine fuel input or HCl emission rates. You can use the results from one fuel analysis for multiple EGUs provided they are all burning the same fuel type. However, you must calculate chlorine fuel input, or HCl emission rate, for each EGU.

(4) A copy of all calculations and supporting documentation of maximum Hg fuel input, using Equation 8 of § 63.10011, that were done to demonstrate continuous compliance with the Hg emission limit for sources that demonstrate compliance through performance testing. For sources that demonstrate compliance through fuel analysis, a copy of all calculations and supporting documentation of Hg emission rates, using Equation 11 of § 63.10011, that were done to demonstrate compliance with the Hg emission limit. Supporting documentation should include results of any fuel analyses and basis for the estimates of maximum Hg fuel input or Hg emission rates. You can use the results from one fuel analysis for multiple EGUs provided they are all burning the same fuel type. However, you must calculate Hg fuel input, or Hg emission rates, for each EGU.

(5) If consistent with § 63.10032(b) and (c), you choose to stack test less frequently than annually, you must keep annual records that document that your emissions in the previous stack test(s) were less than 90 percent of the applicable emission limit, and document that there was no change in source operations including fuel composition and operation of air pollution control equipment that would cause emissions of the pollutant to increase within the past year.

(e) If you elect to average emissions consistent with § 63.10009, you must additionally keep a copy of the emission averaging implementation plan required in § 63.10009(g), all calculations required under § 63.10009, including daily records of heat input or steam generation, as applicable, and monitoring records consistent with § 63.10022.

(f) Records of the occurrence and duration of each startup and/or shutdown.

(g) Records of the occurrence and duration of each malfunction of operation (i.e., process equipment) or the air pollution control and monitoring equipment.

(h) Records of actions taken during periods of malfunction to minimize emissions in accordance with § 63.10000(b), including corrective actions to restore malfunctioning process and air pollution control and monitoring equipment to its normal or usual manner of operation.

§ 63.10033 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years.

Other Requirements and Information

§ 63.10040 What parts of the General Provisions apply to me?

Table 10 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.10041 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by U.S. EPA, or a delegated authority such as your state, local, or tribal agency. If the EPA Administrator has delegated authority to your state, local, or tribal agency, then that agency (as well as the U.S. EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your state, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a state, local, or tribal agency under 40 CFR part 63, subpart E, the authorities listed in paragraphs (b)(1) through (4) of this section are retained by the EPA Administrator and are not transferred to the state, local, or tribal agency; however, the U.S. EPA retains oversight of this subpart and can take enforcement actions, as appropriate.

(1) Approval of alternatives to the non-opacity emission limits and work practice standards in § 63.9991(a) and (b) under § 63.6(g).

(2) Approval of major change to test methods in Table 5 to this subpart under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, approval of minor and intermediate changes to monitoring performance specifications/procedures in Table 5 where the monitoring serves as the performance test method (see definition of "test method" in § 63.2), and approval of alternative analytical methods requested under § 63.10008(b)(2).

(3) Approval of major change to monitoring under § 63.8(f) and as defined in § 63.90, and approval of alternative operating parameters under §§ 63.9991(a)(2) and 63.10009(g)(2).

(4) Approval of major change to recordkeeping and reporting under § 63.10(e) and as defined in § 63.90.

§ 63.10042 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in § 63.2 (the General Provisions), and in this section as follows:

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.

Anthracite coal means solid fossil fuel classified as anthracite coal by American Society of Testing and Materials (ASTM) Method D388–77, 90, 91, 95, 98a, or 99 (incorporated by reference, see 40 CFR 63.14(b)(39)).

Bag leak detection system means a group of instruments that are capable of monitoring PM loadings in the exhaust of a fabric filter (i.e., baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on electrodynamic, triboelectric, light scattering, light transmittance, or other principle to monitor relative PM loadings.

Bituminous coal means coal that is classified as bituminous according to ASTM Method D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004) $^{\varepsilon 1}$ (incorporated by reference, see 40 CFR 63.14(b)(39)).

Boiler operating day means a 24-hour period between midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for the fuel to be combusted the entire 24-hour period.

Coal means all solid fuels classifiable as anthracite, bituminous, sub-bituminous, or lignite by ASTM Method D388–991 (incorporated by reference,

see 40 CFR 63.14(b)(39)), and coal refuse. Synthetic fuels derived from coal for the purpose of creating useful heat including but not limited to, coal derived gases (not meeting the definition of natural gas), solvent-refined coal, coal-oil mixtures, and coal-water mixtures, are considered "coal" for the purposes of this subpart.

Coal-fired electric utility steam generating unit means an electric utility steam generating unit meeting the definition of "fossil fuel-fired" that burns coal or coal refuse either exclusively, in any combination together, or in any combination with other fuels in any amount.

Coal refuse means any by-product of coal mining, physical coal cleaning, and coal preparation operations (e.g. culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis.

Cogeneration means a steam-generating unit that simultaneously produces both electrical (or mechanical) and useful thermal energy from the same primary energy source.

Cogeneration unit means a stationary, fossil fuel-fired EGU meeting the definition of "fossil fuel-fired" or stationary, integrated gasification combined cycle:

(1) Having equipment used to produce electricity and useful thermal energy for industrial, commercial, heating, or cooling purposes through the sequential use of energy; and

(2) Producing during the 12-month period starting on the date the unit first produces electricity and during any calendar year after which the unit first produces electricity:

(i) For a topping-cycle cogeneration unit,

(A) Useful thermal energy not less than 5 percent of total energy output; and

(B) Useful power that, when added to one-half of useful thermal energy produced, is not less than 42.5 percent of total energy input, if useful thermal energy produced is 15 percent or more of total energy output, or not less than 45 percent of total energy input, if useful thermal energy produced is less than 15 percent of total energy output.

(ii) For a bottoming-cycle cogeneration unit, useful power not less than 45 percent of total energy input.

(3) Provided that the total energy input under paragraphs (2)(i)(B) and (2)(ii) of this definition shall equal the unit's total energy input from all fuel except biomass if the unit is a boiler.

Combined-cycle gas stationary combustion turbine means a stationary combustion turbine system where heat from the turbine exhaust gases is recovered by a waste heat boiler.

Common stack means the exhaust of emissions from two or more affected units through a single flue.

Deviation. (1) Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(i) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limit, operating limit, work practice standard, or monitoring requirement; or

(ii) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

(2) A deviation is not always a violation.

Distillate oil means fuel oils, including recycled oils, that comply with the specifications for fuel oil numbers 1 and 2, as defined by ASTM Method D396–02a (incorporated by reference, see § 63.14(b)(40)).

Dry flue gas desulfurization technology, or *dry FGD,* or spray dryer absorber (SDA), or *spray dryer,* or *dry scrubber* means an add-on air pollution control system located downstream of the steam generating unit that injects a dry alkaline sorbent (dry sorbent injection) or sprays an alkaline sorbent slurry (spray dryer) to react with and neutralize acid gases such as SO_2 and HCl in the exhaust stream forming a dry powder material. Sorbent injection systems in fluidized bed combustors (FBC) or circulating fluidized bed (CFB) boilers are included in this definition.

Dry sorbent injection (DSI) means an add-on air pollution control system in which sorbent (e.g., conventional activated carbon, brominated activated carbon, Trona, hydrated lime, sodium carbonate, etc.) is injected into the flue gas steam upstream of a PM control device to react with and neutralize acid gases (such as SO_2 and HCl) or Hg in the exhaust stream forming a dry powder material that may be removed in a primary or secondary PM control device.

Electric utility steam generating unit (EGU) means a fossil fuel-fired combustion unit of more than 25 megawatts electric (MWe) that serves a generator that produces electricity for sale. A fossil fuel-fired unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MWe output to any utility power distribution system for sale is considered an electric utility steam generating unit.

Electrostatic precipitator or *ESP* means an add-on air pollution control device that is located downstream of the steam generating unit used to capture PM by charging the particles using an electrostatic field, collecting the particles using a grounded collecting surface, and transporting the particles into a hopper.

Emission limitation means any emissions limit or operating limit.

Equivalent means the following only as this term is used in Table 6 to subpart UUUUU:

(1) An equivalent sample collection procedure means a published voluntary consensus standard or practice (VCS) or EPA method that includes collection of a minimum of three composite fuel samples, with each composite consisting of a minimum of three increments collected at approximately equal intervals over the test period.

(2) An equivalent sample compositing procedure means a published VCS or EPA method to systematically mix and obtain a representative subsample (part) of the composite sample.

(3) An equivalent sample preparation procedure means a published VCS or EPA method that: Clearly states that the standard, practice or method is appropriate for the pollutant and the fuel matrix; or is cited as an appropriate sample preparation standard, practice or method for the pollutant in the chosen VCS or EPA determinative or analytical method.

(4) An equivalent procedure for determining heat content means a published VCS or EPA method to obtain gross calorific (or higher heating) value.

(5) An equivalent procedure for determining fuel moisture content means a published VCS or EPA method to obtain moisture content. If the sample analysis plan calls for determining metals (especially the Hg, selenium, or arsenic) using an aliquot of the dried sample, then the drying temperature must be modified to prevent vaporizing these metals. On the other hand, if metals analysis is done on an "as received" basis, a separate aliquot can be dried to determine moisture content and the metals concentration mathematically adjusted to a dry basis.

(6) An equivalent pollutant (Hg) determinative or analytical procedure means a published VCS or EPA method that clearly states that the standard, practice, or method is appropriate for the pollutant and the fuel matrix and has a published detection limit equal or lower than the methods listed in Table

6 to subpart UUUUU for the same purpose.

Fabric filter, or *FF,* or *baghouse* means an add-on air pollution control device that is located downstream of the steam generating unit used to capture PM by filtering gas streams through filter media.

Federally enforceable means all limitations and conditions that are enforceable by the EPA Administrator, including the requirements of 40 CFR parts 60, 61, and 63; requirements within any applicable State implementation plan; and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

Fossil fuel means natural gas, oil, coal, and any form of solid, liquid, or gaseous fuel derived from such material.

Fossil fuel-fired means an electric utility steam generating unit (EGU) that is capable of combusting more than 73 MWe (250 million Btu/hr, MMBtu/hr) heat input (equivalent to 25 MWe output) of fossil fuels. To be "capable of combusting" fossil fuels, an EGU would need to have these fuels allowed in their permits and have the appropriate fuel handling facilities on-site (e.g., coal handling equipment, including coal storage area, belts and conveyers, pulverizers, etc.; oil storage facilities). In addition, fossil fuel-fired means any EGU that fired fossil fuels for more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years.

Fuel type means each category of fuels that share a common name or classification. Examples include, but are not limited to, bituminous coal, subbituminous coal, lignite, anthracite, biomass, residual oil. Individual fuel types received from different suppliers are not considered new fuel types.

Fluidized bed boiler, or *fluidized bed combustor,* or *circulating fluidized boiler,* or *CFB* means a boiler utilizing a fluidized bed combustion process.

Fluidized bed combustion means a process where a fuel is burned in a bed of granulated particles which are maintained in a mobile suspension by the forward flow of air and combustion products.

Gaseous fuel includes, but is not limited to, natural gas, process gas, landfill gas, coal derived gas, solid oil-derived gas, refinery gas, and biogas. Blast furnace gas is exempted from this definition.

Generator means a device that produces electricity.

Gross output means the gross useful work performed by the steam generated and, for an IGCC electric utility steam generating unit, the work performed by the stationary combustion turbines. For a unit generating only electricity, the gross useful work performed is the gross electrical output from the unit's turbine/generator sets. For a cogeneration unit, the gross useful work performed is the gross electrical, including any such electricity used in the power production process (which process includes, but is not limited to, any on-site processing or treatment of fuel combusted at the unit and any on-site emission controls), or mechanical output plus 75 percent of the useful thermal output measured relative to ISO conditions that is not used to generate additional electrical or mechanical output or to enhance the performance of the unit (i.e., steam delivered to an industrial process).

Heat input means heat derived from combustion of fuel in an EGU and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources such as gas turbines, internal combustion engines, etc.

Integrated gasification combined cycle electric utility steam generating unit or *IGCC* means an electric utility steam generating unit that burns a synthetic gas derived from coal or solid oil-derived fuel in a combined-cycle gas turbine. No coal or solid oil-derived fuel is directly burned in the unit during operation.

ISO conditions means a temperature of 288 Kelvin, a relative humidity of 60 percent, and a pressure of 101.3 kilopascals.

Lignite coal means coal that is classified as lignite A or B according to ASTM Method D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004) $^{\varepsilon 1}$ (incorporated by reference, see § 63.14(a)(39)).

Liquid fuel includes, but is not limited to, distillate oil and residual oil.

Minimum pressure drop means 90 percent of the test average pressure drop measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limit.

Minimum scrubber effluent pH means 90 percent of the test average effluent pH measured at the outlet of the wet scrubber according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable HCl emission limit.

Minimum scrubber flow rate means 90 percent of the test average flow rate measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limit.

Minimum sorbent injection rate means 90 percent of the test average sorbent (or activated carbon) injection rate for each sorbent measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limits.

Minimum voltage or *amperage* means 90 percent of the test average voltage or amperage to the electrostatic precipitator measured according to Table 7 to this subpart during the most recent performance test demonstrating compliance with the applicable emission limits.

Natural gas means:

(1) A naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or

(2) Liquid petroleum gas, as defined by ASTM Method D1835–03a (incorporated by reference, see § 63.14(b)(41)).

Net-electric output means the gross electric sales to the utility power distribution system minus purchased power on a calendar year basis.

Non-cogeneration unit means a unit that has a combustion unit of more than 25 MWe and that supplies more than 25 MWe to any utility power distribution system for sale.

Noncontinental area means the State of Hawaii, the Virgin Islands, Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Mariana Islands.

Non-mercury (Hg) HAP metals means Antimony (Sb), Arsenic (As), Beryllium (Be), Cadmium (Cd), Chromium (Cr), Cobalt (Co), Lead (Pb), Manganese (Mn), Nickel (Ni), and Selenium (Se).

Oil means crude oil or petroleum or a fuel derived from crude oil or petroleum, including distillate and residual oil, solid oil-derived fuel (e.g., petroleum coke) and gases derived from solid oil-derived fuels (not meeting the definition of natural gas).

Oil-fired electric utility steam generating unit means an electric utility steam generating unit that either burns oil exclusively, or burns oil alternately with burning fuels other than oil at other times.

Particulate matter or *PM* means any finely divided solid or liquid material, other than uncombined water, as measured by the test methods specified under this subpart, or an alternative method.

Pulverized coal boiler means an EGU in which pulverized coal is introduced into an air stream that carries the coal

to the combustion chamber of the EGU where it is fired in suspension.

Residual oil means crude oil, and all fuel oil numbers 4, 5 and 6, as defined by ASTM Method D396–02a (incorporated by reference, see § 63.14(b)(40)).

Responsible official means responsible official as defined in 40 CFR 70.2.

Stationary combustion turbine means all equipment, including but not limited to the turbine, the fuel, air, lubrication and exhaust gas systems, control systems (except emissions control equipment), and any ancillary components and sub-components comprising any simple cycle stationary combustion turbine, any regenerative/recuperative cycle stationary combustion turbine, the combustion turbine portion of any stationary cogeneration cycle combustion system, or the combustion turbine portion of any stationary combined cycle steam/electric generating system. Stationary means that the combustion turbine is not self propelled or intended to be propelled while performing its function. Stationary combustion turbines do not include turbines located at a research or laboratory facility, if research is conducted on the turbine itself and the turbine is not being used to power other applications at the research or laboratory facility.

Steam generating unit means any furnace, boiler, or other device used for combusting fuel for the purpose of producing steam (including fossil-fuel-fired steam generators associated with integrated gasification combined cycle gas turbines; nuclear steam generators are not included).

Stoker means a unit consisting of a mechanically operated fuel feeding mechanism, a stationary or moving grate to support the burning of fuel and admit undergrate air to the fuel, an overfire air system to complete combustion, and an ash discharge system. There are two general types of stokers: underfeed and overfeed. Overfeed stokers include mass feed and spreader stokers.

Subbituminous coal means coal that is classified as subbituminous A, B, or C according to ASTM Method D388–77, 90, 91, 95, 98a, or 99 (Reapproved 2004) $^{\varepsilon 1}$ (incorporated by reference, see § 60.14(a)(39)).

Unit designed for coal > 8,300 Btu/lb subcategory includes any EGU designed to burn a coal having a calorific value (moist, mineral matter-free basis) of greater than or equal to 19,305 kilojoules per kilogram (kJ/kg) (8,300 British thermal units per pound (Btu/lb)) in an EGU with a height-to-depth ratio of less than 3.82.

Unit designed for coal < 8,300 Btu/lb includes any EGU designed to burn a nonagglomerating virgin coal having a calorific value (moist, mineral matter-free basis) of less than 19,305 kJ/kg (8,300 Btu/lb) in an EGU with a height-to-depth ratio of 3.82 or greater.

Unit designed to burn liquid oil fuel subcategory includes any EGU that burned any liquid oil for more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years, either alone or in combination with gaseous fuels.

Unit designed to burn solid oil-derived fuel subcategory includes any EGU that burned a solid fuel derived from oil for more than 10.0 percent of the average annual heat input during the previous 3 calendar years or for more than 15.0 percent of the annual heat input during any one of those calendar years, either alone or in combination with other fuels.

Voluntary Consensus Standards or *VCS* mean technical standards (*e.g.,* materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. EPA/OAQPS has by precedent only used VCS that are written in English. Examples of VCS bodies are: American Society of Testing and Materials (ASTM), American Society of Mechanical Engineers (ASME), International Standards Organization (ISO), Standards Australia (AS), British Standards (BS), Canadian Standards (CSA), European Standard (EN or CEN) and German Engineering Standards (VDI). The types of standards that are not considered VCS are standards developed by: The U.S. States, e.g., California (CARB) and Texas (TCEQ); industry groups, such as American Petroleum Institute (API), Gas Processors Association (GPA), and Gas Research Institute (GRI); and other branches of the U.S. government, e.g. Department of Defense (DOD) and Department of Transportation (DOT). This does not preclude EPA from using standards developed by groups that are not VCS bodies within their rule. When this occurs, EPA has done searches and reviews for VCS equivalent to these non-EPA methods.

Wet flue gas desulfurization technology, or *wet FGD,* or *wet scrubber* means any add-on air pollution control device that is located downstream of the steam generating unit that mixes an aqueous stream or slurry with the exhaust gases from an EGU to control emissions of PM and/or to absorb and neutralize acid gases, such as SO_2 and HCl.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, which is promulgated pursuant to CAA section 112(h).

Tables to Subpart UUUUU of Part 63

As stated in § 63.9991, you must comply with the following applicable emission limits:

TABLE 1 TO SUBPART UUUUU OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED EGUS

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate, (e.g., specified sampling volume or test run duration) with the test methods in Table 5 . . .
1. Coal-fired unit designed for coal ≥ 8,300 Btu/lb.	a. Total particulate matter (PM) ...	0.050 lb per MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	0.000040 lb per MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.000080 lb/GWh	
	Arsenic (As)	0.00020 lb/GWh	
	Beryllium (Be)	0.000030 lb/GWh	
	Cadmium (Cd)	0.00040 lb/GWh	

TABLE 1 TO SUBPART UUUUU OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED EGUS—Continued

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate, (e.g., specified sampling volume or test run duration) with the test methods in Table 5 . . .
	Chromium (Cr)	0.020 lb/GWh	
	Cobalt (Co)	0.00080 lb/GWh	
	Lead (Pb)	0.00090 lb/GWh	
	Manganese (Mn)	0.0040 lb/GWh	
	Nickel (Ni)	0.0040 lb/GWh	
	Selenium (Se)	0.030 lb/GWh	
	b. Hydrogen chloride (HCl)	0.30 lb per GWh	For Method 26A, collect a minimum of 4 dscm per run.
	OR		
	Sulfur dioxide (SO_2) [1]	0.40 lb per MWh	SO_2 CEMS.
	c. Mercury (Hg)	0.000010 lb per GWh	Hg CEMS or Sorbent trap monitoring system.
2. Coal-fired unit designed for coal < 8,300 Btu/lb.	a. Total particulate matter (PM)	0.050 lb per MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	0.000040 lb per MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.000080 lb/GWh	
	Arsenic (As)	0.00020 lb/GWh	
	Beryllium (Be)	0.000030 lb/GWh	
	Cadmium (Cd)	0.00040 lb/GWh	
	Chromium (Cr)	0.020 lb/GWh	
	Cobalt (Co)	0.00080 lb/GWh	
	Lead (Pb)	0.00090 lb/GWh	
	Manganese (Mn)	0.0040 lb/GWh	
	Nickel (Ni)	0.0040 lb/GWh	
	Selenium (Se)	0.030 lb/GWh	
	b. Hydrogen chloride (HCl)	0.30 lb per GWh	For Method 26A, collect a minimum of 4 dscm per run.
	OR	OR	
	Sulfur dioxide (SO_2) [2]	0.40 lb per MWh	SO_2 CEMS.
	c. Mercury (Hg)	0.040 lb per GWh	Hg CEMS or Sorbent trap monitoring system.
3. IGCC unit	a. Particulate matter (PM)	0.050 lb per MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	0.000040 lb per MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.000080 lb/GWh	
	Arsenic (As)	0.00020 lb/GWh	
	Beryllium (Be)	0.000030 lb/GWh	
	Cadmium (Cd)	0.00040 lb/GWh	
	Chromium (Cr)	0.020 lb/GWh	
	Cobalt (Co)	0.00080 lb/GWh	
	Lead (Pb)	0.00090 lb/GWh	
	Manganese (Mn)	0.0040 lb/GWh	
	Nickel (Ni)	0.0040 lb/GWh	
	Selenium (Se)	0.030 lb/GWh	
	b. Hydrogen chloride (HCl)	0.30 lb per GWh	For Method 26A, collect a minimum of 4 dscm per run.
	OR		
	Sulfur dioxide (SO_2) [3]	0.40 lb per MWh	SO_2 CEMS.
	c. Mercury (Hg)	0.000010 lb per GWh	Hg CEMS or Sorbent trap monitoring system.
4. Liquid oil-fired unit	a. Total HAP metals	0.00040 lb/MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.0020 lb/GWh	

TABLE 1 TO SUBPART UUUUU OF PART 63—EMISSION LIMITS FOR NEW OR RECONSTRUCTED EGUS—Continued

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate, (e.g., specified sampling volume or test run duration) with the test methods in Table 5 . . .
	Arsenic (As)	0.0020 lb/GWh	
	Beryllium (Be)	0.00070 lb/GWh	
	Cadmium (Cd)	0.00040 lb/GWh	
	Chromium (Cr)	0.020 lb/GWh	
	Cobalt (Co)	0.0060 lb/GWh	
	Lead (Pb)	0.0060 lb/GWh	
	Manganese (Mn)	0.030 lb/GWh	
	Nickel (Ni)	0.040 lb/GWh	
	Selenium (Se)	0.0040 lb/GWh	
	Mercury (Hg)	0.00010 lb/GWh	For Method 30B sample volume determination (8.2.4), the estimated Hg concentration should nominally be < ½ the standard.
	b. Hydrogen chloride (HCl)	0.00050 lb/MWh	For Method 26A, collect a minimum of 4 dscm per run.
	c. Hydrogen fluoride (HF)	0.00050 lb/MWh	For Method 26A, collect a minimum of 4 dscm per run.
5. Solid oil-derived fuel-fired unit	a. Particulate matter (PM)	0.050 lb/MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	0.00020 lb/MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.00090 lb/GWh	
	Arsenic (As)	0.0020 lb/GWh	
	Beryllium (Be)	0.000080 lb/GWh	
	Cadmium (Cd)	0.0070 lb/GWh	
	Chromium (Cr)	0.0060 lb/GWh	
	Cobalt (Co)	0.0020 lb/GWh	
	Lead (Pb)	0.020 lb/GWh	
	Manganese (Mn)	0.0070 lb/GWh	
	Nickel (Ni)	0.0070 lb/GWh	
	Selenium (Se)	0.00090 lb/GWh	
	b. Hydrogen chloride (HCl)	0.00030 lb/MWh	For Method 26A, collect a minimum of 4 dscm per run.
	OR		
	Sulfur dioxide (SO_2) [4]	0.40 lb/MWh	SO_2 CEMS.
	c. Mercury (Hg)	0.0020 lb/GWh	Hg CEMS or Sorbent trap monitoring system.

As stated in § 63.9991, you must comply with the following applicable emission limits: [5]

TABLE 2 TO SUBPART UUUUU OF PART 63—EMISSION LIMITS FOR EXISTING EGUS

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) with the test methods in Table 5 . . .
1. Coal-fired unit designed for coal ≥ 8,300 Btu/lb.	a. Total particulate matter (PM)	0.030 lb/MMBtu or 0.30 lb/MWh	Collect a minimum of 2 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	0.000040 lb/MMBtu 0.00040 lb/MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.60 lb/TBtu or 0.0060 lb/GWh.	
	Arsenic (As)	2.0 lb/TBtu or 0.020 lb/GWh.	
	Beryllium (Be)	0.20 lb/TBtu or 0.0020 lb/GWh.	
	Cadmium (Cd)	0.30 lb/TBtu or 0.0030 lb/GWh.	

TABLE 2 TO SUBPART UUUUU OF PART 63—EMISSION LIMITS FOR EXISTING EGUS—Continued

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) with the test methods in Table 5 . . .
	Chromium (Cr)	3.0 lb/TBtu or 0.030 lb/GWh.	
	Cobalt (Co)	0.80 lb/TBtu or 0.0080 lb/GWh.	
	Lead (Pb)	2.0 lb/TBtu or 0.020 lb/GWh.	
	Manganese (Mn)	5.0 lb/TBtu or 0.050 lb/GWh.	
	Nickel (Ni)	4.0 lb/TBtu or 0.040 lb/GWh.	
	Selenium (Se)	6.0 lb/TBtu or 0.060 lb/GWh.	
	b. Hydrogen chloride (HCl)	0.0020 lb per MMBtu or 0.020 lb per MWh.	For Method 26A, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 60 liters per run.
	OR		
	Sulfur dioxide (SO_2) [6]	0.20 lb per MMBtu or 2.0 lb per MWh.	SO_2 CEMS.
	c. Mercury (Hg)	1.0 lb/TBtu or 0.008 lb/GWh	LEE Testing for 28–30 days with 10 days maximum per run or Hg CEMS or Sorbent trap monitoring system.
2. Coal-fired unit designed for coal < 8,300 Btu/lb	a. Total particulate matter (PM)	0.030 lb/MMBtu or 0.30 lb/MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	0.000040 lb/MMBtu 0.00040 lb/MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.60 lb/TBtu or 0.0060 lb/GWh.	
	Arsenic (As)	2.0 lb/TBtu or 0.020 lb/GWh.	
	Beryllium (Be)	0.20 lb/TBtu or 0.0020 lb/GWh.	
	Cadmium (Cd)	0.30 lb/TBtu or 0.0030 lb/GWh.	
	Chromium (Cr)	3.0 lb/TBtu or 0.030 lb/GWh.	
	Cobalt (Co)	0.80 lb/TBtu or 0.0080 lb/GWh.	
	Lead (Pb)	2.0 lb/TBtu or 0.020 lb/GWh.	
	Manganese (Mn)	5.0 lb/TBtu or 0.050 lb/GWh.	
	Nickel (Ni)	4.0 lb/TBtu or 0.040 lb/GWh.	
	Selenium (Se)	6.0 lb/TBtu or 0.060 lb/GWh.	
	b. Hydrogen chloride (HCl)	0.0020 lb per MMBtu or 0.020 lb per MWh.	For Method 26A, collect a minimum of 0.75 dscm per run; for Method 26, collect a minimum of 60 liters per run.
	OR		
	Sulfur dioxide (SO_2) [7]	0.20 lb per MMBtu or 2.0 lb per MWh.	SO_2 CEMS.
	c. Mercury (Hg)	4.0 lb/TBtu or 0.040 lb/GWh	LEE Testing for 28–30 days with 10 days maximum per run or Hg CEMS or Sorbent trap monitoring system.
3. IGCC unit	a. Total particulate matter (PM)	0.050 lb/MMBtu or 0.30 lb/MWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	5.0 lb/TBtu or 0.050 lb/GWh	Collect a minimum of 4 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.40 lb/TBtu or 0.0040 lb/GWh.	
	Arsenic (As)	2.0 lb/TBtu or 0.020 lb/GWh.	
	Beryllium (Be)	0.030 lb/TBtu or 0.0030 lb/GWh.	
	Cadmium (Cd)	0.20 lb/TBtu or 0.0020 lb/GWh.	
	Chromium (Cr)	3.0 lb/TBtu or 0.020 lb/GWh.	
	Cobalt (Co)	2.0 lb/TBtu or 0.0040 lb/GWh.	
	Lead (Pb)	0.0002 lb/MMBtu or 0.003 lb/MWh.	
	Manganese (Mn)	3.0 lb/TBtu or 0.020 lb/GWh.	
	Nickel (Ni)	5.0 lb/TBtu or 0.050 lb/GWh.	
	Selenium (Se)	22.0 lb/TBtu or 0.20 lb/GWh.	
	b. Hydrogen chloride (HCl)	0.00050 lb/MMBtu or 0.0030 lb/MWh.	For Method 26A, collect a minimum of 4 dscm per run.

TABLE 2 TO SUBPART UUUUU OF PART 63—EMISSION LIMITS FOR EXISTING EGUS—Continued

If your EGU is in this subcategory . . .	For the following pollutants . . .	You must meet the following emission limits and work practice standards . . .	Using these requirements, as appropriate (e.g., specified sampling volume or test run duration) with the test methods in Table 5 . . .
	c. Mercury (Hg)	3.0 lb/TBtu or 0.020 lb/GWh	LEE Testing for 28–30 days with 10 days maximum per run or Hg CEMS or Sorbent trap monitoring system.
4. Liquid oil-fired unit	a. Total HAP metals	0.000030 lb/MMBtu or 0.00030 lb/MWh.	Collect a minimum of 4 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.20 lb/TBtu or 0.0030 lb/GWh.	
	Arsenic (As)	0.60 lb/TBtu or 0.0070 lb/GWh.	
	Beryllium (Be)	0.060 lb/TBtu or 0.00070 lb/GWh.	
	Cadmium (Cd)	0.10 lb/TBtu or 0.0020 lb/GWh.	
	Chromium (Cr)	2.0 lb/TBtu or 0.020 lb/GWh.	
	Cobalt (Co)	3.0 lb/TBtu or 0.020 lb/GWh.	
	Lead (Pb)	2.0 lb/TBtu or 0.030 lb/GWh.	
	Manganese (Mn)	5.0 lb/TBtu or 0.060 lb/GWh.	
	Nickel (Ni)	8.0 lb/TBtu or 0.080 lb/GWh.	
	Selenium (Se)	2.0 lb/TBtu or 0.020 lb/GWh.	
	Mercury (Hg)	0.050 lb/TBtu or 0.00070 lb/GWh	For Method 29, collect a minimum of 4 dscm per run or for Method 30B sample volume determination (8.2.4), the estimated Hg concentration should nominally be < ½ the standard.
	b. Hydrogen chloride (HCl)	0.00030 lb/MMBtu or 0.0030 lb/MWh.	For Method 26A, collect a minimum of 4 dscm per run.
	c. Hydrogen fluoride (HF)	0.00020 lb/MMBtu or 0.0020 lb/MWh.	For Method 26A, collect a minimum of 4 dscm per run.
5. Solid oil-derived fuel-fired unit	a. Total particulate matter (PM)	0.20 lb/MMBtu or 2.0 lb/MWh	Collect a minimum of 2 dscm per run.
	OR	OR	
	Total non-Hg HAP metals	0.000050 lb/MMBtu or 0.0010 lb/MWh.	Collect a minimum of 2 dscm per run.
	OR	OR	
	Individual HAP metals:		Collect a minimum of 4 dscm per run.
	Antimony (Sb)	0.40 lb/TBtu or 0.0070 lb/GWh.	
	Arsenic (As)	0.40 lb/TBtu or 0.0040 lb/GWh.	
	Beryllium (Be)	0.070 lb/TBtu or 0.00070 lb/GWh.	
	Cadmium (Cd)	0.40 lb/TBtu or 0.0040 lb/GWh.	
	Chromium (Cr)	2.0 lb/TBtu or 0.020 lb/GWh.	
	Cobalt (Co)	2.0 lb/TBtu or 0.020 lb/GWh.	
	Lead (Pb)	11.0 lb/TBtu or 0.020 lb/GWh.	
	Manganese (Mn)	3.0 lb/TBtu or 0.040 lb/GWh.	
	Nickel (Ni)	9.0 lb/TBtu or 0.090 lb/GWh.	
	Selenium (Se)	2.0 lb/TBtu 0.020 lb/GWh.	
	b. Hydrogen chloride (HCl)	0.0050 lb/MMBtu or 0.080 lb/GWh	For Method 26A, collect a minimum of 1 dscm per run; for Method 26, collect a minimum of 60 liters per run.
	OR		
	Sulfur dioxide (SO_2)[8]	0.40 lb/MMBtu or 5.0 lb/MWh	SO_2 CEMS.
	c. Mercury (Hg)	0.20 lb/TBtu or 0.0020 lb/GWh	LEE Testing for 28–30 days with 10 days maximum per run or Hg CEMS or Sorbent trap monitoring system.

[5] footnote.
[6] footnote.
[7] footnote.
[8] The alternate sulfur dioxide limit may not be used if your EGU does not have some form of flue gas desulfurization system installed.

As stated in § 63.9991, you must comply with the following applicable work practice standards:

TABLE 3 TO SUBPART UUUUU OF PART 63—WORK PRACTICE STANDARDS

If your EGU is . . .	You must meet the following . . .
1. An existing EGU	Conduct a performance test of the EGU annually as specified in § 63.10005.
2. A new EGU	Conduct a performance test of the EGU annually as specified in § 63.10005.

TABLE 4 TO SUBPART UUUUU OF PART 63—OPERATING LIMITS FOR EGUS

If you demonstrate compliance using . . .	You must meet these operating limits . . .
1. Wet PM scrubber control	a. Maintain the pressure drop at or above the lowest 1-hour average pressure drop across the wet scrubber and the liquid flow rate at or above the lowest 1-hour average liquid flow rate measured during the most recent performance test demonstrating compliance with the PM emissions limitation.
2. Wet acid gas scrubbers	a. Maintain the pH at or above the lowest 1-hour average pressure drop across the wet scrubber and the liquid flow-rate at or above the lowest 1-hour average liquid flow rate measured during the most recent performance test demonstrating compliance with the HCl emissions limitation.
3. Fabric filter control	a. Install and operate a bag leak detection system according to § 63.10010 and operate the fabric filter such that the bag leak detection system does not initiate alarm mode more than 5 percent of the operating time during each 6-month period.
4. Electrostatic precipitator control.	a. This option is only for EGUs that operate additional wet control systems. Maintain the secondary power input of the electrostatic precipitator at or above the lowest 1-hour average secondary power measured during the most recent performance test demonstrating compliance with the PM emissions limitation.
5. Dry scrubber, DSI, or carbon injection control.	Maintain the sorbent or carbon injection rate at or above the lowest 1-hour average sorbent flow rate measured during the most recent performance test demonstrating compliance with the Hg emissions limitation.
6. Fuel analysis	Maintain the fuel type or fuel mixture such that the applicable emission rate calculated according to § 63.10011(d)(3), (4) and/or (5) is less than the applicable emission limits.
7. Performance testing	For EGUs that demonstrate compliance with a performance test, maintain the operating load of each unit such that it does not exceed 110 percent of the average operating load recorded during the most recent performance test.
8. PM CEMS	Maintain the PM concentration (mg/dscm) at or below the highest 1-hour average measured during the most recent performance test demonstrating compliance with the total PM emissions limitation.

As stated in § 63.10007, you must comply with the following requirements for performance testing for existing, new or reconstructed affected sources: [9]

TABLE 5 TO SUBPART UUUUU OF PART 63—PERFORMANCE STACK TESTING REQUIREMENTS

To conduct a performance test for the following pollutant . . .	Using . . .	You must . . .	Using . . .[10]
1. Particulate matter (PM).	Emissions Testing	a. Select sampling ports location and the number of traverse points.	Method 1 at 40 CFR part 60, Appendix A–1 of this chapter.
		b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G at 40 CFR part 60, Appendix A–1 or A–2 to part 60 of this chapter.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at 40 CFR part 60, Appendix A–2 to part 60 of this chapter, or ANSI/ASME PTC 19.10–1981.
		d. Measure the moisture content of the stack gas.	Method 4 at 40 CFR part 60, Appendix A–3 of this chapter.
		e. Measure the PM emissions concentrations and determine the filterable and condensable fractions, as well as total PM.	Method 202 at 40 CFR part 51, Appendix M of this chapter for condensable PM emissions from units and Method 5 (positive pressure fabric filters must use Method 5D) at 40 CFR part 60, Appendix A–3 or A–6 of this chapter for filterable PM emissions. Note that the Method 5 front half temperature shall be 320 °F ± 25 °F.
		f. Convert emissions concentration to lb per MMBtu emissions rates or lb/MWh emissions rates.	Method 19 F-factor methodology at 40 CFR part 60, Appendix A–7 of this chapter, or calculate using mass emissions rate and electrical output data.
2. Total or individual non-Hg HAP metals.	Emissions Testing	a. Select sampling ports location and the number of traverse points.	Method 1 at 40 CFR part 60, Appendix A–1 of this chapter.

[9] For emissions calculations involving periods of startup or shutdown, use procedures in § 63.10005(l).

TABLE 5 TO SUBPART UUUUU OF PART 63—PERFORMANCE STACK TESTING REQUIREMENTS—Continued

To conduct a performance test for the following pollutant . . .	Using . . .	You must . . .	Using . . .[10]
		b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G at 40 CFR part 60, Appendix A–1 or A–2 to part 60 of this chapter.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at 40 CFR part 60, Appendix A–2 to part 60 of this chapter, or ANSI/ASME PTC 19.10–1981.
		d. Measure the moisture content of the stack gas.	Method 4 at 40 CFR part 60, Appendix A–3 of this chapter.
		e. Measure the HAP metals emissions concentrations and determine each individual HAP metals emissions concentration, as well as the total filterable HAP metals emissions concentration and total HAP metals emissions concentration.	Method 29 at 40 CFR part 60, Appendix A–8 of this chapter. Determine total filterable HAP metals according to section 8.3.1.1 prior to beginning metals analyses.
		f. Convert emissions concentrations (individual HAP metals, total filterable HAP metals, and total HAP metals) to lb per MMBtu or lb per MWh emissions rates.	Method 19 F-factor methodology at 40 CFR part 60, Appendix A–7 of this chapter, or calculate using mass emissions rate and electrical output data.
3. Hydrogen chloride (HCl) and hydrogen fluoride (HF).	Emissions Testing	a. Select sampling ports location and the number of traverse points.	Method 1 at 40 CFR part 60, Appendix A–1 of this chapter.
		b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G at 40 CFR part 60, Appendix A–2 of this chapter.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at 40 CFR part 60, Appendix A–2 of this chapter, or ANSI/ASME PTC 19.10–1981.
		d. Measure the moisture content of the stack gas.	Method 4 at 40 CFR part 60, Appendix A–3 of this chapter.
		e. Measure the HCl and HF emissions concentrations.	Method 26 if there are no entrained water droplets in the exhaust stream or 26A if there are entrained water droplets in the exhaust stream at 40 CFR part 60, Appendix A–8 of this chapter.
		f. Convert emissions concentration to lb per MMBtu or lb per MWh emissions rates.	Method 19 F-factor methodology at 40 CFR part 60, Appendix A–7 of this chapter, or calculate using mass emissions rate and electrical output data.
	OR	OR	
	HCl and/or HF CEMS	a. Install, operate, and maintain the CEMS	PS 15 or 6 at 40 CFR part 60, Appendix B of this chapter and QA Procedure 1 at 40 CFR part 60, Appendix F of this chapter.
		b. Install, operate, and maintain the diluents gas, flow rate, and/or moisture monitoring systems.	Section 4.1.3 and 5.3 of Appendix A of this subpart.
		c. Convert hourly emissions concentrations to 30 boiler operating day rolling average lb per MMBtu emissions rates or lb/MWh emissions rates.	Method 19 F-factor methodology at 40 CFR part 60, Appendix A–7 of this chapter, or calculate using mass emissions rate and electrical output data.
4. Mercury (Hg)	Emissions Testing	a. Select sampling ports location and the number of traverse points.	Method 1 at 40 CFR part 60, Appendix A–1 of this chapter.
		b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G at 40 CFR part 60, Appendix A–1 or A–2 of this chapter.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at 40 CFR part 60, Appendix A–1 of this chapter, or ANSI/ASME PTC 19.10–1981.
		d. Measure the moisture content of the stack gas.	Method 4 at 40 CFR part 60, Appendix A–3 of this chapter.
		e. Measure the Hg emission concentration	Method 29 or 30B at 40 CFR part 60, Appendix A–8 of this chapter or ASTM Method D6784–02 (2008) as specified.
		f. Convert emissions concentration to lb per TBtu emissions rates.	Section 6 of Appendix A of this subpart.
	OR	OR	
	Hg CEMS	a. Install, operate, and maintain the CEMS	Sections 3.2.1 and 5.1 of Appendix A of this subpart.
		b. Install, operate, and maintain the diluents gas, flow rate, and/or moisture monitoring systems.	Section 4.1.3 and 5.3 of Appendix A of this subpart.

TABLE 5 TO SUBPART UUUUU OF PART 63—PERFORMANCE STACK TESTING REQUIREMENTS—Continued

To conduct a performance test for the following pollutant . . .	Using . . .	You must . . .	Using . . .[10]
		c. Convert hourly emissions concentrations to 30 boiler operating day rolling average lb per MMBtu emissions rates or lb/MWh emissions rates.	Section 6 of Appendix A of this subpart.
	OR	OR	
	Sorbent trap monitoring system	a. Install, operate, and maintain the sorbent trap monitoring system.	Sections 3.2.2 and 5.2 of Appendix A of this subpart.
		b. Install, operate, and maintain the diluents gas, flow rate, and/or moisture monitoring systems.	Section 4.1.3 and 5.3 of Appendix A of this subpart.
		c. Convert emissions concentrations to 30 boiler operating day rolling average lb per MMBtu emissions rates or lb/MWh emissions rates.	Section 6 of Appendix A of this subpart.
	OR	OR	
	LEE testing	a. Select sampling ports location and the number of traverse points.	Single point located at the 10% centroidal area of the duct at a port location per Method 1 at 40 CFR part 60, Appendix A–1 of this chapter.
		b. Determine velocity and volumetric flow-rate of the stack gas.	Method 2, 2F, or 2G at 40 CFR part 60, Appendix A–1 or A–2 of this chapter or flow monitoring systems certified by Section 4.1.3 and 5.3 of Appendix A of this subpart.
		c. Determine oxygen and carbon dioxide concentrations of the stack gas.	Method 3A or 3B at 40 CFR part 60, Appendix A–1 of this chapter, or ANSI/ASME PTC 19.10–1981 or diluent gas monitoring systems certified by Section 4.1.3 and 5.3 of Appendix A of this subpart.
		d. Measure the moisture content of the stack gas.	Method 4 at 40 CFR part 60, Appendix A–3 of this chapter or moisture monitoring systems certified by Section 4.1.3 and 5.3 of Appendix A of this subpart.
		e. Measure the Hg emission concentration	Method 30B at 40 CFR part 60, Appendix A–8 of this chapter.
		f. Convert emissions concentrations to 30 boiler operating day rolling average lb per MMBtu emissions rates or lb/MWh emissions rates.	Section 6 of Appendix A of this subpart.
		g. Convert 30 boiler operating day rolling average lb per MMBtu pr lb/MWh to lb per year.	Potential maximum annual heat input in MMBtu or potential maximum electricity generated in MWh.
5. Sulfur dioxide (SO_2)	SO_2 CEMS	a. Install, operate, and maintain the CEMS	PS 2 or 6 at 40 CFR part 60, Appendix B of this chapter and QA Procedure 1 at 40 CFR part 60, Appendix F of this chapter.
		b. Install, operate, and maintain the diluents gas, flow rate, and/or moisture monitoring systems.	Section 4.1.3 and 5.3 of Appendix A of this subpart.
		c. Convert hourly emissions concentrations to 30 boiler operating day rolling average lb per MMBtu emissions rates or lb/MWh emissions rates.	Method 19 F-factor methodology at 40 CFR part 60, Appendix A–7 of this chapter, or calculate using mass emissions rate and electrical output data.

As stated in § 63.10008, you must comply with the following requirements for fuel analysis testing for existing, new, or reconstructed affected sources. However, equivalent methods may be used in lieu of the prescribed methods at the discretion of the source owner or operator:

TABLE 6 TO SUBPART UUUUU OF PART 63—FUEL ANALYSIS REQUIREMENTS

To conduct a fuel analysis for the following pollutant . . .	You must . . .	Using . . .[11]
1. Mercury (Hg)	a. Collect fuel samples	Procedure in § 63.10008(c) or ASTM D2234/D2234M (for coal) or equivalent.
	b. Composite fuel samples	Procedure in § 63.10008(d) or equivalent.

[10] All ASTM, ANSI, and ASME methods are incorporated by reference.

[11] All ASTM, ANSI, and ASME methods are incorporated by reference.

TABLE 6 TO SUBPART UUUUU OF PART 63—FUEL ANALYSIS REQUIREMENTS—Continued

To conduct a fuel analysis for the following pollutant . . .	You must . . .	Using . . .[11]
	c. Prepare composited fuel samples	EPA SW–846–3020A (for liquid samples) or ASTM D2013/D2013M– (for coal) or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865 (for coal) or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173 or equivalent.
	f. Measure Hg concentration in fuel sample	ASTM D6722–01 (for coal) or SW–846–7471A (for solid samples) or SW–846–7470A (for liquid samples) or equivalent.
	g. Convert concentration into units of pounds of pollutant per TBtu of heat content or lb per MWh.	Method 19 F-factor methodology at 40 CFR part 60, Appendix A–7 of this chapter, or calculate using mass emissions rate and electrical output data.
2. Other non-Hg HAP metals	a. Collect fuel samples	Procedure in § 63.10008(c) or ASTM D2234/D2234M (for coal) or equivalent.
	b. Composite fuel samples	Procedure in § 63.10008(d) or equivalent.
	c. Prepare composited fuel samples	EPA SW–846–3020A (for liquid samples) or ASTM D2013/D2013M– (for coal) or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865 (for coal) or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173 or equivalent.
	f. Measure other non-Hg HAP metals concentrations in fuel sample.	EPA SW–846–6010B or ASTM D3683 (for coal samples) or equivalent; EPA SW–846–6010B (for other solid fuel samples) or equivalent; or EPA SW–846–6020 (for liquid fuel samples) or equivalent.
	g. Convert concentration into units of pounds of pollutant per TBtu of heat content or lb per MWh.	Method 19 F-factor methodology at 40 CFR part 60, Appendix A–7 of this chapter, or calculate using mass emissions rate and electrical output data.
	b. Composite fuel samples	Procedure in § 63.10008(d) or equivalent.
3. Hydrogen chloride (HCl)	a. Collect fuel samples	Procedure in § 63.10008(c) or D2234/D2234M (for coal) or equivalent.
	b. Composite fuel samples	Procedure in § 63.10008(d) or equivalent.
	c. Prepare composited fuel samples	EPA SW–846–3020A (for liquid samples), EPA SW–846–3050B (for solid samples), or ASTM D2013/D2013M (for coal) or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865 (for coal) or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173 or equivalent.
	f. Measure chlorine concentration in fuel sample.	EPA SW–846–9250 or ASTM D6721 (for coal) or equivalent, or EPA SW–846–9250 or ASTM E776 (for solid or liquid samples) or equivalent.
	g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content or lb per MWh.	Method 19 F-factor methodology at 40 CFR part 60, Appendix A–7 of this chapter, or calculate using mass emissions rate and electrical output data.
4. Hydrogen fluoride (HF)	a. Collect fuel samples	Procedure in § 63.10008(c) or D2234/D2234M (for coal) or equivalent.
	b. Composite fuel samples	Procedure in § 63.10008(d) or equivalent.
	c. Prepare composited fuel samples	EPA SW–846–3020A (for liquid samples), EPA SW–846–3050B (for solid samples), or ASTM D2013/D2013M (for coal) or equivalent.
	d. Determine heat content of the fuel type	ASTM D5865 (for coal) or equivalent.
	e. Determine moisture content of the fuel type	ASTM D3173 or equivalent.
	f. Measure chlorine concentration in fuel sample.	EPA SW–846–9250 or ASTM D6721 (for coal) or equivalent, or EPA SW–846–9250 or ASTM E776 (for solid or liquid samples) or equivalent.
	g. Convert concentrations into units of pounds of pollutant per MMBtu of heat content.	Method 19 F-factor methodology at 40 CFR part 60, Appendix A–7 of this chapter.

As stated in § 63.10007, you must comply with the following requirements for establishing operating limits:

TABLE 7 TO SUBPART UUUUU OF PART 63—ESTABLISHING OPERATING LIMITS

If you have an applicable emission limit for . . .	And your operating limits are based on . . .	You must . . .	Using . . .	According to the following requirements
1. Particulate matter (PM), mercury (Hg), or other non-Hg HAP metals.	a. Wet scrubber operating parameters.	i. Establish a site-specific minimum pressure drop and minimum flow rate operating limit according to § 63.10011(c).	(1) Data from the pressure drop and liquid flow rate monitors and the PM, Hg, or other non-Hg HAP metals performance test.	(a) You must collect pressure drop and liquid flow-rate data every 15 minutes during the entire period of the performance tests; (b) Determine the average hourly pressure drops and liquid flow rates for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during each test run.
	b. Electrostatic precipitator operating parameters (option only for units that operate wet scrubbers).	i. Establish a site-specific secondary power input according to § 63.10011(c).	(1) Data from the secondary power input during the PM, Hg, or other non-Hg HAP metals performance test.	(a) You must collect secondary voltage and current and calculate total ESP secondary power input data every 15 minutes during the entire period of the performance tests; (b) Determine the average hourly total secondary power inputs for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during each test run.
	c. Filterable PM results obtained from performance testing and are measured continuously using PM CEMS.	i. Establish a site-specific filterable PM concentration according to § 63.10011(d).	(1) Data from the PM performance test.	(a) You must collect at least 3 test runs of Method 5 filterable PM results.
2. Hydrogen chloride (HCl) or hydrogen fluoride (HF).	a. Wet scrubber operating parameters.	i. Establish a site-specific minimum pH and flow rate operating limits according to § 63.10011(c).	(1) Data from the pH and liquid flow rate monitors and the HCl performance test.	(a) You must collect pH and liquid flow rate data every 15 minutes during the entire period of the performance tests; (b) Determine the average hourly pH liquid flow rates for each individual test run in the three-run performance test by computing the average of all the 15-minute readings taken during each test run.
	b. Dry scrubber or DSI operating parameters.	i. Establish a site-specific minimum sorbent injection rate operating limit according to § 63.10011(c). If different acid gas sorbents are used during the HCl performance test, the average value for each sorbent becomes the site-specific operating limit for that sorbent.	(1) Data from the sorbent injection rate monitors and HCl or Hg performance test.	(a) You must collect sorbent injection rate data every 15 minutes during the entire period of the performance tests; (b) Determine the average hourly sorbent injection rates of the three test run averages measured during the performance test.

As stated in § 63.10021, you must show continuous compliance with the emission limitations for affected sources according to the following:

TABLE 8 TO SUBPART UUUUU OF PART 63—DEMONSTRATING CONTINUOUS COMPLIANCE

If you must meet the following operating limits or work practice standards . . .	You must demonstrate continuous compliance by . . .
1. Fabric filter bag leak detection operation	Installing and operating a bag leak detection system according to § 63.10010 and operating the fabric filter such that the requirements in § 63.10021(a)(9) are met.
2. Wet PM scrubber pressure drop and liquid flow-rate.	a. Collecting the pressure drop and liquid flow rate monitoring system data according to §§ 63.10010 and 63.10020; and b. Reducing the data to 12-hour block averages; and c. Maintaining the 12-hour average pressure drop and liquid flow-rate at or above the operating limits established during the performance test according to § 63.10011(c).
3. Wet acid gas scrubber pH and liquid flow rate.	a. Collecting the pH and liquid flow rate monitoring system data according to §§ 63.10010 and 63.10020; and b. Reducing the data to 12-hour block averages; and c. Maintaining the 12-hour average pH and liquid flow-rate at or above the operating limits established during the performance test according to § 63.10011(c).
4. Dry scrubber or DSI sorbent or carbon injection rate.	a. Collecting the sorbent or carbon injection rate monitoring system data for the dry scrubber or DSI according to §§ 63.10010 and 63.10020; and b. Reducing the data to 12-hour block averages; and c. Maintaining the 12-hour average sorbent or carbon injection rate at or above the operating limit established during the performance test according to § 63.10011(c).
5. Electrostatic precipitator secondary power input.	a. Collecting the secondary power input monitoring system data for the electrostatic precipitator according to §§ 63.10010 and 63.10020; and b. Reducing the data to 12-hour block averages; and c. Maintaining the 12-hour average secondary power input at or above the operating limits established during the performance test according to § 63.10011(c).
6. Fuel pollutant content	a. Only burning the fuel types and fuel mixtures used to demonstrate compliance with the applicable emission limit according to § 63.10011(c) or (d) as applicable; and b. Keeping monthly records of fuel use according to § 63.10021(a).
7. Filterable PM as measured by PM CEMS	a. Collecting the PM concentration data using a PM CEMS installed, operated and maintained in accordance with PS 11 at 40 CFR part 60, Appendix B of this chapter and QA Procedure 5 at 40 CFR part 60, Appendix F of this chapter; b. Converting hourly emissions concentrations to 30 boiler operating mg/dscm values; and c. Maintaining the 30 boiler operating day rolling average mg/dscm values below the operating limits established during the performance test according to § 63.10011(d).

As stated in § 63.10031, you must comply with the following requirements for reports:

TABLE 9 TO SUBPART UUUUU OF PART 63—REPORTING REQUIREMENTS

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. Information required in § 63.10031(c)(1) through (11) through (11); and b. If there are no deviations from any emission limitation (emission limit and operating limit) that applies to you and there are no deviations from the requirements for work practice standards in Table 8 to this subpart that apply to you, a statement that there were no deviations from the emission limitations and work practice standards during the reporting period. If there were no periods during which the CMSs, including continuous emissions monitoring system, and operating parameter monitoring systems, were out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the CMSs were out-of-control during the reporting period; and c. If you have a deviation from any emission limitation (emission limit and operating limit) or work practice standard during the reporting period, the report must contain the information in § 63.10031(d). If there were periods during which the CMSs, including continuous emissions monitoring system, and operating parameter monitoring systems, were out-of-control, as specified in § 63.8(c)(7), the report must contain the information in § 63.10031(e); and d. If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).	Semiannually according to the requirements in § 63.10031(b).

TABLE 9 TO SUBPART UUUUU OF PART 63—REPORTING REQUIREMENTS—Continued

You must submit a(n)	The report must contain . . .	You must submit the report . . .
2. An immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan, and the source exceeds any applicable emission limitation in the emission standard.	a. Actions taken for the event; and	i. By fax or telephone within 2 working days after starting actions inconsistent with the plan; and
	b. The information in § 63.10(d)(5)(ii)	ii. By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.

As stated in § 63.10040, you must comply with the applicable General Provisions according to the following:

TABLE 10 TO SUBPART UUUUU OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUUU

Citation	Subject	Applies to subpart UUUUU
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes. Additional terms defined in § 63.10042.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities and Circumvention	Yes.
§ 63.5	Preconstruction Review and Notification Requirements.	Yes.
§ 63.6(a), (b)(1)–(b)(5), (b)(7), (c), (f)(2)–(3), (g), (h)(2)–(h)(9), (i), (j).	Compliance with Standards and Maintenance Requirements.	Yes.
§ 63.6(e)(1)(i)	General Duty to minimize emissions	No. See § 63.10000(b) for general duty requirement.
§ 63.6(e)(1)(ii)	Requirement to correct malfunctions ASAP	No.
§ 63.6(e)(3)	SSM Plan requirements	No.
§ 63.6(f)(1)	SSM exemption	No.
§ 63.6(h)(1)	SSM exemption	No.
§ 63.7(a), (b), (c), (d), (e)(2)–(e)(9), (f), (g), and (h).	Performance Testing Requirements	Yes.
§ 63.7(e)(1)	Performance testing	No. See § 63.10007.
§ 63.8	Monitoring Requirements	
63.8(c)(1)(i)	General duty to minimize emissions and CMS operation.	
§ 63.8(c)(1)(iii)	Requirement to develop SSM Plan for CMS	No.
§ 63.8(d)(3)	Written procedures for CMS	Yes, except for last sentence, which refers to an SSM plan. SSM plans are not required.
§ 63.9	Notification Requirements	Yes.
§ 63.10(a), (b)(1), (c), (d)(1)–(2), (e), and (f)	Recordkeeping and Reporting Requirements	Yes.
§ 63.10(b)(2)(i)	Recordkeeping of occurrence and duration of startups and shutdowns.	No.
§ 63.10(b)(2)(ii)	Recordkeeping of malfunctions	No. See 63.10001 for recordkeeping of (1) occurrence and duration and (2) actions taken during malfunction.
§ 63.10(b)(2)(iii)	Maintenance records	Yes.
§ 63.10(b)(2)(iv)	Actions taken to minimize emissions during SSM.	No.
§ 63.10(b)(2)(v)	Actions taken to minimize emissions during SSM.	No.
§ 63.10(b)(2)(vi)	Recordkeeping for CMS malfunctions	Yes.
§ 63.10(b)(2)(vii)–(ix)	Other CMS requirements	Yes.
§ 63.10(b)(3), and (d)(3)–(5)		No.
§ 63.10(c)(7)	Additional recordkeeping requirements for CMS—identifying exceedances and excess emissions.	Yes.
§ 63.10(c)(8)	Additional recordkeeping requirements for CMS—identifying exceedances and excess emissions.	Yes.
§ 63.10(c)(10)	Recording nature and cause of malfunctions	No. See 63.10032(g) and (h) for malfunctions recordkeeping requirements.

TABLE 10 TO SUBPART UUUUU OF PART 63—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART UUUUU—Continued

Citation	Subject	Applies to subpart UUUUU
§ 63.10(c)(11)	Recording corrective actions	No. See 63.10032(g) and (h) for malfunctions recordkeeping requirements.
§ 63.10(c)(15)	Use of SSM Plan	No.
§ 63.10(d)(5)	SSM reports	No. See 63.10031(h) and (i) for malfunction reporting requirements.
§ 63.11	Control Device Requirements	No.
§ 63.12	State Authority and Delegation	Yes.
§ 63.13–63.16	Addresses, Incorporation by Reference, Availability of Information, Performance Track Provisions.	Yes.
§ 63.1(a)(5), (a)(7)–(a)(9), (b)(2), (c)(3)–(4), (d), 63.6(b)(6), (c)(3), (c)(4), (d), (e)(2), (e)(3)(ii), (h)(3), (h)(5)(iv), 63.8(a)(3), 63.9(b)(3), (h)(4), 63.10(c)(2)–(4), (c)(9).	Reserved	No.

Appendix A to Subpart UUUUU—Hg Monitoring Provisions

1. General Provisions

1.1 *Applicability.* These monitoring provisions apply to the measurement of total vapor phase mercury (Hg) in emissions from electric utility steam generating units, using either a mercury continuous emission monitoring system (Hg CEMS) or a sorbent trap monitoring system. The Hg CEMS or sorbent trap monitoring system must be capable of measuring the total vapor phase mercury in units of the applicable emissions standard (e.g., lb/TBtu or lb/GWh), regardless of speciation. The monitoring, recordkeeping, and reporting provisions of this appendix shall be considered to be met to the extent that they have already been, and are continuing to be, met or exceeded under another Federal or State program.

1.2 *Initial Certification and Recertification Procedures.* The owner or operator of an affected unit that uses a Hg CEMS or a sorbent trap monitoring system together with other necessary monitoring components to account for Hg emissions in units of the applicable emissions standard shall comply with the initial certification and recertification procedures in section 4 of this appendix.

1.3 *Quality Assurance and Quality Control Requirements.* The owner or operator of an affected unit that uses a Hg CEMS or a sorbent trap monitoring system together with other necessary monitoring components to account for Hg emissions in units of the applicable emissions standard shall meet the applicable quality assurance requirements in section 5 of this appendix.

1.4 *Missing Data Procedures.* The owner or operator of an affected unit is not required to substitute for missing data from Hg CEMS or sorbent trap monitoring systems. Any process operating hour for which the CEMS fails to produce quality-assured Hg mass emissions data is counted as an hour of monitoring system downtime.

2. Monitoring of Hg Emissions for Various Configurations

2.1 *Single Unit-Single Stack Configuration.* For an affected unit that exhausts to the atmosphere through a single, dedicated stack, the owner or operator shall install, certify, maintain, and operate a Hg CEMS or a sorbent trap monitoring system and any other necessary monitoring components needed to express the measured Hg emissions in the units of the applicable emissions standard, in accordance with section 3.2 of this appendix.

2.2 *Unit Utilizing Common Stack with Other Affected Unit(s).* When an affected unit utilizes a common stack with one or more other affected units, but no non-affected units, the owner or operator shall either:

2.2.1 Install, certify, maintain, and operate the monitoring systems described in paragraph 2.1 of this section in the duct to the common stack from each unit; or

2.2.2 Install, certify, maintain, and operate the monitoring systems described in paragraph 2.1 of this section in the common stack.

2.3 *Unit Utilizing Common Stack with Non-affected Units.* When one or more affected units shares a common stack with one or more non-affected units, the owner or operator shall either:

2.3.1 Install, certify, maintain, and operate the monitoring systems described in paragraph 2.1 of this section in the duct to the common stack from each affected unit; or

2.3.2 Install, certify, maintain, and operate the monitoring systems described in paragraph 2.1 of this section in the common stack and attribute all of the Hg emissions measured at the common stack to the affected unit(s).

2.4 *Unit with a Main Stack and a Bypass Stack.* If the exhaust configuration of an affected unit consists of a main stack and a bypass stack, the owner and operator shall either:

2.4.1 Install, certify, maintain, and operate the monitoring systems described in paragraph 2.1 of this section on both the main stack and the bypass stack; or

2.4.2 Install, certify, maintain, and operate the monitoring systems described in paragraph 2.1 of this section only on the main stack, and report the maximum potential Hg concentration (as defined in section 3.2.1.4.1 of this appendix) for each unit operating hour in which the bypass stack is used.

2.5 *Unit with Multiple Stack or Duct Configuration.* If the flue gases from an affected unit either: are discharged to the atmosphere through more than one stack; or are fed into a single stack through two or more ducts and the owner or operator chooses to monitor in the ducts rather than in the stack, the owner or operator shall either:

2.5.1 Install, certify, maintain, and operate the monitoring systems described in paragraph 2.1 of this section in each of the multiple stacks; or

2.5.2 Install, certify, maintain, and operate the monitoring systems described in paragraph 2.1 of this section in each of the ducts that feed into the stack.

3. Mercury Emissions Measurement Methods

The following definitions, equipment specifications, procedures, and performance criteria are applicable to the measurement of vapor-phase Hg emissions from electric utility steam generating units, under relatively low-dust conditions (i.e., sampling in the stack or duct after all pollution control devices). The analyte measured by these procedures and specifications is total vapor-phase Hg in the flue gas, which represents the sum of elemental Hg (Hg^0, CAS Number 7439–97–6) and oxidized forms of Hg.

3.1 *Definitions.*

3.1.1 *Mercury Continuous Emission Monitoring System or Hg CEMS* means all of the equipment used to continuously determine the total vapor phase Hg concentration. The measurement system may include the following major subsystems: Sample acquisition, Hg^{+2} to Hg^0 converter, sample transport, sample conditioning, flow control/gas manifold, gas analyzer, and data acquisition and handling system (DAHS).

3.1.2 *Sorbent Trap Monitoring System* means the equipment required to monitor Hg emissions continuously, using paired sorbent traps containing iodated charcoal (IC) or other suitable sorbent medium. The monitoring system consists of a probe, paired sorbent traps, an umbilical line, moisture removal components, an airtight sample pump, a gas flow meter, and an automated data acquisition and handling system. The system samples the stack gas at a rate proportional to the stack gas volumetric flow

rate. The sampling is a batch process. The average Hg concentration in the stack gas for the sampling period is determined, in units of micrograms per dry standard cubic meter (μg/dscm), based on the sample volume measured by the gas flow meter and the mass of Hg collected in the sorbent traps.

3.1.3 *NIST* means the National Institute of Standards and Technology, located in Gaithersburg, Maryland.

3.1.4 *NIST-traceable elemental Hg standards* means either: compressed gas cylinders having known concentrations of elemental Hg, which have been prepared according to the "EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards"; or calibration gases having known concentrations of elemental Hg, produced by a generator that meets the performance requirements of the "EPA Traceability Protocol for Qualification and Certification of Elemental Mercury Gas Generators", or an interim version of that protocol.

3.1.5 *NIST-traceable source of oxidized Hg* means a generator that is capable of providing known concentrations of vapor phase mercuric chloride ($HgCl_2$), and that meets the performance requirements of the "EPA Traceability Protocol for Qualification and Certification of Mercuric Chloride Gas Generators", or an interim version of that protocol.

3.1.6 Calibration Gas means a NIST-traceable gas standard containing known concentration of a gaseous species that is produced and certified in accordance with an EPA traceability protocol.

3.1.7 *Span value* means a conservatively high estimate of the gas concentrations or stack gas flow rates to be measured by a CEMS. For a Hg pollutant concentration monitor, the span value should be set to approximately twice the concentration corresponding to the emission standard, rounded off as appropriate.

3.1.8 *Zero-Level Gas* means calibration gas with a concentration that is below the level detectable by a gas monitoring system.

3.1.9 *Low-Level Gas* means calibration gas with a concentration that is 20 to 30 percent of the span value.

3.1.10 *Mid-Level Gas* means calibration gas with a concentration that is 50 to 60 percent of the span value.

3.1.11 *High-Level Gas* means calibration gas with a concentration that is 80 to 100 percent of the span value.

3.1.12 *Calibration Error Test* means a test designed either to assess the ability of a gas monitor to measure the concentrations of calibration gases accurately, or the ability of a flow monitor to read electronic reference signals accurately. A zero-level gas (or signal) and an upscale gas (or signal) are required for this test. For gas monitors, either a mid-level gas or a high-level gas may be used. For a flow monitor, an upscale signal of 50 to 70 percent of the calibration span value is required. For a Hg CEMS, the upscale gas may either be an elemental or oxidized Hg standard.

3.1.13 *Linearity Check* means a test designed to determine whether the response of a gas analyzer is linear across its measurement range. Three calibration gas standards (i.e., low, mid, and high-level gases) are required for this test. For a Hg CEMS, elemental Hg calibration standards are required.

3.1.14 *System Integrity Check* means a test designed to assess the transport and measurement of oxidized Hg by a Hg CEMS. Oxidized Hg standards are used for this test. For a three-level system integrity check, low, mid, and high-level calibration gases are required. For a single-level check, either a mid-level gas or a high-level gas may be used.

3.1.15 *Cycle Time Test* means a test designed to measure the amount of time it takes for a gas monitor, while operating normally, to respond to a known step change in gas concentration. For this test, a zero gas and a high-level gas are required. For a Hg CEMS, the high-level gas may be either an elemental or an oxidized Hg standard.

3.1.16 *Relative Accuracy Test Audit or RATA* means a series of nine or more test runs, directly comparing readings from a CEMS or sorbent trap monitoring system to measurements made with a reference stack test method. The relative accuracy (RA) of the monitoring system is expressed as the absolute mean difference between the monitoring system and reference method measurements plus the absolute value of the 2.5 percent error confidence coefficient, divided by the mean value of the reference method measurements.

3.1.17 *Unit Operating Hour* means a clock hour in which a unit combusts any fuel, either for part of the hour or for the entire hour.

3.1.18 *Stack Operating Hour* means a clock hour in which gases flow through a particular monitored stack or duct (either for part of the hour or for the entire hour), while the associated unit(s) are combusting fuel.

3.1.19 *Unit Operating Day* means a calendar day in which a unit combusts any fuel.

3.1.20 *QA Operating Quarter* means a calendar quarter in which there are at least 168 unit or stack operating hours (as defined in this section).

3.1.21 *Grace Period* means a specified number of unit or stack operating hours after the deadline for a required quality-assurance test of a continuous monitor has passed, in which the test may be performed and passed without loss of data.

3.2 *Continuous Monitoring Methods.*

3.2.1 *Hg CEMS.* A typical Hg CEMS is shown in Figure A–1. The CEMS in Figure A–1 is a dilution extractive system, which measures Hg concentration on a wet basis, and is the most commonly-used type of Hg CEMS. Other system designs may be used, provided that the CEMS meets the performance specifications in section 4.1.1 of this appendix.

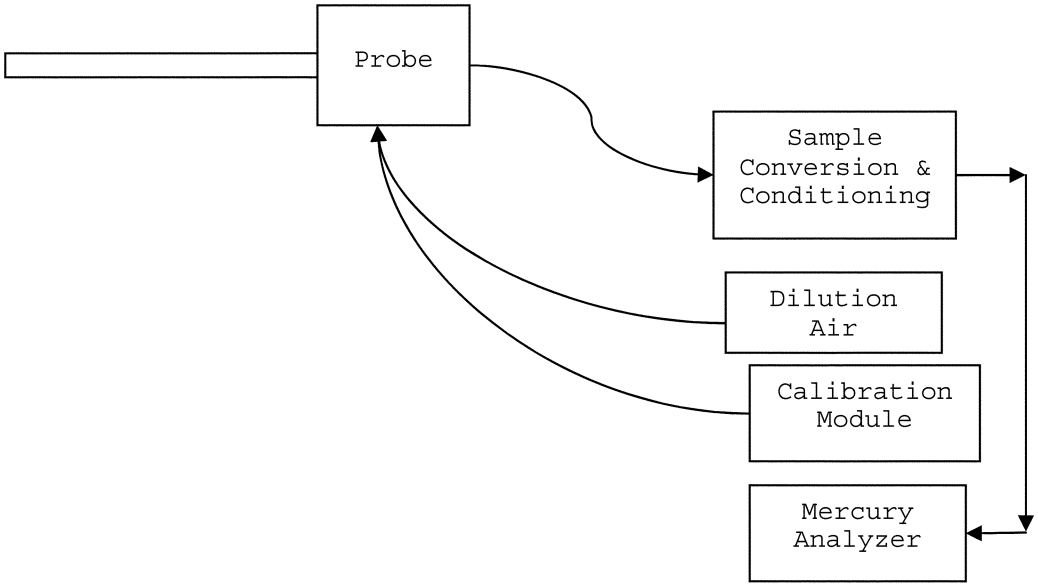

FIGURE A-1. TYPICAL MERCURY CEMS

3.2.1.1 *Equipment Specifications.*

3.2.1.1.1 *Materials of Construction.* All wetted sampling system components, including probe components prior to the point at which the calibration gas is introduced, must be chemically inert to all Hg species. Materials such as perfluoroalkoxy (PFA) Teflon™, quartz, treated stainless steel (SS) are examples of such materials.

3.2.1.1.2 *Temperature Considerations.* All system components prior to the Hg^{+2} to Hg^0 converter must be maintained at a sample temperature above the acid gas dew point.

3.2.1.1.3 *Measurement System Components.*

3.2.1.1.3.1 Sample Probe. The probe must be made of the appropriate materials as noted in paragraph 3.2.1.1.1 of this section, heated when necessary, as described in paragraph 3.2.1.1.3.4 of this section, and configured with ports for introduction of calibration gases.

3.2.1.1.3.2 *Filter or Other Particulate Removal Device.* The filter or other particulate removal device is part of the measurement system, must be made of appropriate materials, as noted in paragraph 3.2.1.1.1 of this section, and must be included in all system tests.

3.2.1.1.3.3 *Sample Line.* The sample line that connects the probe to the converter, conditioning system, and analyzer must be made of appropriate materials, as noted in paragraph 3.2.1.1.1 of this section.

3.2.1.1.3.4 *Conditioning Equipment.* For wet basis systems, such as the one shown in Figure A–1, the sample must be kept above its dew point either by: Heating the sample line and all sample transport components up to the inlet of the analyzer (and, for hot-wet extractive systems, also heating the analyzer); or diluting the sample prior to analysis using a dilution probe system. The components required for these operations are considered to be conditioning equipment. For dry basis measurements, a condenser, dryer or other suitable device is required to remove moisture continuously from the sample gas, and any equipment needed to heat the probe or sample line to avoid condensation prior to the moisture removal component is also required.

3.2.1.1.3.5 *Sampling Pump.* A pump is needed to push or pull the sample gas through the system at a flow rate sufficient to minimize the response time of the measurement system. If a mechanical sample pump is used and its surfaces are in contact with the sample gas prior to detection, the pump must be leak free and must be constructed of a material that is non-reactive to the gas being sampled (see paragraph 3.2.1.1.1 of this section). For dilution-type measurement systems, such as the system shown in Figure A–1, an ejector pump (eductor) may be used to create a sufficient vacuum that sample gas will be drawn through a critical orifice at a constant rate. The ejector pump may be constructed of any material that is non-reactive to the gas being sampled.

3.2.1.1.3.6 *Calibration Gas System(s).* Design and equip each Hg monitor to permit the introduction of known concentrations of elemental Hg and $HgCl_2$ separately, at a point preceding the sample extraction filtration system, such that the entire measurement system can be checked. The calibration gas system(s) must be designed so that the flow rate exceeds the sampling system flow requirements and that the gas is delivered to the CEMS at atmospheric pressure.

3.2.1.1.3.7 *Sample Gas Delivery.* The sample line may feed directly to a converter, to a by-pass valve (for Hg speciating systems), or to a sample manifold. All valve and/or manifold components must be made of material that is non-reactive to the gas sampled and the calibration gas, and must be configured to safely discharge any excess gas.

3.2.1.1.3.8 *Hg Analyzer.* An instrument is required that continuously measures the total vapor phase Hg concentration in the gas stream. The analyzer may also be capable of measuring elemental and oxidized Hg separately.

3.2.1.1.3.9 *Data Recorder.* A recorder, such as a computerized data acquisition and handling system (DAHS), digital recorder, or data logger, is required for recording measurement data.

3.2.1.2 *Reagents and Standards.*

3.2.1.2.1 *NIST Traceability.* Only NIST-certified or NIST-traceable calibration gas standards and reagents (as defined in paragraphs 3.1.4 and 3.1.5 of this section) shall be used for the tests and procedures required under this subpart. Calibration gases with known concentrations of Hg^0 and $HgCl_2$ are required. Special reagents and equipment may be needed to prepare the Hg^0 and $HgCl_2$ gas standards (e.g., NIST-traceable solutions of $HgCl_2$ and gas generators equipped with mass flow controllers).

3.2.1.2.2 *Required Calibration Gas Concentrations.*

3.2.1.2.2.1 *Zero-Level Gas.* A zero-level calibration gas with a Hg concentration below the detectable limit of the analyzer is required for calibration error tests and cycle time tests of the CEMS.

3.2.1.2.2.2 *Low-Level Gas.* A low-level calibration gas with a Hg concentration of 20 to 30 percent of the span value is required for linearity checks and 3-level system integrity checks of the CEMS. Elemental Hg standards are required for the linearity checks and oxidized Hg standards are required for the system integrity checks.

3.2.1.2.2.3 *Mid-Level Gas.* A mid-level calibration gas with a Hg concentration of 50

to 60 percent of the span value is required for linearity checks and for 3-level system integrity checks of the CEMS, and is optional for calibration error tests and single-level system integrity checks. Elemental Hg standards are required for the linearity checks, oxidized Hg standards are required for the system integrity checks, and either elemental or oxidized Hg standards may be used for the calibration error tests.

3.2.1.2.2.4 *High-Level Gas.* A high-level calibration gas with a Hg concentration of 80 to 100 percent of the span value is required for linearity checks, 3-level system integrity checks, and cycle time tests of the CEMS, and is optional for calibration error tests and single-level system integrity checks. Elemental Hg standards are required for the linearity checks, oxidized Hg standards are required for the system integrity checks, and either elemental or oxidized Hg standards may be used for the calibration error and cycle time tests.

3.2.1.3 *Installation and Measurement Location.* For the Hg CEMS and any additional monitoring system(s) needed to convert Hg concentrations to the desired units of measure (i.e., a flow monitor, CO_2 or O_2 monitor, and/or moisture monitor, as applicable), install each monitoring system at a location: That represents the emissions exiting to the atmosphere; and at which it is likely that the CEMS can pass the relative accuracy test.

3.2.1.4 *Monitor Span and Range Requirements.* Determine the appropriate span and range value(s) for the Hg CEMS as described in paragraphs 3.2.1.4.1 through 3.2.1.4.3 of this section.

3.2.1.4.1 *Maximum Potential Concentration.* There are three options for determining the maximum potential Hg concentration (MPC). Option 1 applies to coal combustion. You may use a default value of 10 μg/scm for all coal ranks (including coal refuse) except for lignite; for lignite, use 16 μg/scm. Option 2 is to base the MPC on the results of site-specific Hg emission testing. This option may be used only if the unit does not have add-on Hg emission controls or a flue gas desulfurization system, or if testing is performed upstream of all emission control devices. If Option 2 is selected, perform at least three test runs at the normal operating load, and the highest Hg concentration obtained in any of the tests shall be the MPC. If different coals are blended as part of normal operation, use the highest MPC for any fuel in the blend. Option 3 is to use fuel sampling and analysis to estimate the MPC. To make this estimate, use the average Hg content (i.e., the weight percentage) from at least three representative fuel samples, together with other available information, including, but not limited to the maximum fuel feed rate, the heating value of the fuel, and an appropriate F-factor. Assume that all of the Hg in the fuel is emitted to the atmosphere as vapor-phase Hg.

3.2.1.4.2 *Span Value.* To determine the span value of the Hg CEMS, multiply the Hg concentration corresponding to the applicable emissions standard by two. If the result of this calculation is an exact multiple of 10 μg/scm, use the result as the span value. Otherwise, round off the result to the next highest integer. Alternatively, you may round off the span value to the next highest multiple of 10 μg/scm.

3.2.1.4.3 *Full-Scale Range.* The full-scale range of the Hg analyzer output must include the MPC.

3.2.2 *Sorbent Trap Monitoring System.* A sorbent trap monitoring system (as defined in paragraph 3.1.2 of this section) may be used as an alternative to a Hg CEMS. If this option is selected, the monitoring system shall be installed, maintained, and operated in accordance with Performance Specification 12B in Appendix B to part 60 of this chapter. The system shall be certified in accordance with the provisions of section 4.1.2 of this appendix.

3.2.3 *Other Necessary Monitoring Systems.* When the applicable Hg emission limit is specified in units of lb/TBtu or lb/GWh, some or all of the monitoring systems described in paragraphs 3.2.3.1 and 3.2.3.2 of this section will be needed to convert the measured Hg concentrations to the units of the emissions standard. These additional monitoring systems shall be installed, certified, maintained, operated, and quality-assured according to the applicable provisions of this appendix (see section 4.1.3 of this appendix). The calculation methods for the types of emission limits described in paragraphs 3.2.3.1 and 3.2.3.2 of this section are presented in section 6.2 of this appendix.

3.2.3.1 *Heat Input-Based Emission Limits.* For a heat input-based Hg emission limit (e.g., in lb/TBtu), data from a certified CO_2 or O_2 monitor are needed, along with a fuel-specific F-factor and a conversion constant to convert measured Hg concentration values to the units of the standard. In some cases, the stack gas moisture content must also be accounted for, as follows:

3.2.3.1.1 Determine the stack gas moisture content using a certified continuous moisture monitoring system; or

3.2.3.1.2 Use the moisture value determined during the most recent Hg emissions test while combusting the fuel type currently in use; or

3.2.3.1.3 For coal combustion, use a fuel-specific moisture default value. For anthracite coal, use 3.0% H_2O; for bituminous coal, use 6.0% H_2O; for sub-bituminous coal, use 8.0% H_2O; and for lignite, use 11.0% H_2O.

3.2.3.2 *Electrical Output-Based Emission Rates.* If the applicable Hg limit is electrical output-based (e.g., lb/GWh), hourly electrical load data and unit operating times are required in addition to hourly data from a certified flow rate monitor and (if applicable) moisture data.

3.2.3.3 *Span and Range of Flow Rate, Diluent Gas, and Moisture Monitors.* Set the span value of a CO_2 or O_2 monitor at 1.00 to 1.25 times the maximum potential concentration. Set the span value of a flow rate monitor at 1.00 to 1.25 times the maximum potential flow rate, in units of standard cubic feet per hour (scfh). If the units of measure for daily calibrations of the flow monitor are not expressed in scfh, convert the calculated span value from scfh to an equivalent "calibration span value" in the units of measure actually used for daily calibrations. Set the full-scale range of the CO_2, O_2, and flow monitors such that the majority of the data will fall between 20 and 80% of full-scale. For a continuous moisture sensor, there is no span value requirement; set up and operate the instrument according to the manufacturer's instructions.

4. Certification and Recertification Requirements

4.1 *Certification Requirements.* All Hg CEMS and sorbent trap systems and the monitoring systems used to continuously measure Hg emissions in units of the applicable emissions standard in accordance with this appendix must be certified prior to the applicable compliance date specified in § 63.9984.

4.1.1 *Hg CEMS.* Table A–1, below, summarizes the certification test requirements and performance specifications for a Hg CEMS. The CEMS may not be used to report quality-assured data until these performance criteria are met. Paragraphs 4.1.1.1 through 4.1.1.5 of this section provide specific instructions for the required tests.

4.1.1.1 *7-Day Calibration Error Test.* Perform the 7-day calibration error test on 7 consecutive operating days, using a zero-level gas and either a high-level or a mid-level calibration gas standard (as defined in sections 3.1.8, 3.1.10, and 3.1.11 of this appendix). Either elemental or oxidized NIST-traceable Hg standards (as defined in sections 3.1.4 and 3.1.5 of this appendix) may be used for the test. If moisture and/or chlorine is added to the calibration gas, the dilution effect of the moisture and/or chlorine addition on the calibration gas concentration must be accounted for in an appropriate manner. Operate each monitor in its normal sampling mode during the test. The calibrations should be approximately 24 hours apart, unless the 7-day test is performed over nonconsecutive calendar days. On each day of the test, inject the zero-level and upscale gases in sequence and record the analyzer responses. Pass the calibration gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling, and through as much of the sampling probe as is practical. Do not make any manual adjustments to the monitor (i.e., resetting the calibration) until after taking measurements at both the zero and upscale concentration levels. If automatic adjustments are made following both injections, conduct the calibration error test such that the magnitude of the adjustments can be determined, and use only the unadjusted analyzer responses in the calculations. Calculate the calibration error (CE) on each day of the test, as described in Table A–1. The CE on each day of the test must either meet the main performance specification or the alternative specification in Table A–1.

TABLE A–1—REQUIRED CERTIFICATION TESTS AND PERFORMANCE SPECIFICATIONS FOR HG CEMS

For this required certification test . . .	The main performance specification [1] is . . .	The alternate performance specification [1] is . . .	And the conditions of the alternate specification are . . .
7-day calibration error test [2]	$\|R-A\| \leq 5.0\%$ of span value, for both the zero and upscale gases, on each of the 7 days.	$\|R-A\| \leq 1.0$ µg/scm	The alternate specification may be used on any day of the test.
Linearity check [3]	$\|R-A_{avg}\| \leq 10.0\%$ of the reference gas concentration at each calibration gas level.	$\|R-A_{avg}\| \leq 0.8$ µg/scm	The alternate specification may be used at any gas level.
3-level system integrity check [4]	$\|R-A_{avg}\| \leq 10.0\%$ of the reference gas concentration at each calibration gas level.	$\|R-A_{avg}\| \leq 0.8$ µg/scm	The alternate specification may be used at any gas level.
RATA	20.0% RA	$\|RM_{avg}-C_{avg}\| \leq 1.0$ µg/scm **	$RM_{avg} < 5.0$ µg/scm.
Cycle time test [2]	15 minutes.[5]		

[1] Note that $|R-A|$ is the absolute value of the difference between the reference gas value and the analyzer reading. $|R-A_{avg}|$ is the absolute value of the difference between the reference gas concentration and the average of the analyzer responses, at a particular gas level.
[2] Use either elemental or oxidized Hg standards.
[3] Use elemental Hg standards.
[4] Use oxidized Hg standards. Not required if the CEMS does not have a converter.
[5] Stability criteria – Readings change by < 2.0% of span *or* by ≤0.5 µg/m³, for 2 minutes.
** Note that $|RM_{avg}-C_{avg}|$ is the absolute difference between the mean reference method value and the mean CEMS value from the RATA. The arithmetic difference between RM_{avg} and C_{avg} can be either + or −.

4.1.1.2 *Linearity Check.* Perform the linearity check using low, mid, and high-level concentrations of NIST-traceable elemental Hg standards. Three gas injections at each concentration level are required, with no two successive injections at the same concentration level. Introduce the calibration gas at the gas injection port, as specified in section 3.2.1.1.3.6 of this appendix. Operate each monitor at its normal operating temperature and conditions. Pass the calibration gas through all filters, scrubbers, conditioners, and other monitor components used during normal sampling, and through as much of the sampling probe as is practical. If moisture and/or chlorine is added to the calibration gas, the dilution effect of the moisture and/or chlorine addition on the calibration gas concentration must be accounted for in an appropriate manner. Record the monitor response from the data acquisition and handling system for each gas injection. At each concentration level, use the average analyzer response to calculate the linearity error (LE), as described in Table A–1. The LE must either meet the main performance specification or the alternative specification in Table A–1.

4.1.1.3 *Three-Level System Integrity Check.* Perform the 3-level system integrity check using low, mid, and high-level calibration gas concentrations generated by a NIST-traceable source of oxidized Hg. Follow the same basic procedure as for the linearity check. If moisture and/or chlorine is added to the calibration gas, the dilution effect of the moisture and/or chlorine addition on the calibration gas concentration must be accounted for in an appropriate manner. Calculate the system integrity error (SIE), as described in Table A–1. The SIE must either meet the main performance specification or the alternative specification in Table A–2. (**Note:** This test is not required if the CEMS does not have a converter).

4.1.1.4 *Cycle Time Test.* Perform the cycle time test, using a zero-level gas and a high-level calibration gas. Either an elemental or oxidized NIST-traceable Hg standard may be used as the high-level gas. Perform the test in two stages—upscale and downscale. The slower of the upscale and downscale response times is the cycle time for the CEMS. Begin each stage of the test by injecting calibration gas after achieving a stable reading of the stack emissions. The cycle time is the amount of time it takes for the analyzer to register a reading that is 95 percent of the way between the stable stack emissions reading and the final, stable reading of the calibration gas concentration. Use the following criterion to determine when a stable reading of stack emissions or calibration gas has been attained—the reading is stable if it changes by no more than 2.0 percent of the span value or 0.5 µg/scm (whichever is less restrictive) for two minutes.

4.1.1.5 *Relative Accuracy Test Audit (RATA).* Perform the RATA of the Hg CEMS at normal load. Acceptable Hg reference methods for the RATA include ASTM D6784–02 (the Ontario Hydro Method) and Methods 29, 30A, and 30B in appendix A–8 to part 60 of this chapter. When Method 29 or the Ontario Hydro Method is used, paired sampling trains are required. To validate a Method 29 or Ontario Hydro test run, calculate the relative deviation (RD) using Equation A–1 of this section, and assess the results as follows to validate the run. The RD must not exceed 10 percent, when the average Hg concentration is greater than 1.0 µg/dscm. If the average concentration is ≤1.0 µg/dscm, the RD must not exceed 20 percent. The RD results are also acceptable if the absolute difference between the two Hg concentrations does not exceed 0.03 µg/dscm. If the RD specification is met, the results of the two samples shall be averaged arithmetically.

$$RD = \frac{|C_a - C_b|}{C_a + C_b} \; x\,100 \qquad \text{(Eq. A-1)}$$

Where:

RD = Relative deviation between the Hg concentrations of samples "a" and "b" (percent)

C_a = Hg concentration of Hg sample "a" (µg/dscm)

C_b = Hg concentration of Hg sample "b" (µg/dscm)

4.1.1.5.1 *Special Considerations. Special Considerations.* A minimum of nine valid test runs must be performed, directly comparing the CEMS measurements to the reference method. If 12 or more runs are performed, you may discard the results from a maximum of three runs for calculating relative accuracy. The minimum time per run is 21 minutes if Method 30A is used. If the Ontario Hydro Method, Method 29, or Method 30B is used, the time per run must be long enough to collect a sufficient mass of Hg to analyze. Complete the RATA within 168 unit operating hours, except when the Ontario Hydro Method or Method 29 is used, in which case up to 336 operating hours may be taken to finish the test.

4.1.1.5.2 *Calculation of RATA Results.* Calculate the relative accuracy (RA) of the monitoring system, on a µg/scm basis, as described in section 12 of Performance Specification 2 or 6 in Appendix B to part 60 of this chapter. The CEMS must either meet the main performance specification or the alternative specification in Table A–1.

4.1.1.5.3 *Bias Adjustment.* Measurement or adjustment of Hg CEMS data for bias is not required.

4.1.2 *Sorbent Trap Monitoring Systems.* For the initial certification of a sorbent trap monitoring system, only a RATA is required.

4.1.2.1 *Reference Methods.* The acceptable reference methods for the RATA of a sorbent trap system are listed in paragraph 4.1.1.5 of this section.

4.1.2.2 *Special Considerations.* The special considerations specified in paragraph 4.1.1.5.1 of this section apply to the RATA of a sorbent trap monitoring system. During the RATA, the monitoring system must be operated and quality-assured in accordance with Performance Specification 12B in Appendix B to part 60 of this chapter. The type of sorbent material used by the traps during the RATA must be the same as for daily operation of the monitoring system; however, the size of the traps used for the RATA may be smaller than the traps used for daily operation of the system.

4.1.2.3 *Calculation of RATA Results.* Calculate the relative accuracy (RA) of the Hg concentration monitoring system, on a μg/scm basis, as described in section 12 of Performance Specification 2 or 6 in appendix B to part 60 of this chapter. The main and alternative RATA performance specifications in Table A–1 for Hg CEMS also apply to the sorbent trap monitoring system.

4.1.2.4 *Bias Adjustment.* Measurement or adjustment of sorbent trap monitoring system data for bias is not required.

4.1.3 *Diluent Gas, Flow Rate, and/or Moisture Monitoring Systems.* Monitoring systems that are used to measure stack gas volumetric flow rate and/or diluent gas concentration and/or stack gas moisture content in order to convert Hg concentration data to units of the applicable emission limit must be certified. The minimum certification test requirements and performance specifications for these systems are shown in Table A–2, below.

4.2 *Recertification.* Whenever the owner or operator makes a replacement, modification, or change to a certified Hg CEMS, sorbent trap monitoring system, flow rate monitoring system, diluent gas monitoring system, or moisture monitoring system that may significantly affect the ability of the system to accurately measure or record the Hg concentration, stack gas volumetric flow rate, CO_2 concentration, O_2 concentration, or stack gas moisture content, the owner or operator shall recertify the monitoring system. Furthermore, whenever the owner or operator makes a replacement, modification, or change to the flue gas handling system or the unit operation that may significantly change the flow or concentration profile, the owner or operator shall recertify the monitoring system. The same tests performed for the initial certification of the monitoring system shall be repeated for recertification, unless otherwise specified by the Administrator. Examples of changes that require recertification include: replacement of a gas analyzer; complete monitoring system replacement, and changing the location or orientation of the sampling probe.

TABLE A–2—MINIMUM REQUIRED CERTIFICATION TESTS AND PERFORMANCE SPECIFICATIONS FOR OTHER MONITORING SYSTEMS

For this required certification test . . .	Of this auxiliary monitoring system . . .	The main performance specification [1] is . . .	The alternate performance specification [2] is . . .	And the conditions of the alternate specification are . . .
7-day calibration error test	O_2 or CO_2	$\|R - A\| \leq 0.5\%$ O_2 or CO_2 for both the zero and upscale gases, on each day of the test.		
7-day calibration error test	Flow rate	$\|R - A\| \leq 3.0\%$ of calibration span value for both the zero and upscale signals, on each day of the test.	$\|R - A\| \leq 0.01$ in. H_2O, for DP-type monitors.	The alternate specification may be used on any day of the tests.
Linearity check	O_2 or CO_2	$\|R - A_{avg}\| \leq 5.0\%$ of the reference gas value.	$\|R - A\| \leq 0.5\%$ O_2 or CO_2	The alternate specification may be used at any gas level.
Cycle time test	O_2 or CO_2	≤ 15 minutes.		
RATA	O_2 or CO_2	10.0% RA	$\|RM_{avg} - C_{avg}\| \leq 1.0\%$ O_2 or % CO_2.	
RATA	Flow rate	10.0% RA.		
RATA	Moisture	10.0% RA	$\|RM_{avg} - C_{avg}\| \leq 1.5\%$ H_2O.	

[1] Note that $|R - A|$ is the absolute value of the difference between the reference gas value and the analyzer reading. $|R - A_{avg}|$ is the absolute value of the difference between the reference gas concentration and the average of the analyzer responses, at a particular gas level.

[2] Note that $|RM_{avg} - C_{avg}|$ is the absolute difference between the mean reference method value and the mean CEMS value from the RATA. The arithmetic difference between RM_{avg} and C_{avg} can be either + or −.

5. Ongoing Quality Assurance (QA) and Data Validation

5.1 *Hg CEMS.*

5.1.1 *Required QA Tests.* Periodic QA testing of each Hg CEMS is required following initial certification. The required QA tests, the test frequencies, and the performance specifications that must be met are summarized in Table A–3, below.

5.1.2 *Test Frequency.* The frequency for the required QA tests of the Hg CEMS shall be as follows:

5.1.2.1 Perform calibration error tests of the Hg CEMS daily. Use either NIST-traceable elemental Hg standards or NIST-traceable oxidized Hg standards for these calibrations. A zero-level gas and either a mid-level or high-level gas are required for these calibrations.

5.1.2.2 Perform a linearity check of the Hg CEMS in each QA operating quarter, using low-level, mid-level, and high-level NIST-traceable elemental Hg standards. For units that operate infrequently, limited exemptions from this test are allowed for "non-QA operating quarters". A maximum of three consecutive exemptions for this reason are permitted, following the quarter of the last test. After the third consecutive exemption, a linearity check must be performed in the next calendar quarter or within a grace period of 168 unit or stack operating hours after the end of that quarter. The test frequency for 3-level system integrity checks (if performed in lieu of linearity checks) is the same as for the linearity checks. Use low-level, mid-level, and high-level NIST-traceable oxidized Hg standards for the system integrity checks.

TABLE A–3—ON–GOING QA TEST REQUIREMENTS FOR HG CEMS

Perform this type of QA test . . .	At this frequency . . .	With these qualifications and exceptions . . .	Acceptance criteria . . .
Calibration error test	Daily	• Use either a mid- or high- level gas. • Use either elemental or oxidized Hg. • Calibrations are not required when the unit is not in operation.	$\|R - A\| \leq 5.0\%$ of span value; *or* $\|R - A\| \leq 1.0$ μg/scm.
Single-level system integrity check	Weekly [1]	• Required only for systems with converters. • Use oxidized Hg —either mid- or high-level. • Not required if daily calibrations are done with a NIST-traceable source of oxidized Hg.	$\|R - A_{avg}\| \leq 10.0\%$ of the reference gas value; *or* $\|R - A_{avg}\| \leq 0.8$ μg/scm.
Linearity check *or* 3-level system integrity check.	Quarterly [3]	• Required in each "QA operating quarter" [2]—and no less than once every 4 calendar quarters. • 168 operating hour grace period available. • Use elemental Hg for linearity check. • Use oxidized Hg for system integrity check. • For system integrity check, CEMS must have a converter.	$\|R - A_{avg}\| \leq 10.0\%$ of the reference gas value, at each calibration gas level; *or* $\|R - A_{avg}\| \leq 0.8$ μg/scm.
RATA	Annual [4]	• Test deadline may be extended for "non-QA operating quarters," up to a maximum of 8 quarters from the quarter of the previous test. • 720 operating hour grace period available.	20.0% RA; *or* $\|RM_{avg} - C_{avg}\| \leq 1.0$ μg/scm; *if* $RM_{avg} < 5.0$ μg/scm.

[1] "Weekly" means once every 168 unit operating hours.
[2] A "QA operating quarter" is a calendar quarter with at least 168 unit or stack operating hours.
[3] "Quarterly" means once every QA operating quarter.
[4] "Annual" means once every four QA operating quarters.

5.1.2.3 A weekly single-level system integrity check (if required—see third column in Table A–3).

5.1.2.4 The test frequency for the RATAs of the Hg CEMS shall be annual, i.e., once every four QA operating quarters. For units that operate infrequently, extensions of RATA deadlines are allowed for non-QA operating quarters. Following a RATA, if there is a subsequent non-QA quarter, it extends the deadline for the next test by one calendar quarter. However, there is a limit to these extensions—the deadline may not be extended beyond the end of the eighth calendar quarter after the quarter of the last test. At that point, a RATA must either be performed within the eighth calendar quarter or in a 720 hour unit or stac operating hour grace period following that quarter.

5.1.3 *Data Validation.* The Hg CEMS is considered to be out-of-control, and data from the CEMS may not be reported as quality-assured, when any of the acceptance criteria for the required QA tests in Table A–3 is not met. The CEMS is also considered to be out-of-control when a required QA test is not performed on schedule or within an allotted grace period. To end an out-of-control period, the QA test that was either failed or not done on time must be performed and passed.

5.1.4 *Grace Periods.*

5.1.4.1 A 168 unit or stack operating hour grace period is available for quarterly linearity checks and 3-level system integrity checks of the Hg CEMS.

5.1.4.2 A 720 unit or stack operating hour grace period is available for RATAs of the Hg CEMS.

5.1.4.3 There is no grace period for weekly system integrity checks. The test must be completed once every 168 unit or stack operating hours.

5.1.5 *Adjustment of Span.* If the Hg concentration readings exceed the span value for a significant percentage of the unit operating hours in a calendar quarter, make any necessary adjustments to the MPC and span value. A diagnostic linearity check is required within 168 unit or stack operating hours after changing the span value.

5.2 *Sorbent Trap Monitoring Systems.*

5.2.1 Each sorbent trap monitoring system shall be continuously operated and maintained in accordance with Performance Specification 12B (PS 12B) in appendix B to part 60 of this chapter. The QA/QC criteria for routine operation of the system are summarized in Table 12B–1 of PS 12B. Each pair of sorbent traps may be used to sample the stack gas for up to 14 operating days.

5.2.2 For ongoing QA, periodic RATAs of the system are required.

5.2.2.1 The RATA frequency shall be annual, i.e., once every four QA operating quarters.

5.2.2.2 The same RATA performance criteria specified in Table A–3 for Hg CEMS shall apply to the annual RATAs of the sorbent trap monitoring system.

5.2.2.3 A 720 unit or stack operating hour grace period is available for RATAs of the monitoring system.

5.2.2.4 Data validation for RATAs of the system shall be done in accordance with paragraph 5.1.3 of this section.

5.3 *Flow Rate, Diluent Gas, and Moisture Monitoring Systems.* The minimum on-going QA test requirements for these monitoring systems are summarized in Table A–4, below. The data validation provisions in paragraph 5.1.3 apply to these systems. The linearity grace period described in paragraph 5.1.4.1 applies to the O_2 and CO_2 monitors. The RATA grace period in paragraph 5.1.4.2 of this section applies to the O_2, CO_2, moisture, and flow rate monitors.

5.4 *QA/QC Program for Continuous Monitoring Systems.* The owner or operator shall develop and implement a quality assurance/quality control (QA/QC) program for all continuous monitoring systems that

are used to provide data under this subpart (i.e., all Hg CEMS, sorbent trap monitoring systems, and any associated monitoring systems used to convert Hg concentration data to the appropriate units of measure). At a minimum, the program shall include a written plan that describes in detail (or that refers to separate documents containing) complete, step-by-step procedures and operations for the most important QA/QC activities. Electronic storage of the QA/QC plan is permissible, provided that the information can be made available in hard copy to auditors and inspectors.

TABLE A–4—MINIMUM ON-GOING QUALITY ASSURANCE TEST REQUIREMENTS FOR AUXILIARY MONITORING SYSTEMS

Perform this QA test . . .	For this monitoring system . . .	At this frequency . . .	With these conditions and exceptions . . .	The acceptance criteria are . . .
Calibration error test	O_2 or CO_2	Daily	• Use either a mid or high level gas. • Not required on non-operating days.	$\|R - A\| \leq 1.0\%$ O_2 or CO_2.
Calibration error test	Flow rate	Daily	• Not required on non-operating days.	$\|R - A\| \leq 6.0\%$ of calibration span value or $\|R - A\| \leq 0.02$ in. H_2O for a DP-type monitor.
Interference check	Flow rate	Daily	• Not required on non-operating days.	Must be passed.
Linearity check	O_2 or CO_2	Quarterly	• Required in each QA operating quarter—but no less than once every 4 calendar quarters. • 168 operating hour grace period available.	$\|R - A\| \leq 5.0\%$ of reference gas *or* $\|R - A\| \leq 1.0\%$ O_2 or CO_2.
Leak check	Flow rate	Quarterly	• Required only for DP-type flow monitors.	Must be passed.
RATA	O_2 or CO_2	Annual***	• Once every four QA operating quarters, not to exceed 8 calendar quarters.	RA ≤ 7.5%; *or* $\|RM_{avg} - C_{avg}\| \leq 0.7\%$ O_2 or CO_2.
RATA	Flow rate	Annual***	• Once every four QA operating quarters, not to exceed 8 calendar quarters.	RA ≤ 7.5%.
RATA	Moisture	Annual***	• Once every four QA operating quarters, not to exceed 8 calendar quarters.	RA ≤ 7.5%; *or* $\|RM_{avg} - C_{avg}\| \leq 1.0\%$ H_2O.

*** Note that these RATAs can still be passed at RA percentages up to and including 10.0% RA. Alternate specifications of $|R - A| \leq 1.0\%$ O_2 or CO_2 and $|R - A| \leq 1.5\%$ H_2O are also acceptable. However, for all of these acceptance criteria, the test frequency becomes *semiannual* (i.e., once every two QA operating quarters) monitors. The RATA grace period in paragraph 5.1.4.2 of this section applies to the O_2, CO_2, and flow rate monitors.

5.4.1 *General Requirements.*

5.4.1.1 *Preventive Maintenance.* Keep a written record of procedures needed to maintain the monitoring system in proper operating condition and a schedule for those procedures. This shall, at a minimum, include procedures specified by the manufacturers of the equipment and, if applicable, additional or alternate procedures developed for the equipment.

5.4.1.2 *Recordkeeping and Reporting.* Keep a written record describing procedures that will be used to implement the recordkeeping and reporting requirements of this appendix.

5.4.1.3 *Maintenance Records.* Keep a record of all testing, maintenance, or repair activities performed on any monitoring system in a location and format suitable for inspection. A maintenance log may be used for this purpose. The following records should be maintained: date, time, and description of any testing, adjustment, repair, replacement, or preventive maintenance action performed on any monitoring system and records of any corrective actions associated with a monitor outage period. Additionally, any adjustment that may significantly affect a system's ability to accurately measure emissions data must be recorded (e.g., changing of flow monitor polynomial coefficients or K factors, changing the dilution ratio of a gas monitor, etc.), and a written explanation of the procedures used to make the adjustment(s) shall be kept.

5.4.2 *Specific Requirements for Hg CEMS, Flow Rate, Diluent Gas, and Moisture Monitoring Systems.*

5.4.2.1 *Daily Calibrations, Linearity Checks and System Integrity Checks.* Keep a written record of the procedures used for daily calibrations of the Hg CEMS and all associated monitoring systems. If moisture and/or chlorine is added to the Hg calibration gas, explain how the dilution effect of the moisture and/or chlorine addition on the calibration gas concentration is accounted for. Also keep records of the procedures used to perform linearity checks (of the Hg CEMS and, if applicable, the CO_2 or O_2 monitor) and the procedures for system integrity checks of the Hg CEMS. Explain how the test results are calculated and evaluated.

5.4.2.2 *Monitoring System Adjustments.* Explain how each component of the continuous emission monitoring system will be adjusted to provide correct responses to calibration gases or reference signals after routine maintenance, repairs, or corrective actions.

5.4.2.3 *Relative Accuracy Test Audits.* Keep a written record of procedures used for RATAs of the monitoring systems. Indicate the reference methods used and explain how the test results are calculated and evaluated.

5.4.3 *Specific Requirements for Sorbent Trap Monitoring Systems.*

5.4.3.1 *Sorbent Trap Identification and Tracking.* Include procedures for inscribing or otherwise permanently marking a unique identification number on each sorbent trap, for tracking purposes. Keep records of the ID of the monitoring system in which each sorbent trap is used, and the dates and hours of each Hg collection period.

5.4.3.2 *Monitoring System Integrity and Data Quality.* Explain the procedures used to perform the leak checks when a sorbent trap is placed in service and removed from service. Also explain the other QA procedures used to ensure system integrity and data quality, including, but not limited to, gas flow meter calibrations, verification of moisture removal, and ensuring air-tight pump operation. In addition, the QA plan must include the data acceptance and quality

control criteria in Table 12B–1 in section 9.0 of Performance Specification 12B in Appendix B to part 60 of this chapter. All reference meters used to calibrate the gas flow meters (e.g., wet test meters) shall be periodically recalibrated. Annual, or more frequent, recalibration is recommended. If a NIST-traceable calibration device is used as a reference flow meter, the QA plan must include a protocol for ongoing maintenance and periodic recalibration to maintain the accuracy and NIST-traceability of the calibrator.

5.4.3.3 *Hg Analysis.* Explain the chain of custody employed in packing, transporting, and analyzing the sorbent traps. Keep records of all Hg analyses. The analyses shall be performed in accordance with the procedures described in section 11.0 of Performance Specification 12B in Appendix B to part 60 of this chapter.

5.4.3.4 *Data Collection Period.* State, and provide the rationale for, the minimum acceptable data collection period (e.g., one day, one week, etc.) for the size of sorbent trap selected for the monitoring. Include in the discussion such factors as the Hg concentration in the stack gas, the capacity of the sorbent trap, and the minimum mass of Hg required for the analysis. Each pair of sorbent traps may be used to sample the stack gas for up to 14 operating days.

5.4.3.5 *Relative Accuracy Test Audit Procedures.* Keep records of the procedures and details peculiar to the sorbent trap monitoring systems that are to be followed for relative accuracy test audits, such as sampling and analysis methods.

6. Data Reduction and Calculations

6.1 *Data Reduction.*

6.1.1 Reduce the data from Hg CEMS and (as applicable) flow rate, diluent gas, and moisture monitoring systems to hourly averages, in accordance with § 60.13(h)(2) of this chapter.

6.1.2 For sorbent trap monitoring systems, determine the Hg concentration for each data collection period and assign this concentration value to each operating hour in the data collection period.

6.1.3 For any operating hour in which valid data are not obtained, either for Hg concentration or for a parameter used in the emissions calculations (i.e., flow rate, diluent gas concentration, or moisture, as applicable), do not calculate the Hg emission rate for that hour.

6.1.4 Operating hours in which valid data are not obtained, either for Hg concentration or for another parameter, are considered to be hours of monitor downtime.

6.2 *Calculation of Hg Emission Rates.* Use the applicable calculation methods in paragraphs 6.2.1 and 6.2.2 of this section to convert Hg concentration values to the appropriate units of the emission standard.

6.2.1 *Heat Input-Based Hg Emission Rates.* Calculate hourly heat input-based Hg emission rates, in units of lb/TBtu, according to sections 6.2.1.1 through 6.2.1.4 of this appendix.

6.2.1.1 Select an appropriate emission rate equation from among Equations 19–1 through 19–9 in EPA Method 19 in appendix A–7 to part 60 of this chapter.

6.2.1.2 Calculate the Hg emission rate in lb/MMBtu, using the equation selected from Method 19. Multiply the Hg concentration value by 6.24×10^{-11} to convert it from µg/scm to lb/scf.

6.2.1.3 Multiply the lb/MMBtu value obtained in section 6.2.1.2 of this appendix by 10^6 to convert it to lb/TBtu.

6.2.1.4 If the heat input-based Hg emission rate limit must be met over a specified averaging period (e.g., a 30 boiler operating day rolling average), use Equation 19–19 in EPA Method 19 to calculate the Hg emission rate for each averaging period. Do not include non-operating hours with zero emissions in the average.

6.2.2 *Electrical Output-Based Hg Emission Rates.* Calculate electrical output-based Hg emission limits in units of lb/GWh, according to sections 6.2.2.1 through 6.2.2.3 of this appendix.

6.2.2.1 First, calculate the Hg mass emissions for each operating hour in which valid data are obtained for all parameters, using Equation A–2 of this section (for wet-basis measurements of Hg concentration) or Equation A–3 of this section (for dry-basis measurements), as applicable:

$$M_h = K C_h Q_h t_h \qquad \text{(Equation A-2)}$$

Where:

M_h = Hg mass emissions for the hour (lb)

K = Units conversion constant, 6.236×10^{-11} lb-scm/µg-scf

C_h = Hourly average Hg concentration, wet basis (µg/scm)

Q_h = Stack gas volumetric flow rate for the hour (scfh). (**Note:** Use unadjusted flow rate values; bias adjustment is not required)

t_h = Unit or stack operating time, fraction of the clock hour, expressed as a decimal. For example, t_h = 1.00 for a full operating hour, 0.50 for 30 minutes of operation, 0.00 for a non-operating hour, etc.) *or*

$$M_h = K C_h Q_h t_h \left(1 - B_{ws}\right) \qquad \text{(Equation A-3)}$$

Where:

M_h = Hg mass emissions for the hour (lb)

K = Units conversion constant, 6.236×10^{-11} lb-scm/µg-scf

C_h = Hourly average Hg concentration, dry basis (µg/dscm)

Q_h = Stack gas volumetric flow rate for the hour (scfh). (*Note:* Use unadjusted flow rate values; bias adjustment is not required)

t_h = Unit or stack operating time, fraction of the clock hour, expressed as a decimal. For example, t_h = 1.00 for a full operating hour, 0.50 for 30 minutes of operation, 0.00 for a non-operating hour, etc.)

B_{ws} = Moisture fraction of the stack gas, expressed as a decimal (equal to $\%H_2O/100$)

6.2.2.2 Next, use Equation A–4 of this section to calculate the emission rate for each unit or stack operating hour in which valid data are obtained for all parameters.

$$E_{ho} = \frac{M_h}{(MW)_h (t_h)} x\, 10^3 \qquad \text{(Equation A-4)}$$

Where:

E_{ho} = Electrical output-based Hg emission rate (lb/GWh)

M_h = Hg mass emissions for the hour, from Equation A–2 or A–3 of this section, as applicable (lb)

$(MW)_h$ = Electrical load for the hour, in megawatts (MW)

t_h = Unit or stack operating time, fraction of the hour, expressed as a decimal. For example, t_h = 1.00 for a full operating hour, 0.50 for 30 minutes of operation, etc.)

10^3 = Conversion factor from megawatts to gigawatts

6.2.2.3 If the electrical output-based Hg emission rate limit must be met over a specified averaging period (e.g., a 30 boiler operating day rolling average), use Equation A–5 of this section to calculate the Hg emission rate for each averaging period.

$$\overline{E}_o = \frac{\sum_{h=1}^{n} E_{ho}}{n} \qquad \text{(Equation A-5)}$$

Where:

$\bar{E}_o$ = Hg emission rate for the averaging period (lb/GWh)

E_{ho} = Electrical output-based hourly Hg emission rate for unit or stack operating hour "h" in the averaging period, from Equation A–4 of this section (lb/GWh)

n = Number of unit or stack operating hours in the averaging period in which valid data were obtained for all parameters. (*Note:* Do *not* include non-operating hours with zero emission rates in the average).

7. Recordkeeping and Reporting

7.1 *Recordkeeping Provisions.* The owner or operator shall, for each affected unit and each non-affected unit under section 2.3 of this appendix, maintain a file of all measurements, data, reports, and other information required by this appendix in a form suitable for inspection, for 5 years from the date of each record. The file shall contain the information in paragraphs 7.1.1 through 7.1.10 of this section.

7.1.1 *Monitoring Plan Records.* The owner or operator of an affected unit shall prepare and maintain a monitoring plan for each affected unit or group of units monitored at a common stack and each non-affected unit under section 2.3 of this appendix. The monitoring plan shall contain sufficient information on the continuous monitoring systems that provide data under this subpart, and how the data derived from these systems are sufficient to demonstrate that all Hg emissions from the unit or stack are monitored and reported.

7.1.1.1 *Updates.* Whenever the owner or operator makes a replacement, modification, or change in a certified continuous monitoring system that is used to provide data under this subpart (including a change in the automated data acquisition and handling system or the flue gas handling system) which affects information reported in the monitoring plan (*e.g.,* a change to a serial number for a component of a monitoring system), the owner or operator shall update the monitoring plan.

7.1.1.2 *Contents of the Monitoring Plan.* For the Hg CEMS, sorbent trap monitoring systems, and any flow rate and/or moisture, and/or diluent gas monitors used to provide data under this subpart, the monitoring plan shall contain the following information, as applicable:

7.1.1.2.1 *Electronic.* Unit or stack IDs; monitoring location(s); type(s) of fuel combusted; type(s) of emission controls; maximum rated unit heat input(s); megawatt rating(s); monitoring methodologies used; monitoring system information (unique system and component ID numbers, parameters monitored); formulas used to calculate emissions and heat input; unit operating ranges and normal load level(s); monitor span and range information.

7.1.1.2.2 *Hard Copy.* Schematics and/or blueprints showing the location of monitoring systems and test ports; data flow diagrams; test protocols; monitor span and range calculations; miscellaneous technical justifications.

7.1.2 *Operating Parameter Records. T*he owner or operator shall record the following information for each operating hour of each affected unit and each non-affected unit under section 2.3 of this appendix, and also for each group of units utilizing a common stack, to the extent that these data are needed to convert Hg concentration data to the units of the emission standard. For non-operating hours, record only the items in paragraphs 7.1.2.1 and 7.1.2.2 of this section:

7.1.2.1 The date and hour;

7.1.2.2 The unit or stack operating time (rounded up to the nearest fraction of an hour (in equal increments that can range from one hundredth to one quarter of an hour, at the option of the owner or operator);

7.1.2.3 The hourly gross unit load (rounded to nearest MWge);

7.1.2.4 The hourly heat input rate (MMBtu/hr, rounded to the nearest tenth);

7.1.2.5 An identification code for the formula used to calculate the hourly heat input rate, as provided in the monitoring plan; and

7.1.2.6 The F-factor used for the heat input rate calculation.

7.1.3 *Hg Emissions Records (Hg CEMS).* For each affected unit or common stack using a Hg CEMS, the owner or operator shall record the following information for each unit or stack operating hour:

7.1.3.1 The date and hour;

7.1.3.2 Monitoring system and component identification codes, as provided in the monitoring plan, if the CEMS provides a quality-assured value of Hg concentration for the hour;

7.1.3.3 The hourly Hg concentration, if a quality-assured value is obtained for the hour (µg/scm, rounded to the nearest tenth);

7.1.3.4 A special code, indicating whether or not a quality-assured Hg concentration is obtained for the hour; and

7.1.3.5 Monitor availability, as a percentage of unit or stack operating hours.

7.1.4 *Hg Emissions Records (Sorbent Trap Monitoring Systems).* For each affected unit or common stack using a sorbent trap monitoring system, each owner or operator shall record the following information for the unit or stack operating hour in each data collection period:

7.1.4.1 The date and hour;

7.1.4.2 Monitoring system and component identification codes, as provided in the monitoring plan, if the sorbent trap system provides a quality-assured value of Hg concentration for the hour;

7.1.4.3 The hourly Hg concentration, if a quality-assured value is obtained for the hour (µg/scm, rounded to the nearest tenth). Note that when a quality-assured Hg concentration value is obtained for a particular data collection period, that single concentration value is applied to each operating hour of the data collection period.

7.1.4.4 A special code, indicating whether or not a quality-assured Hg concentration is obtained for the hour;

7.1.4.5 The average flow rate of stack gas through each sorbent trap (in appropriate units, e.g., liters/min, cc/min, dscm/min);

7.1.4.6 The gas flow meter reading (in dscm, rounded to the nearest hundredth), at the beginning and end of the collection period and at least once in each unit operating hour during the collection period;

7.1.4.7 The ratio of the stack gas flow rate to the sample flow rate, as described in section 12.2 of Performance Specification 12B in Appendix B to part 60 of this chapter; and

7.1.4.8 Data availability, as a percentage of unit or stack operating hours.

7.1.5 *Stack Gas Volumetric Flow Rate Records.*

7.1.5.1 Hourly measurements of stack gas volumetric flow rate during unit operation are required for routine operation of sorbent trap monitoring systems, to maintain the required ratio of stack gas flow rate to sample flow rate (see section 8.2.2 of Performance Specification 12B in Appendix B to part 60 of this chapter). Stack gas flow rate data are also needed in order to demonstrate compliance with heat input-based and electrical output-based Hg emissions limits, as provided in sections 6.2.1 and 6.2.2 of this appendix.

7.1.5.2 For each affected unit or common stack, if measurements of stack gas flow rate are required, use a certified flow rate monitor to record the following information for each unit or stack operating hour:

7.1.5.2.1 The date and hour;

7.1.5.2.2 Monitoring system and component identification codes, as provided in the monitoring plan, if a quality-assured flow rate value is obtained for the hour;

7.1.5.2.3 The hourly average volumetric flow rate, if a quality-assured flow rate value is obtained for the hour (in scfh, rounded to the nearest thousand);

7.1.5.2.4 A special code, indicating whether or not a quality-assured flow rate value is obtained for the hour; and

7.1.5.2.5 Monitor availability, as a percentage of unit or stack operating hours.

7.1.6 *Records of Stack Gas Moisture Content.*

7.1.6.1 Correction of Hg concentration data for moisture is sometimes required, when compliance with an applicable Hg emissions limit must be demonstrated, as provided in sections 6.2.1 and 6.2.2 of this appendix. In particular, these corrections are required for sorbent trap monitoring systems and for Hg CEMS that measure Hg concentration on a dry basis.

7.1.6.2 If moisture corrections are required, use a certified moisture monitoring system to record the following information for each unit or stack operating hour (except

where a default moisture value is used; in that case, keep a record of the default value currently in use):

7.1.6.2.1 The date and hour;

7.1.6.2.2 Monitoring system and component identification codes for the system, as provided in the monitoring plan, if a quality-assured moisture value is obtained for the hour;

7.1.6.2.3 Hourly average moisture content of the flue gas (percent H_2O, rounded to the nearest tenth). If the continuous moisture monitoring system consists of wet- and dry-basis oxygen analyzers, also record both the wet- and dry-basis oxygen hourly averages (in percent O_2, rounded to the nearest tenth);

7.1.6.2.4 A special code, indicating whether or not a quality-assured moisture value is obtained for the hour; and

7.1.6.2.5 Monitor availability, as a percentage of unit or stack operating hours.

7.1.7 *Records of Diluent Gas (CO_2 or O_2) Concentration.*

7.1.7.1 When a heat input-based Hg mass emissions limit must be met (e.g., in units of lb/TBtu), hourly measurements of CO_2 or O_2 concentration are required, in order to calculate hourly heat input values.

7.1.7.2 For each affected unit or common stack, if measurements of diluent gas concentration are required, use a certified CO_2 or O_2 monitor to record the following information for each unit or stack operating hour:

7.1.7.2.1 The date and hour;

7.1.7.2.2 Monitoring system and component identification codes, as provided in the monitoring plan, if a quality-assured O_2 or CO_2 concentration is obtained for the hour;

7.1.7.2.3 The hourly average O_2 or CO_2 concentration (in percent, rounded to the nearest tenth);

7.1.8.2.4 A special code, indicating whether or not a quality-assured O_2 or CO_2 concentration value is obtained for the hour; and

7.1.7.2.5 Monitor availability, as a percentage of unit or stack operating hours.

7.1.8 *Hg Mass Emissions Records.* When compliance with a Hg emission limit in units of lb/GWh is required, Hg mass emissions must be calculated. In such cases, record the following information for each operating hour of affected unit or common stack:

7.1.8.1 The date and hour;

7.1.8.2 The calculated hourly Hg mass emissions, from Equation A–2 or A–3 in section 6.2.2 of this appendix (lb, rounded to three decimal places), if valid values of Hg concentration, stack gas volumetric flow rate, and (if applicable) moisture data are all obtained for the hour;

7.1.8.3 An identification code for the formula (either Equation A–2 or A–3 in section 6.2.2 of this appendix) used to calculate hourly Hg mass emissions from Hg concentration, flow rate and (if applicable) moisture data; and

7.1.8.4 A code indicating that the Hg mass emissions were not calculated for the hour, if valid data for Hg concentration, flow rate, and/or moisture (as applicable) are not obtained for the hour.

7.1.9 *Hg Emission Rate Records.* For applicable Hg emission limits in units of lb/TBtu or lb/GWh, record the following information for each affected unit or common stack:

7.1.9.1 The date and hour;

7.1.9.2 The hourly Hg emissions rate (lb/TBtu or lb/GWh, as applicable, rounded to three decimal places), if valid values of Hg concentration and all other required parameters (stack gas volumetric flow rate, diluent gas concentration, electrical load, and moisture data, as applicable) are obtained for the hour;

7.1.9.3 An identification code for the formula (either the selected equation from Method 19 in section 6.2.1 of this appendix or Equation A–4 in section 6.2.2 of this appendix) used to derive the hourly Hg emission rate from Hg concentration, flow rate, electrical load, diluent gas concentration, and moisture data (as applicable); and

7.1.9.4 A code indicating that the Hg emission rate was not calculated for the hour, if valid data for Hg concentration and/or any of the other necessary parameters are not obtained for the hour.

7.1.10 *Certification and Quality Assurance Test Records.* For the continuous monitoring systems used to provide data under this subpart at each affected unit (or group of units monitored at a common stack) and each non-affected unit under section 2.3 of this appendix, record the following certification and quality-assurance information:

7.1.10.1 The reference values, monitor responses, and calculated calibration error (CE) values, for all required 7-day calibration error tests and daily calibration error tests of all volumetric flow rate monitors and gas monitors, including Hg CEMS;

7.1.10.2 The results (pass/fail) of the required daily interference checks of flow monitors;

7.1.10.3 The reference values, monitor responses, and calculated linearity error (LE) or system integrity error (SIE) values for all required linearity checks of all gas monitors, including Hg CEMS, and for all single-level and 3-level system integrity checks of Hg CEMS;

7.1.10.4 The results (pass/fail) of all required quarterly leak checks of all differential pressure-type flow monitors (if applicable);

7.1.10.5 The CEMS and reference method readings for each test run and the calculated relative accuracy results for all RATAs of all Hg CEMS, sorbent trap monitoring systems, and (as applicable) flow rate, diluent gas, and moisture monitoring systems;

7.1.10.6 The stable stack gas and calibration gas readings and the calculated results for the upscale and downscale stages of all required cycle time tests of all gas monitors, including Hg CEMS;

7.1.10.7 Supporting information for all required RATAs of volumetric flow rate monitoring systems, diluent gas monitoring systems, and moisture monitoring systems, including the raw field data and, as applicable, the results of reference method bias and drift checks, calibration gas certificates, the results of lab analyses, and records of sampling equipment calibrations. For the RATAs of Hg CEMS and sorbent trap monitoring systems, keep sufficient records of the test dates, the raw reference method and monitoring system data, and the results of sample analyses to substantiate the reported test results; and

7.1.10.8 For sorbent trap monitoring systems, the results of all analyses of the sorbent traps used for routine daily operation of the system, and information documenting the results of all leak checks and the other applicable quality control procedures described in Table 12B–1 of Performance Specification 12B in Appendix B to part 60 of this chapter.

7.2 *Reporting Requirements.*

7.2.1 *General Reporting Provisions.* The owner or operator shall comply with the following reporting requirements for each affected unit (or group of units monitored at a common stack) and each non-affected unit under section 2.3 of this appendix:

7.2.1.1 Notifications, in accordance with paragraph 7.2.2 of this section;

7.2.1.2 Monitoring plan reporting, in accordance with paragraph 7.2.3 of this section;

7.2.1.3 Certification, recertification, and QA test submittals, in accordance with paragraph 7.2.4 of this section; and

7.2.1.4 Electronic quarterly report submittals, in accordance with paragraph 7.2.5 of this section.

7.2.2 *Notifications.* In addition to the notifications required elsewhere in this subpart, the owner or operator of any affected unit shall provide the following notifications for each affected unit (or group of units monitored at a common stack) and each non-affected unit under section 2.3 of this appendix. Provide each notification at least 21 days prior to the event:

7.2.2.1 The date(s) of the required annual RATAs of the Hg CEMS, sorbent trap monitoring systems, and (as applicable) flow rate, diluent gas, and moisture monitoring systems used to provide data under this subpart;

7.2.2.2 The date on which emissions first exhaust through a new stack or flue gas desulfurization system; and

7.2.2.3 The date on which an affected unit is removed from service and placed into long-term cold storage, and the date on which the unit is expected to resume operation.

7.2.3 *Monitoring Plan Reporting.* The owner or operator of any affected unit shall make electronic and hard copy monitoring plan submittals for each affected unit (or group of units monitored at a common stack) and each non-affected unit under section 2.3 of this appendix, as follows:

7.2.3.1 At least 21 days prior to the initial certification testing or recertification testing of a monitoring system used to provide data under this subpart; and

7.2.3.2 Whenever an update of the monitoring plan is required, as provided in paragraph 7.1.1.1 of this section. An electronic monitoring plan information update must be submitted either prior to or concurrent with the quarterly report for the calendar quarter in which the update is required.

7.2.4 The results of all required certification, recertification, and quality-

assurance tests described in paragraphs 7.1.10.3 through 7.1.10.6 of this section shall be submitted electronically, either prior to or concurrent with the relevant quarterly electronic report.

7.2.5 *Quarterly Reports.*

7.2.5.1 Beginning with the calendar quarter containing the program start date, the owner or operator of any affected unit shall submit electronic quarterly reports to the Administrator, in a format specified by the Administrator, for each affected unit (or group of units monitored at a common stack) and each non-affected unit under section 2.3 of this appendix.

7.2.5.2 The electronic reports must be submitted within 30 days following the end of each calendar quarter, except for units that have been placed in long-term cold storage.

7.2.5.3 Each electronic quarterly report shall include the following information:

7.2.5.3.1 The date of report generation;

7.2.5.3.2 Facility identification information;

7.2.5.3.3 The information in paragraphs 7.1.2 through 7.1.19 of this section, as applicable to the Hg emission measurement methodology (or methodologies) used and the units of the Hg emission standard(s); and

7.2.5.3.4 The results of all daily calibration error tests and daily flow monitor interference checks, as described in paragraphs 7.1.10.1 and 7.1.10.2 of this section.

7.2.5.4 Information which is incompatible with electronic reporting (e.g., field data sheets, lab analyses, stratification test results, sampling equipment calibrations, quality control plan information) is excluded from electronic reporting.

7.2.5.5 *Compliance Certification.* The owner or operator shall submit a compliance certification in support of each electronic quarterly emissions monitoring report, based on reasonable inquiry of those persons with primary responsibility for ensuring that all Hg emissions from the affected unit(s) and (if applicable) any non-affected unit(s) under section 2.3 of this appendix have been correctly and fully monitored. The compliance certification shall indicate whether the monitoring data submitted were recorded in accordance with the applicable requirements of this appendix.

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Annual Notice of Findings on Resubmitted Petitions for Foreign Species; Annual Description of Progress on Listing Actions; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2010–0053; MO 92210–0–0010 B6]

Endangered and Threatened Wildlife and Plants; Annual Notice of Findings on Resubmitted Petitions for Foreign Species; Annual Description of Progress on Listing Actions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: In this notice of review, we announce our annual petition findings for foreign species, as required under section 4(b)(3)(C)(i) of the Endangered Species Act of 1973, as amended. When, in response to a petition, we find that listing a species is warranted but precluded by higher priority listing actions, we must review the status of the species each year until we publish a proposed rule or make a determination that listing is not warranted. These subsequent status reviews and the accompanying 12-month findings are referred to as "resubmitted" petition findings.

Information contained in this notice describes our status review of 20 foreign taxa that were the subject of previous warranted-but-precluded findings, most recently summarized in our 2009 Notice of Review published on August 12, 2009 (74 FR 40540). Based on our current review, we find that 20 species continue to warrant listing, but their listing remains precluded by higher priority listing actions.

With this annual notice of review (ANOR), we are requesting additional information for the 20 taxa whose listings that remain warranted but precluded by higher priority listing actions. We will consider this information in preparing listing documents and future resubmitted petition findings for these 20 taxa. This information will also help us to monitor the status of the taxa and conserve them.

DATES: We will accept information on these resubmitted petition findings at any time.

ADDRESSES: This notice is available on the Internet at *http://www.regulations.gov,* and *http://endangered.fws.gov/.* Supporting information used in preparing this notice is available for public inspection, by appointment, during normal business hours at the Branch of Foreign Species, 4401 N. Fairfax Drive, Room 420, Arlington, Virginia 22203. Please submit any new information, materials, comments, or questions concerning this notice to the above street address.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Foreign Species, Endangered Species Program, (*see* **ADDRESSES**); by telephone at 703–358–2171; or by facsimile at 703–358–1735. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), provides two mechanisms for considering species for listing. First, we can identify and propose for listing those species that are endangered or threatened based on the factors contained in section 4(a)(1) of the Act. We implement this mechanism through the candidate program. Candidate taxa are those taxa for which we have sufficient information on file relating to biological vulnerability and threats to support a proposal to list the taxa as endangered or threatened, but for which preparation and publication of a proposed rule is precluded by higher priority listing actions. The second mechanism for considering species for listing is when the public petitions us to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists). The species covered by this notice were assessed through the petition process.

Under section 4(b)(3)(A) of the Act, when we receive a listing petition, we must determine within 90 days, to the maximum extent practicable, whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted (90-day finding). If we make a positive 90-day finding, we are required to promptly commence a review of the status of the species. Using the information from the status review, in accordance with section 4(b)(3)(B) of the Act, we must make one of three findings within 12 months of the receipt of the petition (12-month finding). The first possible 12-month finding is that listing is not warranted, in which case we need not take any further action on the petition. The second possibility is that we may find that listing is warranted, in which case we must promptly publish a proposed rule to list the species. Once we publish a proposed rule for a species, sections 4(b)(5) and 4(b)(6) of the Act govern further procedures, regardless of whether or not we issued the proposal in response to the petition. The third possibility is that we may find that listing is warranted but precluded. A warranted but-precluded finding on a petition to list means that listing is warranted, but that the immediate proposal and timely promulgation of a final regulation is precluded by higher priority listing actions. In making a warranted-but-precluded finding under the Act, the Service must demonstrate that expeditious progress is being made to add and remove species from the Lists.

Pursuant to section 4(b)(3)(C)(i) of the Act, when, in response to a petition, we find that listing a species is warranted but precluded, we must make a new 12-month finding annually until we publish a proposed rule or make a determination that listing is not warranted. These subsequent 12-month findings are referred to as "resubmitted" petition findings. This notice contains our resubmitted petition findings for foreign species previously described in the 2009 Notice of Review (August 12, 2009, 74 FR 40540).

We maintain this list of candidates for a variety of reasons: To notify the public that these species are facing threats to their survival; to provide advance knowledge of potential listings; to provide information that may stimulate and guide conservation efforts that will remove or reduce threats to these species and possibly make listing unnecessary; to request input from interested parties to help us identify those candidate species that may not require protection under the Act or additional species that may require the Act's protections; and to request necessary information for setting priorities for preparing listing proposals.

On September 21, 1983, we published guidance for assigning a listing priority number (LPN) for each candidate species (48 FR 43098). Using this guidance, we assign each candidate an LPN of 1 to 12, depending on the magnitude of threats, immediacy of threats, and taxonomic status; the lower the LPN, the higher the listing priority (that is, a species with an LPN of 1 would have the highest listing priority). Guidelines for such a priority-ranking guidance system are required under section 4(h)(3) of the Act (15 U.S.C. 1533(h)(3)). As explained below, in using this system we first categorize based on the magnitude of the threat(s), then by the immediacy of the threat(s), and finally by taxonomic status.

Under this priority-ranking system, magnitude of threat can be either "high" or "moderate to low." This criterion helps ensure that the species facing the greatest threats to their continued

existence receive the highest listing priority. It is important to recognize that all candidate species face threats to their continued existence, so the magnitude of threats is in relative terms. When evaluating the magnitude of the threat(s) facing the species, we consider information such as: the number of populations and/or extent of range of the species affected by the threat(s); the biological significance of the affected population(s), the life-history characteristics of the species and its current abundance and distribution; and whether the threats affect the species in only a portion of its range. We also consider the likelihood of persistence of the species in the unaffected portions and whether the effects are likely to be permanent.

As used in our priority ranking system, immediacy of threat is categorized as either "imminent" or "nonimminent." It is not a measure of how quickly the species is likely to become extinct if the threats are not addressed; rather, immediacy is based on when the threats will begin. If a threat is currently occurring or likely to occur in the very near future, we classify the threat as imminent. Determining the immediacy of threats helps ensure that species facing actual, identifiable threats are given priority for listing proposals over those for which threats are only potential or species that are intrinsically vulnerable to certain types of threats, but are not known to be presently facing such threats.

Our priority ranking system has three categories for taxonomic status: species that are the sole members of a genus; full species (in genera that have more than one species); and subspecies and distinct population segments of vertebrate species (DPS).

The result of the ranking system entails assigning each candidate a listing priority number of 1 to 12. For example, if the threat(s) is/are of high magnitude, with immediacy classified as imminent, the listable entity is assigned an LPN of 1, 2, or 3 based on its taxonomic status (i.e., a species that is the only member of its genus would be assigned to the LPN 1 category, a full species would be assigned to LPN 2, and a subspecies, DPS, or a species that is endangered or threatened in only a significant portion of its range would be assigned to LPN 3). In summary, the LPN ranking system provides a basis for making decisions about the relative priority for preparing a proposed rule to list a given species. Each species included in this notice is one for which we have sufficient information to prepare a proposed rule to list, because it is in danger of extinction or likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

For more information on the process and standards used in assigning LPNs, a copy of the guidance is available on our Web site at: *http://www.fws.gov/endangered/esa-library/pdf/48fr43098-43105.pdf.* For more information on the LPN assigned to a particular species, the species assessment for each candidate contains the LPN and a rationale for the determination of the magnitude and imminence of threat(s) and assignment of the LPN; that information is presented in this ANOR.

Previous Notices

This revised notice supersedes all previous annual notices of review for foreign species. The species discussed in this notice were the result of three separate petitions submitted to the U.S. Fish and Wildlife Service (Service) to list a number of foreign bird and butterfly species as endangered or threatened under the Act. We received petitions to list foreign bird species on November 24, 1980, and May 6, 1991 (46 FR 26464, May 12, 1981; and 56 FR 65207, December 16, 1991, respectively). On January 10, 1994, we received a petition to list seven butterfly species as endangered or threatened (59 FR 24117; May 10, 1994).

We took several actions on these petitions. Our most recent review of petition findings was published on August 12, 2009 (74 FR 40540). Previously published petition findings, listing rules, status reviews, and petition finding reviews that included foreign species are also listed in the 2009 ANOR.

Summary of This ANOR

Since publication of the previous ANOR on August 12, 2009 (74 FR 40540), we reviewed the available information on candidate species to ensure that listing is warranted for each species, and reevaluated the relative LPN assigned to each species. We also evaluated the need to emergency list any of these species, particularly species with high listing priority numbers (i.e., species with LPNs of 1, 2, or 3). This review ensures that we focus conservation efforts on those species at greatest risk first. In addition to reviewing foreign candidate species since publication of the last ANOR, we have worked on numerous findings in response to petitions to list species and on proposed and final determinations for rules to list species under the Act. Some of these findings and determinations have been completed and published in the **Federal Register**, while work on others is still under way (*see Preclusion and Expeditious Progress,* below, for details).

Based on our review of the best available scientific and commercial information, with this ANOR, we have changed the LPN for several candidates. The review of these 20 species is summarized in Table 1.

Findings on Resubmitted Petitions

This notice describes our resubmitted petition findings for 20 foreign species for which we had previously found proposed listing to be warranted but precluded. We have considered all of the new information that we have obtained since the previous finding, and we have reviewed in accordance with our Listing Priority Guidance the listing priority number (LPN) of each taxon for which proposed listing continues to be warranted but precluded.

As a result of our review, we find that warranted-but-precluded findings remain appropriate for these 20 species. We emphasize that we are not proposing these species for listing by this notice, but we do anticipate developing and publishing proposed listing rules for these species in the future, with an objective of making expeditious progress in addressing all 20 of these foreign species within a reasonable timeframe.

Table 1 provides a summary of all updated determinations of the 20 taxa in our review. All taxa in Table 1 of this notice are ones for which we find that listing is warranted but precluded and are referred to as "candidates" under the Act. The column labeled "Priority" indicates the LPN. Following the scientific name of each taxon (third column) is the family designation (fourth column) and the common name, if one exists (fifth column). The sixth column provides the known historic range for the taxon. The avian species in Table 1 are listed taxonomically.

TABLE 1—ANNUAL NOTICE OF REVIEW

[C = listing warranted-but-precluded]

Status		Scientific name	Family	Common name	Historic range
Category	Priority				
Birds					
C	2	*Pauxi unicornis*	Craciidae	southern helmeted curassow.	Bolivia, Peru.
C	2	*Rallus semiplumbeus*	Rallidae	Bogota rail	Colombia.
C	8	*Porphyrio hochstetteri*	Rallidae	takahe	New Zealand.
C	8	*Haematopus chathamensis*	Haematopodidae	Chatham oystercatcher	Chatham Islands, New Zealand.
C	8	*Cyanoramphus malherbi*	Psittacidae	orange-fronted parakeet	New Zealand.
C	2	*Eunymphicus uvaeensis*	Psittacidae	Uvea parakeet	Uvea, New Caledonia.
C	2	*Ara glaucogularis*	Psittacidae	blue-throated macaw	Bolivia.
C	8	*Dryocopus galeatus*	Picidae	helmeted woodpecker	Argentina, Brazil, Paraguay.
C	2	*Dendrocopus noguchii*	Picidae	Okinawa woodpecker	Okinawa Island, Japan.
C	2	*Aulacorhynchus huallagae*	Ramphastidae	yellow-browed toucanet	Peru.
C	8	*Scytalopus novacapitalis*	Conopophagidae	Brasilia tapaculo	Brazil.
C	12	*Bowdleria punctata wilsoni*	Sylviidae	Codfish Island fernbird	Codfish Island, New Zealand.
C	2	*Zosterops luteirostris*	Zosteropidae	Ghizo white-eye	Solomon Islands.
C	8	*Tangara peruviana*	Thraupidae	black-backed tanager	Brazil.
C	6	*Strepera graculina crissalis*	Cracticidae	Lord Howe pied currawong	Lord Howe Islands, New South Wales.
Invertebrates					
C	6	*Eurytides (= Graphium or Mimoides) lysithous harrisianus.*	Paplionidae	Harris' mimic swallowtail	Brazil.
C	2	*Eurytides (= Graphium or Neographium or Protographium or Protesilaus) marcellinus.*	Paplionidae	Jamaican kite swallowtail	Jamaica.
C	5	*Parides ascanius*	Paplionidae	Fluminense swallowtail	Brazil.
C	2	*Parides hahneli*	Paplionidae	Hahnel's Amazonian swallowtail.	Brazil.
C	8	*Teinopalpus imperialis*	Paplionidae	Kaiser-I-Hind swallowtail	Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, Vietnam.

Findings on Species for Which Listing Is Warranted but Precluded

We have found that, for the 20 taxa discussed below, publication of proposed listing rules continues to be warranted but precluded due to the need to complete pending, higher priority listing actions. We will continue to monitor the status of these species as new information becomes available (*see* Monitoring, below). Our review of new information will determine if a change in status is warranted, including the need to emergency list any species or change the LPN of any of the species. In the following section, we describe the status of and threats to the individual species.

Birds

A. Southern Helmeted Curassow (*Pauxi unicornis*), LPN = 2

The southern helmeted curassow, also known as the horned curassow, is one of the least frequently encountered South American bird species. This may be due to the inaccessibility of its preferred habitat and its apparent intolerance of human disturbance (Herzog and Kessler 1998; Macleod *et al.* 2009, p. 15). The southern helmeted curassow is only known to occur in central Bolivia and central Peru (BirdLife International (BLI) 2010a). The Bolivian population of the nominate (a subspecies with the same name as the species) species (*Pauxi unicornis unicornis*) remained unknown to science until 1937 (Cordier 1971). The Peruvian population is known as *Pauxi unicornis koepckeae.*

What is now recognized as the southern helmeted curassow may in fact comprise two separate species that are currently recognized as two subspecies (*Pauxi unicornis unicornis, and Pauxi unicornis koepckeae).* It has been proposed that these populations of *Pauxi unicornis* that are currently treated as subspecies may represent two different species because they are separated by more than 1,000 km (621 mi), and have a multitude of distinct characteristics (Gastañaga in prep. in BLI 2010a). Currently, both BLI and the International Union for Conservation of Nature (IUCN) recognize the southern helmeted curassow as *Pauxi unicornis* and do not specifically address either subspecies. The Integrated Taxonomic Information System (ITIS) recognizes *Pauxi unicornis* as a full species as well as both subspecies (ITIS 2010, accessed July 16, 2010). For the purpose of this ANOR, we are reviewing the petitioned entity, *Pauxi unicornis,* which includes all subspecies.

In many cases, taxonomy of species can be unclear. There is substantial discussion in scientific literature that debates the classification of species and whether various entities deserve species status rather than subspecies status (Phillimore 2010, pp. 42–53; James 2010, pp. 1–5; Pratt 2010, pp. 79–89). This is sometimes significant with respect to conservation measures,

particularly when considering the criteria used by organizations such as the IUCN. These two subspecies may in fact be species, but for the purpose of this review, these two subspecies essentially face the same threats, are generally in the same region of South America, and they both have quite small populations. Absent peer-reviewed information to the contrary and based on the best available information, we recognize both subspecies as being valid. For the purpose of this review, we are reviewing the petitioned entity, *Pauxi unicornis,* which includes all subspecies. We welcome comments on the classification of the southern helmeted curassow.

The southern helmeted curassow inhabits dense, humid, lower montane forest and adjacent evergreen forest at 450 to 1,200 meters (m) (1,476 to 3,937 feet) (Cordier 1971; Herzog and Kessler 1998). It prefers eating nuts of the almendrillo tree (*Byrsonima wadsworthii* (Cordier 1971)), but also consumes other nuts, seeds, fruit, soft plants, larvae, and insects (BLI 2008). Clutch size of the southern helmeted curassow is probably two, as in other *Cracidae.* However, the only nest found contained only one egg (Banks 1998; Cox *et al.* 1997; Renjifo and Renjifo 1997 as cited in BLI 2010a). The southern helmeted curassow typically occurs at densities up to 20 individuals per square kilometer (km^2) (Macleod 2007 as cited in BLI 2008).

In Amboró National Park (Yungas Inferiores de Amboró), the southern helmeted curassow was regularly sighted on the upper Saguayo river (Saguayo Río; Wege and Long 1995). Subsequently, it has been observed in the adjacent Amboró and Carrasco National Parks (Herzog and Kessler 1998; Brooks 2006). It was also found in Isiboro-Secure Indigenous Territory and National Park (TIPNIS), and along the western edge of the Cordillera Mosetenes (Mosetenes Mountains), Cochabamba, Bolivia. A recent survey located a few southern helmeted curassows across the northern boundary of Carrasco National Park (Yungas Inferiores de Carrasco), where it was historically found (MacLeod 2007 as cited in BLI 2009a). Surveys conducted between 2004 and 2005 found no evidence of the species anywhere north or east of Amboro, Carrasco, and Isiboro-Secure National Parks in central Bolivia (Macleod *et al.* 2009, p. 16). It was found only in five locations during the survey period. Extensive surveys over the last several years have failed to locate the species in Madidi National Park, La Paz, on the eastern edge of the Mosetenes Mountains in Cochabamba, or in the Río Tambopata area near the Bolivia-Peru border (MacLeod in litt. 2003 as cited in BLI 2010a; Hennessey 2004a as cited in BLI 2009a; Maccormack in litt. 2004 as cited in BLI 2008).

In Peru, *Pauxi unicornis koepckeae* is known only from the Sira Mountains (known as the Reserva Comunal El Sira), in Huanuco (Tobias and del Hoyo 2006). In 2005, a team from the Armonia Association (BirdLife in Bolivia) saw one and heard three southern helmeted curassow in the Sira Mountains: The first sighting of the distinctive endemic Peruvian subspecies since 1969 (BLI 2008). Limited reports suggest that the southern helmeted curassow is rare here (Mee *et al.* 2002; MacLeod in litt. 2004 as cited in BLI 2008; Maccormack in litt. 2004 as cited in BLI 2009a; Gastañaga and Hennessey 2005 as cited in BLI 2009a).

The total population of southern helmeted curassow is estimated to be between 1,000 and 4,999 individuals (BLI 2010a). The population in Peru is estimated to have fewer than 400 individuals (Gastañaga in litt. 2007, as cited in BLI 2010a). The estimated decline in the overall population over 10 years has been 50 to 79 percent (BLI 2009b).

Southern helmeted curassow populations are estimated to be declining very rapidly due to uncontrolled hunting and habitat destruction. This species has a small range and is known only from a few locations, which continue to be subject to habitat loss and hunting pressure. Hunting was indicated to be the biggest threat to southern helmeted curassow in all parts of its range (Gastañaga 2006). The species was often hunted for meat due to its large size and for its unique blue casque, or horn, which the local people used to make cigarette lighters (Cordier 1971; Collar *et al.* 1992). In the Amboró region of Bolivia, the bird's head was purportedly used in folk dances (Hardy 1984 as cited in Collar 1992). It is unclear whether this practice still occurs.

The Río Leche area in Peru experienced a 100 percent population decline in less than 5 years likely due to hunting or other pressures (Macleod *et al.* 2009, p. 16). In Carrasco National Park, the species had been abundant during surveys in 2001 but in 2004 there were no visual or auditory sightings (Macleod *et al.* 2009, p. 16). This may be due to illegal human encroachment. Similar human pressures are ongoing throughout the species' range. The observed decline infers that a 50-percent population loss likely occurred between 1995 and 2005. Unless threats are mitigated, this trend will probably continue for the next several years (Macleod in litt. 2005).

In Bolivia, forests within the range of the southern helmeted curassow are being cleared for crop cultivation by colonists from the altiplano (Maillard 2006, pp. 95–98). Rural development, including road building, inhibits its dispersal (Herzog and Kessler 1998; Fjeldså in litt. 1999 as cited in BLI 2010). In Peru, southern helmeted curassow habitat is threatened by subsistence agriculture (MacLeod in litt. 2000 as cited in BLI 2010a), forest clearing by colonists, illegal logging, mining, and oil exploration (BLI 2010a).

Conservation Status. According to IUCN's Species Survival Commission (SSC) Cracid Specialist Group, the southern helmeted curassow is critically endangered and should be given immediate conservation attention (Brooks and Strahl 2000). The southern helmeted curassow was previously classified as "Vulnerable" on the IUCN Red List. In 2005, it was uplisted to its current status as "Endangered" (BLI 2009a). It is not listed in any appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; www.cites.org), which regulates international trade in animals and plants of conservation concern.

The southern helmeted curassow is dependent upon pristine habitat. In Bolivia, large parts of southern helmeted curassow habitat are ostensibly protected by inclusion in the Amboro and Carrasco National Parks and in the Isiboro-Secure Indigenous Territory and National Park. However, pressures on the species' populations continue (BLI 2010a). In recent years, extensive field surveys of southern helmeted curassow habitat have resulted in little success in locating the species (Mee *et al.* 2002; Hennessey 2004a; MacLeod in litt. 2004 as cited in BLI 2009a; Maccormack in litt. 2004 as cited in BLI 2010a; MacLeod in litt. 2003 as cited in BLI 2010a). The Armonia Association has been attempting to estimate southern helmeted curassow population numbers to identify its most important populations, and is evaluating human impact on the species' natural habitat. In addition, Armonia is carrying out an environmental awareness project to inform local people about the threats to southern helmeted curassow (Asociación Armonía 2010) and is conducting training workshops with park guards to help improve chances for its survival.

In our 2009 ANOR, the southern helmeted curassow received an LPN of 8. After reevaluating the threats to the

species, we have determined that a change in the listing priority number representing the magnitude of threats to the species is warranted. The southern helmeted curassow does not represent a monotypic genus. It faces threats that are high in magnitude based on its small, limited range; and these few locations where it is believed to exist continue to be subject to habitat destruction and loss from agricultural development, road building, and hunting. Although the population is estimated to be between 1,000 and 4,999 individuals, the population trend is believed to be rapidly declining. In the past ten years, the species' population is believed to have declined between 50 and 79 percent (BLI 2009b). The best scientific information available suggests that these significant declines will continue in the future. The threats to the species are occurring now and are ongoing, and are therefore imminent. Because the species is experiencing such a significant population decline, we have changed the LPN from an 8 to a 2 to reflect imminent threats of high magnitude.

B. Bogota Rail (*Rallus semiplumbeus*), LPN = 2

The Bogota rail is found in the East Andes of Colombia on the Ubaté-Bogotá Plateau in Cundinamarca and Boyacá. It occurs in the temperate zone, at 2,500–4,000 m (occasionally as low as 2,100 m) (6,890 ft) in savanna and páramo marshes (BLI 2010b). Bogota rail inhabit wetland habitats with vegetation-rich shallows that are surrounded by tall, dense reeds and bulrushes (Stiles in litt. 1999 as cited in BLI 2010b). It inhabits the water's edge, in flooded pasture and along small overgrown dykes and ponds (Varty *et al.* 1986 as cited in BLI 2010b; Fjeldså 1990 as cited in BLI 2010b; Fjeldså and Krabbe 1990 as cited in BLI 2010b; Salaman in litt. 1999 as cited in BLI 2010b). Nests have been recorded adjoining shallow water in beds of *Scirpus* (bulrush or sedge) and *Typha* (cat tail) species. (Stiles in litt. 1999 as cited in BLI 2010b). The Bogota rail is omnivorous, consuming a diet that includes aquatic invertebrates, insect larvae, worms, mollusks, dead fish, frogs, tadpoles, and plant material (BLI 2010b; Varty *et al.* 1986 as cited in BLI 2010b).

The current population is estimated to range between 1,000 and 2,499 individuals, although numbers are expected to decline over the next 10 years by 10 to 19 percent (BLI 2009). Although the Bogota rail has been observed in at least 21 locations in Cundinamarca, the Bogota rail population is thought to be declining. It is still uncommon to fairly common, with a few notable populations, including nearly 400 birds at Laguna de Tota, approximately 50 bird territories at Laguna de la Herrera, approximately 100 birds at Parque La Florida, and populations at La Conejera marsh and Laguna de Fuquene (BLI 2010b).

Its suitable habitat has become widely fragmented (BLI 2010b). Wetland drainage, pollution, and siltation on the Ubaté-Bogotá plateau have resulted in major habitat loss and few suitably vegetated marshes remain. All major savanna wetlands are threatened, predominately due to draining, but also due to agricultural runoff, erosion, dyking, eutrophication caused by untreated sewage effluent, insecticides, tourism, hunting, burning, reed harvesting, fluctuating water levels, and increasing water demand. Additionally, road construction may result in colonization and human interference, including introduction of exotic species in previously stable wetland environments (Cortes in litt. 2007 as cited in BLI 2010b).

Conservation Status. The Bogota rail is listed as "Endangered" by IUCN primarily because its range is very small and is contracting due to widespread habitat loss and degradation. It is not listed in any appendices of CITES. Some Bogota rails occur in protected areas such as Chingaza National Park and Carpanta Biological Reserve. However, most savanna wetlands are virtually unprotected (BLI 2009).

In our 2009 ANOR, the Bogota rail received an LPN of 8. After reevaluating the threats to this species, we have determined that a change in the listing priority number for the species is appropriate. The Bogota rail does not represent a monotypic genus. It faces threats that are high in magnitude due to the pressures on the population's habitat. Its range is very small and is rapidly contracting because of widespread habitat loss and degradation (agricultural encroachment, erosion, dyking, and eutrophication). The population is believed to be between 1,000 and 2,499 individuals, and the population trend is believed to be rapidly declining. Based on new information regarding threats to this species, we find that the threats to the species are occurring now, are ongoing, and are therefore imminent. Thus, we have changed the LPN from an 8 to a 2 to reflect imminent threats of high magnitude.

C. Takahe (*Porphyrio hochstetteri,* Previously Known as *P. mantelli*), LPN = 8

The takahe, a flightless rail endemic to New Zealand, is the world's largest extant (living) member of the rail family (del Hoyo *et al.* 1996). The species, *Porphyrio mantelli,* was split into *P. mantelli* (extinct) and *P. hochstetteri* (extant) (Trewick 1996). BLI (2000) incorrectly assigned the name *P. mantelli* to the extant form, while the name *P. hochstetteri* was incorrectly assigned to the extinct form. Fossils indicate that this species was once widespread throughout New Zealand's North and South Islands. The takahe was thought to be extinct by the 1930s until its rediscovery in 1948 in the Murchison Mountains, Fiordland (South Island) (Bunin and Jamieson 1996; New Zealand Department of Conservation (NZDOC) 2009b). Soon after its rediscovery, a takahe Special Area of 500 km^2 (193 mi^2) was set aside in the Murchison Mountains of Fiordland National Park for the conservation of the takahe (Crouchley 1994; NZDOC 2009c). Today, the species is present in the Murchison and Stuart Mountains and was introduced to five island reserves (Kapiti, Mana, Tiritiri, Mantangi, Maud) and one privately owned island (Collar *et al.* 1994; NZDOC 2009d, p. 10). The population in the Murchison Mountains is important because it is the only mainland population and has the potential for sustaining a large, viable population (NZDOC 1997).

When rediscovered in 1948, it was estimated that the takahe population was about 260 pairs (del Hoyo 1996; Heather and Robertson 1997). By the 1970s, takahe populations had declined dramatically, and it appeared that the species was at risk of extinction. In 1981, the population reached a low at an estimated 120 birds. Since then, the population has fluctuated between 100 and 160 birds (Crouchley 1994; Maxwell 2001). At first, translocated populations increased only slowly, possibly in part due to young pair-bonds and the quality of the founding population (Bunin *et al.* 1997). In recent years, the total takahe population has experienced significant growth; in 2004, there was a 13.6 percent increase in the number of adult birds, with the number of breeding pairs up 7.9 percent (BLI 2005). As of June 2008, the estimated population of takahe was approximately 93 in the Core Census Area; 91 on islands and at Maungatautari (the mainland sanctuary); 36 at the Burwood Breeding Center; and 5 birds on public display at Wildlife Centers. The Core Census Area consists of suitable habitat east of the

Esk Burn and Woodrow Burn streams in the Murchison Mountains (NZDOC 2009d, pp. 9–10).

This species experienced a loss of fitness as a result of recent inbreeding. Relative to other species, it has low genetic diversity (Grueber *et al.* 2010, pp. 7–9). Research reported in 2010 that the true level of inbreeding may be underestimated for this species (Grueber *et al.* 2010, pp. 7–9). Failure to address these concerns could result in reduced fitness potential and much higher susceptibility to biotic and abiotic disturbances in the short term, and an inability to adapt to environmental change in the long term. There is growing evidence that inbreeding can negatively affect small, isolated populations. Jamieson *et al.* (2006) suggested that limiting the potential effects of inbreeding and loss of genetic variation should be integral to any management plan for a small, isolated, inbred island species such as the takahe.

As of 2009, the current total population estimate is 227 adults (NZDOC 2009d, p. 11; NZDOC 2009e). Birds under 1 year of age were not counted in these totals. As of 2007, the mainland population, as well as island reserves, were thought to be at carrying capacity (Greaves 2007, p. 17), (NZDOC 2009, p. 29), however a Recovery Plan is underway to address conservation priorities and needs for this species (NZDOC 2009d, entire). Overall, population numbers are slowly increasing due to intensive management of the island reserve populations, but fluctuations in the remnant mainland population continue to occur (NZDOC 2009d; BLI 2010c).

Takahe territories historically have been large; they have been known to be between several hectares (ha) to more than 100 ha (247 acres (ac)) depending on the availability of their preferred food sources (Lee and Jamieson 2001, p. 57). Takahe defend them aggressively against other takahe, which means that they will not form dense colonies even in very good habitat. They are long-lived birds, probably living between 14 and 20 years (Heather and Robertson 1997) and have a low reproductive rate, with clutches consisting of 1 to 3 eggs. They form life-long pair bonds and generally occupy the same territory throughout life (Reid 1967). Generally pairs in the wild only rear one chick. Only a few pairs manage to consistently rear more than one chick each year. Although under normal conditions this is generally sufficient to maintain the population, populations recover slowly from catastrophic events (Crouchley 1994); and this is a concern because this species has such a small population size. To increase the population, NZDOC has been removing some eggs from the wild, captive rearing them, and reintroducing them back into the wild (NZDOC 2009, p. 26).

Originally, the species occurred throughout forest and grass ecosystems. Now takahe occupy alpine grasslands (BLI 2010c). They feed on tussock grasses during much of the year; snow tussocks (*Chionochloa pallens, Chionochloa conspicua, Chionochloa flavescens,* and *Chionochloa crassiuscula*) are their preferred food (Mills and Mark 1977, p. 951; Mills *et al.,* 1980, Crouchley 1994, NZDOC 2009, pp. 39–40). These grasses are high in nutritional content. *C. flavescens* is high in phosphorus; *C. pallens* is high in starch; and *C. crassiuscula* is high in sulphur, starch, and sodium (Mills and Mark 1977, pp. 951, 953). takahe also forage on *Carex coriacea,* which is also high in nutrients. During some seasons, takahe prefer plants with high phosphorus content; for example, during spring and autumn, they prefer *C. crassiuscula.* From October to December, when they lay eggs, they prefer mountain daisy (*Celmisia petriei),* which has high levels of calcium and sugar (Mills and Mark 1977, pp. 952–953). By June, the snow cover usually prevents feeding above tree line, and birds move into forested valleys in the winter and feed mainly on the rhizome of a fern (*Hypolepis millefolium*) which has a high carbohydrate content (Mills *et al.* 1980, p. 136).

Research by Mills *et al.* (1980) suggested that takahe require the high-carbohydrate concentrations in the rhizomes of the fern to meet the metabolic requirement of thermoregulation in the mid-winter subfreezing temperatures. *Chionochloa conspicua* (bush snow-grass) is the takahe's preferred winter food in the Murchison Mountains, although new information indicates that it is currently uncommon due to overgrazing by deer (NZDOC 2009d, pp. 39–40). *C. conspicua* has higher levels of phosphorus, potassium and magnesium (Mills *et al.* 1980, p. 136) than *Hypolepis spp.,* which is currently the primary plant in the winter takahe diet.

Although *Hypolepis* rhizomes may not be sufficient for a balanced winter diet, they are a valuable source of starch, nitrogen and phosphorus (Mills *et al.* 1980, p. 136). Because foraging on *Hypolepis* is a learned behavior, it is being taught at the Burwood Captive Rearing Center to chicks by adult birds (NZDOC 2009d, p. 27).

Rareness of *C. conspicua* may be a contributing factor to the lack of viability of the takahe population (NZDOC 2009d, pp. 39–40). There are no known diseases that pose threats to the takahe. *C. conspicua* is less common in the forest understory in the takahe Special Area than it previously was, in part due to overgrazing by deer. NZDOC is conducting research and trying to reintroduce and increase the prevalence of this plant species in the Murchison Mountains Reserve (NZDOC 2009d, pp. 39–40). The island populations now primarily consume introduced grasses (BLI 2010c). Some researchers have theorized that consumption of these nonnative species may contribute to inadequate nutrition and subsequently nest failure (Jamieson 2003, p. 708); however this has not been confirmed.

Several factors have led to the decline in the species' population. The main cause of the species' historical decline was competition for tussock grasses by grazing red deer (*Cervus elaphus*), which were introduced after the 1940s (Mills and Mark 1977). The red deer overgrazed the takahe's habitat, eliminating nutritious plants and preventing some grasses from seeding (del Hoyo *et al.* 1996; NZDOC 2009, p. 39). The NZDOC has controlled red deer through an intensive hunting program in the Murchison Mountains since the 1960s. Predation by introduced stoats (*Mustela erminea*) is still a threat to the species (Crouchley 1994; Bunin and Jamieson 1995; Bunin and Jamieson 1996; NZDOC 2009, pp. 34–36). The NZDOC is running a trial stoat control program in a portion of the takahe Special Area to measure the effect on takahe survival and productivity. Initial assessment indicates that the control program has had a positive influence (NZDOC 2009, pp. 35–36).

Other potential threats include a competitor, the introduced brush-tailed possum (*Trichosurus vulpecula*) and the predator, the threatened weka (*Gallirallus australis*), a flightless woodhen endemic to New Zealand (BLI 2010c). Severe weather may also be a limiting factor to this species (Bunin and Jamieson 1995; BLI 2010c). Weather patterns in the Murchison Mountains vary from year to year. High chick and adult mortality may occur during extraordinarily severe winters, and poor breeding may result from severe stormy weather during spring breeding season (Crouchley 1994). Research has confirmed that severity of winter conditions adversely affects survivorship of takahe in the wild, particularly of young birds (Maxwell and Jamieson 1997).

Lead exposure may affect this species on some of the islands (Youl 2009, pp. 79–83). Lead levels in the island populations were found to be higher

than those on the mainland. Older buildings on some of the island contain lead paint. One or more takahe breeding pairs were located near buildings containing lead-based paint. A family group on one island that was close to a building containing lead paint was found to have significantly higher lead levels than a family group located away from buildings (Youl 2009, p. 80). Lead has been found to affect the learning capacity of avian species (Youl 2009, pp. 11–13). This exposure to lead may lead to decreased fitness of takahe.

Conservation Status. The takahe is listed as "Endangered" on the IUCN Red List because it has an extremely small population (BLI 2010c). It is not listed in any appendices of CITES. New Zealand considers the takahe to be an endangered species and it is classified as "Nationally Critical" under the New Zealand Threat Classification System. The NZDOC, through its 2007–2012 takahe Recovery Plan, is managing the populations of the species through various conservation efforts such as captive breeding, population management, eradication of predators, and management of grasslands.

Since 1983, the NZDOC has been involved in managing a captive-breeding and release program to boost takahe recovery (NZDOC 2009, p. 29). Excess eggs from wild nests are managed to produce birds suitable for releasing back into the wild population in the Murchison Mountains. Some of these captive-reared birds were used to establish five predator-free, offshore island reserves. These captive-breeding efforts have increased the rate of survival of chicks reaching one year of age from 50 to 90 percent (NZDOC 1997; NZDOC 2009d). Takahe that have been translocated to the islands have higher rates of egg infertility and low hatching success when they breed (Jamieson & Ryan 2000). Researchers postulated that the difference in vegetation between the native mainland grassland tussocks and the grasses found on the islands might affect reproductive success. After testing nutrients from available food sources, it remains unclear whether the islands contain adequate nutrients in the available food sources (James *et al.* 2004, pp. 342–344). Research on takahe that are established on Tiritiri Matangi Island estimated that the island can currently support up to 8 breeding pairs, but suggested that the ability of the island to support takahe is likely to decrease as the grass and shrub ecosystem reverts to forest. The researchers concluded that, although the four island populations fulfilled their role as insurance against extinction on the mainland at the time of the study, given impending habitat changes on the islands, it is unclear whether these island populations will continue to be viable in the future without an active management plan (Baber and Craig 2003a; Baber and Craig 2003b). Maxwell and Jamieson (1997) studied survival and recruitment of captive-reared and wild-reared takahe on Fiordland. They concluded that captive rearing of takahe for release into the wild increases recruitment of juveniles into the population.

In our 2009 ANOR, the takahe received an LPN of 8. After reevaluating the threats to the takahe, we have determined that no change in the classification of the magnitude and imminence of threats to the species is warranted at this time. The takahe does not represent a monotypic genus. The current population is small (between 150–220 individuals), and the species' distribution is extremely limited. It faces threats that are moderate in magnitude (extremely small population, limited suitable habitat, inbreeding depression, and to some extent predation) because the NZDOC has taken measures to aid the recovery of the species (NZDOC 2009d, 58 pp.; NZDOC 2009e, 3 pp.) and is active in the species conservation and recovery. The NZDOC has implemented a successful deer control program, implemented a captive-breeding and release program to augment the mainland population, and established four offshore island reserves. However, we find that the threats are on-going and therefore, imminent. Predation by introduced species and reduced survivorship resulting from severe winters, combined with the takahe's small population size and naturally low reproductive rate are threats to this species that are moderate in magnitude. Thus, the LPN remains at 8 to reflect imminent threats of moderate magnitude.

D. Chatham Oystercatcher (*Haematopus chathamensis*), LPN = 8

The Chatham oystercatcher is the most rare oystercatcher species in the world (NZDOC 2001). It is endemic to the Chatham Island group (Marchant and Higgins 1993; Schmechel and Paterson 2005), which lies 860 km (534 mi) east of mainland New Zealand. The Chatham Island group consists of two large, inhabited islands (Chatham and Pitt) and numerous smaller islands. Two of the smaller islands (Rangatira and Mangere) are nature reserves, which provide vitally needed habitat for the Chatham oystercatcher. The Chatham Island group has a biota quite different from the mainland. The remote marine setting, distinct climate, and physical makeup have led to a high degree of endemism (Aikman *et al.* 2001). The southern part of the Chatham oystercatcher range is dominated by rocky habitats with extensive rocky platforms. The northern part of the range is a mix of sandy beach and rock platforms (Aikman *et al.* 2001).

Pairs of Chatham oystercatchers occupy their territory all year, while juveniles and subadults form small flocks or occur alone on vacant sections of the coast. Their scrape nests (shallow-rimmed depressions in soil or vegetation) are usually on sandy beaches just above spring-tide and storm surge level or among rocks above the shoreline and are often under the cover of small bushes or rock overhangs (Heather and Robertson 1997).

In the early 1970s, the Chatham oystercatcher population was approximately 50 birds (del Hoyo 1996). The population increased by 30 percent overall between 1987 and 1999, except trends varied in different areas of the Chatham Islands (Moore *et al.* 2001). Surveys taken over a 6-year period recorded an increase in Chatham oystercatchers from approximately 100 individuals in 1998 to 320 individuals (including 88 breeding pairs) in 2005 (Moore 2005a; Moore 2009b, p. 32). Although the overall population has significantly increased over the last 20 years, the population on South East Island (Rangatira), an island free of mammalian predators, has gradually declined since the 1970s. The reason for the decline is unknown (Schmechel and O'Connor 1999) but is likely due to large waves during sea storms which destroy the nests (Moore 2009a, p. 9).

Predation, nest disturbance, invasive plants, and spring tides and storm surges are factors threatening the Chatham oystercatcher population (NZDOC 2001, Moore 2005; Moore 2009a, pp. 8–9). Feral cats (*Felis catus*) have become established on two of the Chatham Islands after being introduced as pets. Severe reduction in Chatham oystercatcher numbers is attributed in part to heavy cat predation. Video cameras placed to observe nests indicated that feral cats are a major nest predator. After three summers of video recording, 13 of the 19 nests recorded were predated by cats. When a cat was present eggs usually lasted only 1 or 2 days.

Another predator, the weka (*Gallirallus australis*), an endemic New Zealand rail was introduced to the Chatham Islands in the early 1900s. Weka was observed preying upon this species three times through camera trapping between 1999 and 2001 (Moore

2009a, p. 8). It is not considered as severe a threat to the Chatham oystercatcher as feral cats because weka only prey on eggs when adult oystercatchers are not present.

Other potential predators include the Norway rat (*Rattus norvegicus*), ship rat (*R. rattus*), Australian brush-tailed possum (*Trichsurus vulpeculs*), and hedgehog (*Erinaceus europaeus*). However, these predators are not considered serious threats because of the large size of the oystercatcher eggs. Native predators include the red-billed gull (*Larus scopulinus*), and southern black-backed gull (*L. dominicanus*) (Moore 2005b). Nest destruction and disturbance is caused by people fishing, walking, or driving on or near nests. When a nesting area is disturbed, adult Chatham oystercatchers often abandon their eggs for up to an hour or more, leaving the eggs vulnerable to opportunistic predators. Eggs are also trampled by livestock (Moore 2005a). In one case, a sheep was observed to lie on a nest (Moore 2009b, p. 21).

Another obstacle to Chatham oystercatcher populations is marram grass (*Ammophila arenaria*), introduced to New Zealand from Europe to protect farmland from sand encroachment. Marram grass has spread to the Chatham Islands where it binds beach sands forming tall dunes with steep fronts. In many marram-infested areas, the strip between the high tide mark and the fore dunes narrows as the marram advances seaward. Consequently, the Chatham oystercatcher is forced to nest closer to shore where nests are vulnerable to tides and storm surges. The dense marram grass is unsuitable for nesting (Moore and Davis 2005). In a study done by Moore and Williams (2005), the authors found that, along the narrow shoreline, many eggs were washed away and the adults would not successfully breed without human intervention. Oystercatcher eggs could easily be moved away from the shoreline by fieldworkers and placed in hand-dug scrapes surrounded by tidal debris and kelp. After three summers of video recording, 13 of the 19 nests recorded were predated by cats, but of the remaining six nest failures, weka were responsible for three; red-billed gull, one; sheep-trampling, one; and sea wash, one (Moore 2005b).

Conservation Status. Chatham oystercatcher is listed as critically endangered by the NZDOC (2010d), making it a high priority for conservation management (NZDOC 2007). It is classified as "Endangered" on the IUCN Red List because it has an extremely small population (BLI 2010d). It is not listed in any appendices of CITES.

The birds of the Chatham Island group are protected. The NZDOC focused conservation efforts in the early 1990s on predator trapping and fencing to limit domestic stock access to nesting areas. In 2001, the NZDOC published the Chatham Island Oystercatcher Recovery Plan 2001–2011 (NZDOC 2001, 24 pp.), which outlines actions such as translocation of nests away from the high tide mark and nest manipulation to further the conservation of this species. These actions may have helped to increase hatching success (NZDOC 2008b). Artificial incubation has been attempted but has not increased productivity. Additionally, livestock have been fenced and signs erected to reduce human and dog disturbance. Marram grass control has been successful in some areas. Intensive predator control combined with nest manipulation has resulted in a high number of fledglings (BLI 2009).

In our 2009 ANOR, the Chatham oystercatcher received an LPN of 8. After reevaluating the threats to this species, we have determined that no change in the classification of the magnitude and imminence of threats to the species is warranted at this time. The Chatham oystercatcher does not represent a monotypic genus. The current population estimate is very small—between 50 and 300 individuals—and the species only occurs in a small area. Although it faces threats that are moderate in magnitude (predation, low population numbers, and potential loss due to storm surges); the NZDOC has taken measures to aid the recovery of the species that appear to be effective (the species' population is increasing), However, we find that the threats are still on-going and therefore, imminent. The LPN remains an 8 to reflect imminent threats of moderate magnitude.

E. Orange-Fronted Parakeet (*Cyanoramphus malherbi*), LPN = 8

The orange-fronted parakeet, also known as Malherbe's parakeet is endemic to New Zealand. It was treated as an individual species until it was proposed to be a color morph of the yellow-crowned parakeet, *C. auriceps,* in 1974 (Holyoak 1974). Further taxonomic analysis suggested that it should once again be considered a distinct species (Kearvell *et al.* 2003). ITIS recognizes *Cyanoramphus malherbi* as a full species (ITIS 2010, accessed July 16, 2010). Absent peer-reviewed information to the contrary, we consider the orange-fronted parakeet to be a valid species.

At one time, the orange-fronted parakeet was scattered throughout most of New Zealand (Harrison 1970). This species has been described as never being common (Mills and Williams 1979). During the 19th century, the species' distribution included South Island, Stewart Island, and a few other offshore islands of New Zealand (NZDOC 2009a). Currently, there are three known remaining populations. The South Island populations are managed and located within a 30-km (18.6-mi) radius in beech (*Nothofagus* spp.) forests of upland valleys (Hawdon and Poulter valleys). These valleys are within Arthur's Pass National Park and the Hurunui South Branch in Lake Sumner Forest Park in Canterbury, South Island (NZDOC 2009a). Two populations of this species have also been established on Chalky and Maud Islands (Elliott and Suggate 2007; Ortiz-Catedral and Brunton 2009, p. 385). Between 2007 and 2009, 62 birds were introduced to Maud Island.

This species inhabits southern beech forests, with a preference for locales bordering stands of *N. solandri* (mountain beech) (del Hoyo 1997; Snyder *et al.* 2000; Kearvell 2002). The species is reliant on old mature beech trees with natural cavities or hollows for nesting. Breeding is linked with the irregular seed production by *Nothofagus;* in mast years (years yielding a high abundance of seeds), parakeet numbers can increase substantially. On South Island, *Nothofagus* species were observed to be a major component of its diet (Kearvall *et al.* 2002, pp. 140–145). On Maud Island, a primary component of its diet was *Melicytus ramiflorus* (mahoe) (Ortiz-Catedral and Brunton 2009, p. 385). In addition to eating seeds, the orange-fronted parakeet feeds on fruits, leaves, flowers, buds, and small invertebrates (BLI 2009).

The orange-fronted parakeet has an extremely small, fragmented population and limited range, and its population has declined during the past 10 years (BLI 2010e). Currently, BLI estimates its population in the wild to be between 50 and 249 individuals (BLI 2010e, p. 1). NZDOC's population estimate is between 100 to 200 individuals in the wild and they also believe the population is declining (NZDOC 2009a).

There are several reasons for the species' continuing decline; one of the most prominent risks to the species is believed to be predation by introduced species, such as stoats (*Mustela erminea*) and rats (*Rattus* spp.) (BLI 2009). Large numbers of stoats and rats

in beech forests cause large losses of parakeets (NZDOC 2009c). Stoats and rats are excellent hunters on the ground and in trees. They are able to exploit parakeet nests and roosts in tree holes, which impacts primarily females, chicks, and eggs (NZDOC 2009c).

In 2007, habitat loss and degradation were considered threats to the orange-fronted parakeet (BLI 2007b). Large areas of native forest have been felled or burnt, decreasing the habitat available for parakeets (NZDOC 2009c). Silviculture of beech forests aims to harvest trees at an age when few will become mature enough to develop suitable cavities for orange-fronted parakeets (Kearvell 2002). The habitat is also degraded by brush-tailed possum (*Trichosurus vulpecula*), cattle, and deer, which browse on plants, changing the forest structure (NZDOC 2009c). This is problematic for the orange-fronted parakeet, which utilizes the ground and low-growing shrubs while feeding (Kearvell *et al.* 2002).

Other risks to this species' viability exist. Some of these other potential threats include increased competition between the orange-fronted parakeet and the yellow-crowned parakeet for nest sites and food in a habitat substantially modified by humans; competition with introduced finch species; and competition with introduced wasps (*Vespula vulgaris* and *V. germanica*) which compete with parakeets for invertebrates as a dietary source (Kearvell *et al.* 2002). Hybridization is also a concern. The orange-fronted parakeet may hybridize with other species. Snyder *et al.* reported that hybridization with yellow-crowned parakeets (*C. auriceps*) had been observed at Lake Sumner (2000). In some cases, we are not able to distinguish between hybridized birds and full species due to similarities in color (Chan 2006, p. 5).

Conservation Status. The NZDOC (2009b) considers the orange-fronted parakeet, or käkäriki, to be the rarest parakeet in New Zealand. Because it is classified as "Nationally Critical" with a high risk of extinction, the NZDOC has been working intensively on the species to ensure its survival. The species is listed as "Critically Endangered" on the IUCN Red List, "because it underwent a population crash following rat invasions between 1990–2000." It is listed in Appendix II of CITES as part of a general listing for all parrots (CITES 2010).

The NZDOC closely monitors all known populations of the orange-fronted parakeet. Nest searches are conducted, nest holes are inspected, and surveys are carried out in other areas to look for evidence of other populations. For example, the surveys successfully located another orange-fronted parakeet population in May 2003 (NZDOC 2009d). A new population was established in 2006 on the predator-free Chalky Island. Eggs were removed from nests in the wild, and foster parakeet parents incubated the eggs and cared for the hatchlings until they fledged and were transferred to the island. Monitoring later in the year (2006) indicated that the birds had successfully nested and reared chicks. Additional birds will be added to the Chalky Island population in an effort to increase the genetic diversity of the population (NZDOC 2009d). A second self-sustaining population has been established on Maud Island (NZDOC 2008).

Because the NZDOC determined that the species' largest threat is predation, they initiated a program to remove predators in some parts of the species' range. "Operation ARK" is their initiative to respond to predator problems in beech forests to prevent species' extinctions, including orange-fronted parakeets. Predators are methodically controlled with traps, toxins in bait stations, bait bags, and aerial spraying, when necessary (NZDOC 2009d). The NZDOC also implemented a captive-breeding program for the orange-fronted parakeet. Using captive-bred birds from the program, NZDOC established two self-sustaining populations of the orange-fronted parakeet on predator-free islands. The NZDOC monitors wild nest sites and is actively managing the conservation of the species, as evidenced by the 2003 discovery of a new population. Despite these controls, predation by introduced species is still a threat because predators have not been eradicated from this species' range.

In our 2009 ANOR, the orange-fronted parakeet received an LPN of 8. After reevaluating the threats to the orange-fronted parakeet, we have determined that no change in the classification of the magnitude of threats to the species is warranted because NZDOC is actively managing the species. The orange-fronted parakeet does not represent a monotypic genus. Although the species' available suitable nesting habitat in beech forests is extremely restricted, translocations have taken place and seem to be successful (BLI 2010e, p. 2). Although the current population is small and declining (between 50 and 249 individuals), and the species' distribution is extremely limited, threats are being mitigated. It has a very small and severely fragmented population that has declined over the past 10 years (BLI 2010e) but it is being closely monitored and may slowly be increasing (van Hal *in litt,* in BLI 2010e). The species faces threats that are moderate in magnitude (competition for food and suitable nesting habitat within highly altered habitat, predation, and habitat degradation) because the NZDOC has taken measures to aid the recovery of the species. However, because the threats are on-going, we find that the threats to this species are still imminent. Thus, the LPN remains at 8 to reflect imminent threats of moderate magnitude.

F. Uvea Parakeet (*Eunymphicus uvaeensis*), LPN = 2

The Uvea parakeet, previously known as *Eunymphicus cornutus,* is currently known as both *E. uvaeensis* and *E. c. cornutus* (Boon *et al.* 2008, p 251; BLI 2010f). BLI recognizes the Uvea parakeet as *E. uvaeensis.* ITIS considers the Uvea parakeet to be a subspecies, *Eunymphicus cornutus uvaeensis* (ITIS 2010, accessed July 16, 2010). Research presented in 2008 indicates that the Uvea parakeet, based on genetic, ecological, behavioral, and biogeographical evidence, is so markedly distinct that it warrants status as its own species (Boon 2008 *et al.,* p. 259). Thus, in this ANOR, based on the best scientific and commercial data available, we consider the Uvea parakeet to be the species *E. uvaeensis.* We are evaluating the threats to the Uvea parakeet at the taxonomic level of a species.

The Uvea parakeet is found only on the small island of Uvea (also known as both Ouvéa Island and Wallis Island) in the Loyalty Archipelago, New Caledonia (a territory of France) in the South Pacific Ocean. The island is approximately 1,500 km (932 mi) east of Australia. Uvea Island is 110 km^2 (42 mi^2) in size (Juniper and Parr 1998). The Uvea parakeet is found primarily in old-growth forests, specifically those dominated by the pine tree *Agathis australis* (del Hoyo *et al.* 1997). The island is predominantly limestone and lacks deep soil layers (Boon *et al.* 2008, p. 257). Most birds occur in about 20 km^2 (7.7 mi^2) of forest in the north, although some individuals are found in strips of forest on the northwest isthmus and in the southern part of the island, with a total area of potential habitat of approximately 66 km^2 (25.5 mi^2) (BLI 2010f).

Uvea parakeets feed on fruit, the berries of vines, and the flowers and seeds of native trees and shrubs (del Hoyo *et al.* 1997; Robinet and Salas 2003, p. 71). They also feed on a few types of crops in cultivated land

adjacent to their habitat. The greatest number of birds occurs close to gardens with papayas (BLI 2010f). A significant characteristic is that Uvea parakeet nest in cavities of native trees; the absence of suitable trees and nesting cavities may be a limiting factor (Robinet and Salas 2003, p. 71). Their clutch size is generally 2 to 3 eggs; and they are known to have another clutch if the first set of eggs is destroyed (termed "double-clutch") (BLI 2010f).

One survey of Uvea parakeet in the early 1990s estimated that the population was between 70 and 90 individuals (Hahn 1993). However, another survey in 1993 (Robinet *et al.* 1996) yielded an estimate of between 270 and 617 individuals. In 1999, it was believed that 742 individuals lived in northern Uvea, and 82 in the south (Primot 1999 as cited in BLI 2010f). Six surveys conducted between 1993 and 2007 indicated a steady increase in population numbers in both areas (Verfaille in litt. 2007 as cited in BLI 2010f). The current population estimate is 750 individuals (BLI 2010f).

Various threats to this species exist. The Uvea parakeet is primarily threatened by lack of nesting sites due to competition from bees and historic habitat loss, and to lesser extents predation and possibly capture of juveniles for the pet trade (Robinet *et al.* 2003, pp. 73, 78; BLI 2010f, p. 2). Although the forest habitat of the Uvea parakeet has been threatened by clearance for agriculture and logging in the past, the primary threats now appear to be competition by bees for nests and predation by goshawk (*Accipiter fasciatus*) (Robinet *et al.* 2003, p. 73). The invasion of bees into Uvea in 1996 resulted in competition with Uvea parakeet over nesting sites. This decreased known Uvea parakeet nesting sites by 10 percent between 2000 and 2002 (Barré in litt. 2003 as cited in BLI 2010f). Studies by Robinet *et al.* (2003) indicate the density of breeding Uvea parakeet is positively related to the distribution of suitable trees. Consequently, the limited number of suitable trees limits the number of breeding pairs. In two other cases, Robinet *et al.* (2003) observed successful nesting after human restoration of former nest sites that had been destroyed by illegal collectors. This further indicates the deleterious effect of nest-site limitation. Another limiting factor is forest fragmentation as a result of increased numbers of coconut plantations which acts as a barrier to dispersal. This could possibly explain the lack of recolonization in southern Uvea (Robinet *et al.* 2003).

It is unknown if capture of young Uvea parakeets for the pet trade is still occurring, and if so, to what extent. Capture of juvenile parakeets involves cutting open nesting cavities to extract nestlings, which renders the holes unsuitable for future nesting. Robinet *et al.* (1996) suggested that the impact of capture of juveniles on the viability of populations is not obvious in long-lived species that are capable of re-nesting, such as Uvea parakeet.

In 1999, a study of the reproductive biology of Uvea parakeet found that the main cause of chick death was starvation of the third chick within the first week after hatching (Robinet and Salas). However, the reason underlying the starvation is unknown.

Norway rats are prolific invaders of islands and can rapidly establish large populations (Russell 2007). Additionally, impacts of the rat appear to be more severe on smaller islands (Martin *et al.* 2000). In one study, it was determined that the low rate of predation on nest sites of Uvea parakeet was related to the absence of the ship rat and Norway rat. However, these rat species are present on the other nearby Loyalty Islands and on Grande Terre (Robinet and Salas 1996); precautions need to be taken to ensure that rats do not reach Uvea Island. Egg predation rates were four times higher on Lifou (also known as Lifu Island) where *R. rattus* occurs (Robinet *et al.* 1998).

In 30 years, approximately 30 to 50 percent of primary forest was removed (Robinet *et al.* 1996). The island has a young and increasing human population. A 2000 population estimate was 4,000 inhabitants; and the 2008 population census for Wallis (Uvea) was 9,731 (*www.insee.gov.fr*, accessed March 19, 2011). The increase in human population may lead to more destruction of forest for housing, cultivated fields, and plantations. As of 2000, coconut palms plantations were the island's main source of income (CITES 2000a). As indicated earlier, the lack of nesting sites is believed to be the most significant limiting factor for the species (Robinet *et al.* 2003, pp. 73, 78; BLI 2010, p. 2).

Conservation Status. Various conservation measures are in place for this species. This species is listed as "Endangered" on the 2010 IUCN Red List (BLI 2010f). It was uplisted from Appendix II to Appendix I of CITES in July 2000, due to its small population size, restricted area of distribution, loss of suitable habitat, and the illegal pet trade (CITES 2000b). A recovery plan for the Uvea parakeet was prepared for the period 1997–2002, which included strong local participation in population and habitat monitoring (Robinet in litt. 1997 as cited in Snyder *et al.* 2000). A second recovery plan was initiated in 2003. The species increased in popularity and is celebrated as an island emblem (Robinet and Salas 1997; Primot in litt. 1999 as cited in BLI 2009). Conservation actions, including in situ management (habitat protection and restoration), recovery efforts (providing nest boxes and food), and public education on the protection of Uvea parakeet and its habitat have occurred (Robinet *et al.* 1996), however the success of current conservation efforts is unknown. Increased awareness of the plight of the Uvea parakeet and improvements in law enforcement capability are helping to address illegal trade of the species.

Preventive measures have been taken at the port and airport to prevent introduction of invasive rats and should continue to be reinforced, but there is concern that these rats may be introduced in the future (BLI 2010, p. 3). As of 2007, the island remained rat-free (Verfaille in litt. 2007 as cited in BLI 2010). Introductions of Uvea parakeets to the adjacent island of Lifou (to establish a second population) in 1925 and 1963 failed (Robinet *et al.* 1995 as cited in BLI 2009), possibly because of the presence of ship rats and Norway rats (Robinet in litt. 1997 as cited in Snyder *et al.* 2000). Robinet *et al.* (1998) studied the impact of rats in Uvea and Lifou on the Uvea parakeet and concluded that Lifou is not a suitable place for translocating Uvea parakeet unless active habitat management is carried out to protect it from invasive rats. As a preventative measure in case rats reach the island, they also suggested it would be valuable to implement low-intensity rat control of the Polynesian rat (*R. exulans*) in Uvea immediately before the parakeet breeding season. Lifou may also lack suitable nesting sites (Robinet *et al.* 2003, pp. 73, 78).

A captive-breeding program has been discussed but not begun (BLI 2010f). A translocation program to restock this species into the southern portion of Uvea was cancelled under the new recovery plan (2003) because the population was considered viable and was expected to increase naturally (Barré in litt. 2003; Anon 2004 as cited in BLI 2010f). Measures are being taken to control predators and prevent colonization by rats (BLI 2010f). Current Uvea parakeet numbers appear to be slowly increasing, but any relaxation of conservation efforts or introduction of nonnative rats or other predators could lead to a rapid decline (BLI 2010f). The Société Calédonienne d'Ornithologie (SCO) received funding to test artificial

nests, and BirdLife Suisse (ASPO) is continuing to destroy invasive bees' nests and is placing hives in forested areas to attract bees for removal (Verfaille in litt. 2007 as cited in BLI 2010f).

Even though populations appear to be currently increasing, any reduction in conservation efforts or introduction of invasive species (particularly cavity-nesting bees, the ship rat, and the Norway rat) could lead to rapid declines (Robinet *et al.* 1998; BLI 2010f). Although the Uvea parakeet is affected by other threats, the absence of the ship rat and Norway rat on Uvea is a major factor contributing to its survival.

In our 2009 ANOR, the Uvea parakeet received an LPN of 8. We reevaluated the threats to the Uvea parakeet and determined that a change in the LPN for the species is warranted. The Uvea parakeet does not represent a monotypic genus. Its population is estimated to be approximately 750 individuals, and it is an island endemic in limited locations with restricted and declining habitat. The Uvea parakeet faces threats that are high in magnitude primarily due to nest competition by bees, predation by goshawk, and the lack of the old-growth forest, on which the birds depend for nesting holes. The birds only occur in an area about 20 km^2 (7.7 mi^2) of forest with a total area of potential habitat of approximately 66 km^2 (25.5 mi^2) (BLI 2010f). Because the human population on the island is increasing, there is likely an increase occurring in the magnitude of threats to this species. Management efforts have been put in place to aid in the recovery of the species, however, the threats to the species identified here continue. Based on new information, we find that the threats to this species are occurring now, ongoing, and are imminent. Thus, we have changed the LPN from an 8 to a 2 to reflect imminent threats of high magnitude.

G. Blue-Throated Macaw (*Ara glaucogularis*), LPN = 2

The blue-throated macaw is endemic to forest islands in the seasonally flooded Beni Lowlands (Lanos de Mojos, also known as Lanos de Moxos) of central Bolivia (Jordan and Munn 1993; Yamashita and de Barros 1997; BLI 2010g). The taxonomic status of this species was long disputed, primarily because the species was unknown in the wild to biologists until fairly recently. Previously, it was considered an aberrant form of the blue-and-yellow macaw (*A. ararauna*), but the two species are now known to occur sympatrically without interbreeding (del Hoyo *et al.* 1997).

The species inhabits a mosaic of seasonally inundated savanna, palm groves, forest islands, and humid lowlands. This macaw species is found in areas where palm-fruit food and suitable nesting cavities are available (Herrera *et al.* 2007, pp. 18–24). They particularly like fruit mesocarp of palm trees (Jordan and Munn 1993; Yamashita and de Barros 1997; Bueno 2000; Herrera 2007, p. 20) such as *Attalea phalerata* (motacu palm), *Mauritia flexuosa* (common names: aguaje, it palm, buriti palm, moriche palm), and *Acrocomia aculeata* (common names include: coyoli palm, gru-gru palm, macaw palm, Paraguay palm, acrocome, gru-gru, noix de Coyol, Coyolipalme, amankayo, corojo, corozo, coyol, baboso, tucuma, and totai) (*http://www.ars-grin.gov, http://www.pacsoa.org.au*).

The blue-throated macaw also depends on motacu palms for nesting (BLI 2008d). In 2005, this species was found nesting in an area dominated by the Curupau tree (*Anadenanthera colubrina)* (also known as Vilca, Huilco, Wilco, Cebil, or Angico) (Kyle 2005, p. 7). The species inhabits elevations between 200 and 300 m (656 and 984 ft) (Brace *et al.* 1995; Yamashita and de Barros 1997; BLI 2008c). These macaws are seen most commonly traveling in pairs, and have been seen in flocks of 7 to 9 birds, and on rare occasions may be found in small flocks (Macleod *et al.* 2009, p. 15). One flock of 70 birds was found in 2007 near the Rio Mamoré by the Armonia Association (Waugh 2007a, p. 53). The blue-throated macaw nests between November and March in large tree cavities where one to three young are raised (BLI 2010g).

BLI (2010g) estimates the total wild population to be between 50 and 300 birds and noted the population has some fragmentation. Surveys indicate the population may have slowly increased following dramatic declines in the 1970s and 1980s, but now the population is believed to be decreasing (BLI 2010g). Biologists surveying for this species in 2004 found more birds than in previous surveys by searching specific habitat types (palm groves and forested islands) (Herrera *et al.* 2007). A population viability analysis (PVA) of this species found that it had a low probability of extinction over the next 50 years (Strem 2008). However, its small population size and its low population growth rate makes this species very vulnerable to any threat. The low probability of extinction may be reasonable given that the blue-throated macaw is a long-lived species, and the 50-year simulation timeframe is relatively short for such species. However, Strem found that impacts such as habitat destruction and harvesting had significantly increased the probability of extinction, which reemphasizes the importance of addressing these threats for this species (2008).

The blue-throated macaw was historically at risk from trapping for the national and international bird trade, and some illegal trade may still be occurring. Between the early 1980s and early 1990s, an estimated 1,200 or more wild-caught individuals were exported from Bolivia, and many are now in captivity in the European Union and in North America (World Parrot Trust 2003; BLI 2008b). Although Bolivia outlawed the export of live parrots in 1984 (Brace *et al.* 1995), illegal trade did occur after that. In 1993, investigators reported that an Argentinean bird dealer was offering illegal Bolivian dealers a "high price" for blue-throated macaws (Jordan and Munn 1993, p. 695).

Armonia Association (a nonprofit organization in Bolivia) monitored the wild birds that passed through a pet market in Santa Cruz, Bolivia, from August 2004 to July 2005. Although nearly 7,300 parrots were recorded in trade, the blue-throated macaw was absent in the market during the monitoring period, which may point to the effectiveness of the ongoing conservation programs in Bolivia (BLI 2007), or it may be indicative of the scarcity of blue-throated macaws in the wild. There are a number of blue-throated macaws in captivity, with over 1,000 registered in the North American studbook (Waugh 2007c). Because these birds are not difficult to breed, the supply of captive-bred birds has increased (Waugh 2007a), helping to alleviate pressure on, but not completely eliminating illegal collection of wild birds. However, United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) trade data indicates that no birds of wild origin of this species have been exported from Bolivia since 1993 (UNEP–WCMC, accessed September 3, 2010). A current internet search indicated that captive-bred specimens of this species sell for between $1,500 and $3,000 in the United States (*www.hoobly.com*, accessed September 13, 2010). One search advertised that this is a "very rare species and there are only 300 left in the wild." The high value of this species could lead to continued illegal trade.

Other threats to the blue-throated macaw include habitat loss, botfly parasites, and competition from other birds, such as other macaws, toucans, and large woodpeckers (Kyle 2005, pp.

6–10; World Parrot Trust 2008; BLI 2010g). An early researcher noted that all known sites of the blue-throated macaw were on private cattle ranches, where local ranchers typically burn the pasture annually (del Hoyo 1997). This type of burning resulted in almost no recruitment of native palm trees, which are vital to the ecological needs of the blue-throated macaw (Yamashita and de Barros 1977). The blue-throated macaw requires suitable nesting cavities for raising their young. The loss of suitable trees has resulted in increased competition from other species for these nesting cavities as well. In fact, recent research found that some parrot species have been using termite mounds as nesting cavities (Sanchez-Martinez and Renton 2009). In Beni, many palms are cut down by the local people for firewood (Brace *et al.* 1995). Although palm groves are more than 500 years old, Yamashita and de Barros (1977) concluded that the palm population structure suggests long-term decline. In 2004–2005, of 13 potential blue-throated macaw nests, researchers observed several of the threats identified above over the course of the survey. At the end of the survey, only two chicks had fledged (Kyle 2005, p. 9).

Conservation Status. This species is listed in Appendix I of CITES (CITES 2010) and is legally protected in Bolivia (Juniper and Parr 1998). Although conservation of this species is occurring, this species remains categorized as "Critically Endangered" on the 2010 IUCN Red List (BLI 2010g). The Eco Bolivia Foundation patrols existing macaw habitat by foot and motorbike, and the Armonia Association monitors the Beni lowlands for additional populations (Snyder *et al.* 2000). Additionally, the Armonia Association is building an awareness campaign aimed at the cattlemen's association to ensure that the protection and conservation of these birds is at a local level (*e.g.,* protection of macaws from trappers and the sensible management of key habitats, such as palm groves and forest islands, on their property) (Snyder *et al.* 2000; Llampa 2007; BLI 2008a).

In October 2008, Armonia Association announced it had purchased a large, 3,555-ha (8,785-ac) reserve for the purpose of establishing a protected area for the blue-throated macaw (BLI 2008d; Worldland Trust 2010, accessed July 16, 2010). The Barba Azul Nature Reserve protects savanna habitat, and 20 blue-throated macaws have been observed to nest here. The organization has also been experimenting with artificial nest boxes; the macaws have been using these, and this promises to be a way to boost breeding success while habitat restoration is under way in the new reserve. Despite these efforts, only between 50 and 300 remain in the wild.

In our 2009 ANOR, the blue-throated macaw received an LPN of 8. After reevaluating the available information, we find that a change in the LPN is warranted for this species. The blue-throated macaw does not represent a monotypic genus. It faces threats that are high in magnitude such as limited and decreasing habitat suitability (nesting cavities), competition for nesting cavities from other species (toucans in particular and other more aggressive macaws), and parasitism by botflies. Wildlife managers in Bolivia are actively protecting the species and searching for additional populations, and the species is now protected in one nature reserve. Although wild birds may no longer be imported for commercial purposes as a result of the species' CITES listing, and it is legally protected in Bolivia, there are only between 50 and 300 of these birds left in the wild, and the population is decreasing rapidly, despite conservation efforts. The threats to the species identified are of high magnitude, ongoing, and imminent. Based on the rapidly declining population, we have changed the LPN from an 8 to a 2 to reflect imminent threats of high magnitude.

H. Helmeted Woodpecker (Dryocopus galeatus), LPN = 8

The helmeted woodpecker is endemic to the southern Atlantic forest region of southeastern Brazil, eastern Paraguay, and northeastern Argentina (BLI 2010h). Its estimated range spans 24,000 km^2 (9,266 mi^2). It is found in tall lowland Atlantic and primary and mature montane forest, and has been recorded in degraded and small forest patches. However, it is usually found near large forest tracts (Chebez 1995b as cited in BLI 2010h; Clay in litt. 2000 as cited in BLI 2010h). Helmeted woodpeckers forage primarily in the middle story of the forest interior (Brooks *et al.* 1993 cited in BLI 2010h; Clay in litt. 2000 as cited in BLI 2010h).

Field work on the helmeted woodpecker indicated that the species is less rare than once thought (BLI 2010h), although its range is restricted (Mattsson *et al.* 2008) by its habitat requirements. Numerous sightings since the mid-1980s include one pair in the Brazilian State of Santa Catarina in 1998, where the species had not been seen since 1946 (del Hoyo *et al.* 2002).

The most recent population estimate is between 10,000 and 19,999 individuals and decreasing (BLI 2010h); however it is unclear when the last census of this species was conducted. Because the helmeted woodpecker is difficult to locate except when vocalizing and it is silent most of the year, its numbers may be underestimated. Between 1997 and 2006, it was observed in the San Rafael National Park, Paraguay, although infrequently (Esquivel *et al.* 2007, p. 310). The overall conservation status of the helmeted woodpecker's population is unclear; however, it is not common anywhere it is known to exist (BLI 2010h).

The greatest threat to the helmeted woodpecker is widespread deforestation (Cockle 2008 as cited in BLI 2009; BLI 2010h). Other threats may be competition from other species, particularly more competitive woodpeckers, which may use fragmented and "edge" habitat more effectively (BLI 2010h).

The Atlantic Forest, habitat in which the helmeted woodpecker resides, extends along the Atlantic coast of Brazil from Rio Grande do Norte in the north to Rio Grande do Sul in the south, and inland as far as Paraguay and Misiones Province of northeastern Argentina (Morellato and Haddad 2000, pp. 786–787; Conservation International 2007a, p. 1; Höfling 2007, p. 1). The Atlantic Forest extends up to 600 km (373 mi) west of the Atlantic Ocean. It consists of tropical and subtropical moist forests, tropical dry forests, and mangrove forests at mostly low-to-medium elevations less than 1,000 m (3,281 ft); however, altitude can reach as high as 2,000 m (6,562 ft) above sea level. It is likely that only between 7 and 10 percent of this habitat remains intact (Morellato and Haddad 2000, p. 786; Oliveira-Filho and Fontes 2000, p. 794). Between 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; Saatchi *et al.* 2001, p. 868; Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; The Nature Conservancy (TNC) 2007, p. 1; World Wildlife Fund (WWF) 2007, pp. 2–41). In addition to the overall loss and degradation of native habitats within this biome, the remaining tracts of habitat are severely fragmented. The current rate of habitat decline is unknown.

A significant portion of Atlantic Forest habitat has been, and continues to be, lost and degraded by various ongoing human activities, including logging, establishment and expansion of plantations and livestock pastures,

urban and industrial developments (including many new hydroelectric dams), slash-and-burn clearing, and intentional and accidental ignition of fires (Critical Ecosystem Partnership Fund (CEPF) 2001, pp. 9–15). Even with the passage of a national forest policy and in light of many other legal protections in Brazil, the rate of habitat loss throughout the Atlantic Forest biome has increased since the mid-1990s (Hodge *et al.* 1997, p. 1; CEPF 2001, p. 10; Rocha *et al.* 2005, p. 270). Native habitats at many of the remaining sites where the helmeted woodpecker currently exists may be lost over the next several years (Rocha *et al.* 2005, p. 263). Furthermore, the helmeted woodpecker's population is already highly fragmented, and its population believed to be declining (BLI 2010h). Any further loss or degradation of its remaining suitable habitat represents a significant threat to the species. Further studies are needed to clarify this species' distribution and status.

In Paraguay, some viable, although fragmented habitat for this species remains in San Rafael National Park (Esquivel *et al.* 2007, pp. 301–302). The park has undergone logging and clearance, and is extremely isolated from other mature forested areas that might be suitable for the helmeted woodpecker (Esquivel *et al.* 2007, p. 302).

Conservation Status. The helmeted woodpecker is listed as "Vulnerable" by the IUCN (IUCN 2010). It is not listed in any appendices of CITES (CITES 2010). In one of the few remaining large fragments of Atlantic Forest in Paraguay, it is considered to be near threatened (Esquivel *et al.* 2007, p. 301). It is protected by Brazilian law, and populations occur in numerous protected areas throughout its range (Lowen *et al.* 1996 as cited in BLI 2009; Chebez *et al.* 1998 as cited in BLI 2009).

In our 2009 ANOR, the helmeted woodpecker received an LPN of 8. After reevaluating the available information, we find that a change in the LPN for the helmeted woodpecker is not warranted. The helmeted woodpecker does not represent a monotypic genus. The magnitude of threat to the species is moderate because the species' range (24,000 km^2 (9,266 mi^2)) and population (between 10,000 and 19,999 individuals) is believed to be much larger than previously thought. The threats are imminent because the forest habitat upon which the species depends is constantly being altered and destroyed by humans. We will continue to monitor the status of this species, however, a priority rank of 8 remains valid for this species.

I. Okinawa Woodpecker (Dendrocopos noguchii), LPN = 2

The Okinawa woodpecker (also known as Pryer's woodpecker) (*Dendrocopos noguchii,* synonym *Sapheopipo noguchii*) is endemic to Okinawa Island, Japan. ITIS recognizes the Okinawa woodpecker as belonging to the monotypic genus *Sapheopipo* (ITIS 2010i, accessed September 7, 2010). Winkler *et al.* (2005, pp. 103–109) analyzed partial nucleotide sequences of mitochondrial genes and concluded that this woodpecker belongs in the genus *Dendrocopos.* IUCN and BLI both recognize this species as *Dendrocopos noguchii.* Japan references it as *Sapheopipo noguchii* (*http://www.env.go.jp/en/nature/biodiv/reddata.html,* accessed September 30, 2010). For the purpose of this finding and absent peer-reviewed information to the contrary, we recognize it as *Dendrocopos noguchii.* We welcome comments on the classification of this species.

Okinawa is the largest of the Ryukyu Islands, a small island chain located between Japan and Taiwan (Brazil 1991; Stattersfield *et al.* 1998; Winkler *et al.* 2005). Okinawa is approximately 646 km (401 mi) from Taiwan and 1,539 km (956 mi) from Tokyo, Japan. The island is 108 km (67 miles) in length and its width varies between 3 and 27 km (2 to 17 mi). Okinawa's highest point is Mt. Yonaha at 455 m (1,494 ft). The Okinawa woodpecker is confined to forested areas in the northern part of the island, generally in the Yambaru (also known as Yanbaru) area, particularly in the Yonaha-dake Prefecture Protection Area. Yambaru refers to the mountainous areas of Kunigami County in northern Okinawa.

This species of woodpecker prefers undisturbed, mature, subtropical evergreen broadleaf forests, with tall trees greater than 20 cm (7.9 in) in diameter (Short 1982; del Hoyo 2002). Trees of this size are generally more than 30 years old and as of 1991 were confined to hilltops (Brazil 1991). The species' main breeding areas are located along the mountain ridges between Mt. Nishime-take and Mt. Iyu-take, although it has been observed nesting in well-forested coastal areas (Research Center, Wild Bird Society of Japan 1993, as cited in BLI 2001). The majority of the broadleaf trees in the Yanbaru area are oak and chinquapin (*Distylium racemosum* and *Schefflera octophylla*) (Ito *et al.* 2000, p. 305). Areas with conifers (*Coniferae,* cone-bearing trees such as pines and firs) appear to be avoided (Short 1973; Winkler *et al.* 1995). The Okinawa woodpecker was also observed just south of the Mt. Tanodake in an area of entirely secondary forest that was too immature for use by woodpeckers to excavate nest cavities, but these may have involved birds displaced by the clearing of mature forests (Brazil 1991).

The Okinawa woodpecker feeds on large arthropods, notably beetle larvae, spiders, moths, and centipedes, fruit, berries, seeds, acorns, and other nuts (Short 1982; del Hoyo 2002; Winkler *et al.* 2005). They forage in old-growth forests with large, often moribund trees, accumulated fallen trees, rotting stumps, debris, and undergrowth (Short 1973; Brazil 1991). This species has been observed to nest in holes excavated in large, old growth trees such as *Castanopsis cuspidate* (Japanese chinquapin) and *Machilus thunbergii* (Tabu-no-ki tree) (Ogasawara and Ikehara 1977; Short 1982; del Hoyo 2002). Both of these tree species grow to approximately 20 meters (66 ft) in height. It is thought that *Castanopsis* is the preferred tree species for nesting because it tends to be hollow with hard wood, so that the nesting cavities are more secure (Kiyosu 1965 in BLI 2001, p. 1880). The number of fledglings per season range between one and three birds (BLI 2001, p. 1880).

This species is considered one of the world's most rare extant woodpecker species (Winkler *et al.* 2005). During the 1930s, the Okinawa woodpecker was considered nearly extinct. In the early 1970s, it was observed to be scattered among small colonies and isolated pairs (Short 1973). By the early 1990s, the breeding population was estimated to be about 75 birds (BLI 2008a). In 2008, its projected 10-year decline was between 30 to 49 percent (BLI 2008b). The current population estimate ranges between 146 and 584 individuals (BLI 2010i).

Deforestation and the fragmented nature of its habitat due to logging, dam construction, road-building, agricultural development, and golf course construction are cited to be the main causes of its small population size (BLI 2010i). Between 1979 and 1991, 2,443 ha (6,037 ac) of forest were destroyed in the Yanbaru area (Department of Agriculture, Okinawa Prefectural Government 1992, in Ito *et al.* 2000, p. 311). As of 2001, there was only 40 km^2 (15 mi^2) of suitable habitat available for this species (BLI 2001, p. 1882).

The limited range and tiny population make this species vulnerable to extinction from disease and natural disasters such as typhoons (BLI 2008). Feral dogs and cats, the introduced Javan mongoose (*Herpestes javanicus*), and weasel (*Mustela itatsi*) are possible

predators of the woodpecker. Additionally, feral pigs damage potential ground-foraging sites (BLI 2003).

Conservation Status. Various protections and conservation measures are in place for this species. The species is categorized on the IUCN Red List as "Critically Endangered" because it consists of a small, declining population estimated to be between 150 and 584 individuals (BLI 2010i). The species is legally protected in Japan and it occurs in small protected areas on Mt. Ibu and Mt. Nishime (BLI 2008a). The Yambaru, a forested area in the Okinawa Prefecture, was designated as a national park in 1996 (BLI 2010i). Additionally, conservation organizations have purchased sites where the woodpecker occurred in order to establish private wildlife preserves (del Hoyo *et al.* 2002; BLI 2008). It is not listed in any appendices of CITES.

In our 2009 ANOR, the Okinawa woodpecker received an LPN of 8. After reevaluating the available information, we find that a change in the LPN for the Okinawa woodpecker is warranted. The Okinawa woodpecker does not represent a monotypic genus. It is considered one of the world's most rare extant woodpecker species and faces threats that are high in magnitude even though the species is legally protected in Japan. The best available information does not indicate that this species is being actively managed. The threats to the species are of high magnitude due to the scarcity of old-growth habitat (only 40 km^2 (15 mi^2)) upon which the species is dependent. Its very small population is believed to be continually declining; and species with fragmented habitat in combination with small population sizes may be at greater risk of extinction due to synergistic effects (Davies *et al.* 2004, pp. 265–271). Although it exists in areas with protected status, the best available information indicates that the threats to the species are ongoing and imminent. Because its projected 10-year decline was between 30 to 49 percent in 2008, (BLI 2008b), and because the current population estimate ranges between 146 and 584 individuals, we have changed the LPN for this species from an 8 to a 2 to reflect imminent threats of high magnitude.

J. Yellow-Browed Toucanet (*Aulacorhynchus huallagae*), LPN = 2

There is very little information available regarding the yellow-browed toucanet. This species is endemic to Peru and is known from only two localities in north-central Peru—La Libertad, where it is uncommon, and Rio Abiseo National Park, San Martin, where it is thought to be very rare (Wege and Long 1995; del Hoyo *et al.* 2002; BLI 2009). There was also a report of yellow-browed toucanets seen in the Leymebamba area (Mark in litt. 2003, as cited in BLI 2010j) of Peru, although there are no available photos of this species. The current population size is believed to be between 1,000 and 2,499 with a decreasing population trend (BLI 2010j).

The yellow-browed toucanet's estimated range is 450 km^2 (174 mi^2) (BLI 2010j). The species inhabits a narrow altitudinal range between 2,125 and 2,510 m (6,970 and 8,232 ft). It prefers the canopy of humid, epiphyte-laden montane cloud forests, particularly areas that support *Clusia* trees (sometimes known as autograph trees) (Fjeldså and Krabbe 1990; Schulenberg and Parker 1997, pp. 717–718; del Hoyo *et al.* 2002). Within the Clusia genus, there are about 20 species. The yellow-browed toucanet does not appear to occupy all potentially suitable forest available within its range (Schulenberg and Parker 1997). Its restricted range remains unexplained.

The narrow distributional band in which yellow-browed toucanets are found may be related to the occurrence of other avian species that may out-compete the yellow-browed toucanet. Recent information indicates that both of the suggested competitors have wider altitudinal ranges that completely encompass that of the yellow-browed toucanet (Collar *et al.* 1992; Hornbuckle in litt. 1999, as cited in BLI 2009; Clements and Shany 2001, as cited in BLI 2008; del Hoyo *et al.* 2002). The larger grey-breasted mountain toucan (*Andigena hypoglauca*) occurs above 2,300 m (7,544 ft), and the emerald toucanet (*Aulacorhynchus prasinus*) occurs below 2,100 m (6,888 ft) (Schulenberg and Parker 1997). The yellow-browed toucanet may occur to the north and south of its known range, but the area between the Cordillera de Colán, Amazonas, and the Carpish region, Huánuco, is inaccessible, and its existence in other areas has not been confirmed.

Distinguishing features of the yellow-browed toucanet include a bright yellow vent or cloaca, a blackish bill, and a generally green face, (Schulenberg and Parker 1997, p. 719). Its call has been described as a series of 20 to 30 frog-like "krik" notes, delivered at a rate of slightly more than one note per second (recordings housed in Cornell Laboratory of Ornithology, Schulenberg and Parker 1997, p. 717).

Human-related threats to the species include deforestation, mining, and secondary impacts associated with those activities. Deforestation has been widespread in this region, but has largely occurred at lower elevations than habitat occupied by the yellow-browed toucanet (Barnes *et al.* 1995; BLI 2009). However, coca growers have taken over forests within its altitudinal range, probably resulting in some reductions in this species' range and population (BLI 2009; Plenge in litt. 1993, as cited in BLI 2009). Most of the area in 1997 was described as being only lightly settled by humans (Schulenberg and Parker 1997). However, the human population surrounding the Rio Abiseo Park was steadily increasing during the 15 years prior to 2002, primarily because of the advent of mining operations in the area (Obenson 2002). Pressures in and around the park exist due to mining and those secondary impacts associated with mining (Vehkamäki and Bäckman, 2006, pp. 1–2).

Conservation Status. Protections for this species are minimal. The yellow-browed toucanet is listed as "Endangered" on the IUCN Red List due to its very small range and population records from only two locations (BLI 2010j). It occurs in at least one protected area, the Rio Abiseo National Park, a World Heritage Site which was established to protect fauna (UNEP–WCMC 2008, p. 1). It is not listed in any appendices of CITES (CITES 2010).

In our 2009 ANOR, the yellow-browed toucanet received an LPN of 11. After reevaluating the available information, we find that a change in the LPN for the yellow-browed toucanet is warranted. The yellow-browed toucanet does not represent a monotypic genus. Although the species is believed to exist in the protected Rio Abiseo National Park, there have been no documented sightings since 2003. As of 2010, BLI reported that coca-growers have taken over forest within its altitudinal range (BLI 2010j). The magnitude of threats to the species is high given that the species has a small range and rapidly declining population; and may be in competition for habitat with more competitive avian species. Further, pressures in and around the park exist due to mining and secondary impacts associated with mining. Additionally, the only records of this species are from two small locations and they have not been verified in several years. Based on these factors, we find that the threats are imminent and of high magnitude. Thus, we have reassessed and changed the LPN for this species from an 11 to a 2 to reflect imminent threats of high magnitude.

K. Brasilia Tapaculo (*Scytalopus novacapitalis*), LPN = 8

The Brasilia tapaculo is a small bird endemic to Brazil, specifically in the central to southern-central region of the country. It is found in swampy gallery forests, which are forests that grow along streams and rivers in regions otherwise devoid of trees, within disturbed areas of thick streamside vegetation and dense secondary growth of *Pteridium aquilinum* (bracken fern). The Brasilia tapaculo is also strongly associated with two other plant species: *Blechnum* ferns and *Euterpe* palms (del Hoyo *et al.* 2003, in BLI 2010k).

The species has been documented in Goiás and Serra da Canastra National Park, Minas Gerais (Negret and Cavalcanti 1985, as cited in Collar *et al.* 1992; Collar *et al.* 1992; BLI 2008). In Serra do Cipó and Caraça, which are in the hills and plateaus of central Brazil, this species was located at low densities (Collar *et al.* 1992). In and around the Serra da Canastra National Park, this species was reported to be very common (Silveira 1998, p. 3). Again in the Minas Gerais area, the species was located at low densities at Serra Negra (on the upper Dourados River) and the headwaters of the São Francisco river, in the early 1990s (Collar *et al.* 1992).

Although the species was once considered rare (Sick and Texeira 1979, as cited in Collar *et al.* 1992), it has been found in reasonable numbers in areas of Brasilia noted above (D. M. Teixeira in litt. 1987, as cited in Collar *et al.* 1992). There is no current population estimate other than that the population is decreasing (BLI 2010j). However, in 2008 the population was estimated at approximately 10,000 birds, with a decreasing population trend (BLI 2008).

The species occupies a limited area within a range of 109,000 km² (42,085 mi²) and is likely losing habitat (BLI 2010j). Its distribution now appears larger than initially estimated, and the swampy gallery forests where it is found are not conducive to forest clearing, leaving the species' habitat less vulnerable to this threat than previously thought. The majority of locations where this species is found are within established protected nature reserves. Both fire risk and drainage impacts are reduced in these areas (Antas 2007). However, dam building for irrigation on rivers that normally flood gallery forests was identified as an emerging threat (Teixeira *in litt.* 1987, as cited in Collar *et al.* 1992; Antas 2007). Further, annual burning of adjacent grasslands limits the extent and availability of suitable habitat, as does wetland drainage and the sequestration of water for irrigation (Machado *et al.* 1998, as cited in BLI 2008).

Conservation Status. The IUCN categorizes the Brasilia tapaculo as "Near Threatened" (BLI 2010j). It is not listed in any appendices of CITES (CITES 2010). The Brasilia tapaculo is protected by Brazilian law (Bernardes *et al.* 1990, as cited in Collar *et al.* 1992), and some of the areas where this species occurs are protected. Three Important Bird Areas (IBAs) have been identified for this species: Parque Nacional de Brasília, Cerrados ao Sul de Brasília, and the Serra da Canastra National Park. A site is recognized as an IBA when it meets criteria " * * * based on the occurrence of key bird species that are vulnerable to global extinction or whose populations are otherwise irreplaceable." These key sites for conservation are small enough to be conserved in their entirety, but large enough to support self-sustaining populations of the key bird species. IBAs are a way to identify conservation priorities (BLI 2010).

In our 2009 ANOR, the Brasilia tapaculo received an LPN of 8. After reevaluating the available information, we find that a change in the LPN for the Brasilia tapaculo is not warranted. The Brasilia tapaculo does not represent a monotypic genus. The magnitude of threat to the species is moderate because in 2008, their population was estimated at approximately 10,000 birds; at least two of the populations are in protected habitat; and their preferred habitat is swampy and difficult to clear. Threats are imminent, because habitat is still being drained or dammed for agricultural irrigation, and grassland burning limits the extent of suitable habitat. Therefore, a priority rank of 8 remains valid for this species.

L. Codfish Island Fernbird (*Bowdleria punctata wilsoni*), LPN = 12

The Codfish Island fernbird is found only on Codfish Island, New Zealand. Codfish Island is a nature reserve of 1,396 ha (3,448 ac) located 3 km (1.8 mi) off the northwest coast of Stewart Island (IUCN 1979; McClelland 2007). There are five subspecies of *Bowdleria punctata,* each restricted to a single island and its outlying islets. The North and South Islands' subspecies are widespread and locally common. The Stewart Island and the Snares' subspecies are moderately abundant (Heather and Robertson 1997). In 1966, the status of the Codfish Island subspecies (*B. punctata wilsoni*) was considered relatively safe (Blackburn 1967), but estimates dating from 1975 indicated a gradually declining population to approximately 100 individuals (Bell 1975 as cited in IUCN 1979). McClelland (2007) indicated that in the past, the Codfish Island fernbird was restricted to low shrubland in the higher areas of Codfish Island. Few individuals were seen around the coastal shrubland; and a significant predator was the Polynesian rat (*Rattus exulans*) (McClelland 2007). In 1979, the IUCN (1979) concluded that the absence of the fernbird from formerly occupied areas of Codfish Island evidenced a decline.

Although there is no accurate estimate of the current size of the Codfish Island fernbird population (estimates are based on incidental encounter rates in the various habitat types on the island), the population as of 2007 was believed to be several hundred. McClelland (2007) concluded that is it likely that the population peaked and is stable.

Fernbirds are sedentary and are not strong fliers. They are secretive and reluctant to leave cover. They feed in low vegetation or on the ground, eating mainly caterpillars, spiders, grubs, beetles, flies, and moths (Heather and Robertson 1997). Codfish Island's native vegetation has been modified by the introduced Australian brush-tailed possum (*Trichosurus vulpecula*). Codfish Island fernbird populations have also been reduced due to predation by weka (*Gallirallus australis scotti*) and Polynesian rats (Merton 1974, pers. comm., as cited in IUCN 1979; McClelland 2002, pp. 1–9).

IUCN and BLI only recognize the species *Bowdleria punctata;* it is not addressed at subspecies levels. Neither the species nor the subspecies is addressed by ITIS (*www.itis.gov/,* accessed September 9, 2010). The New Zealand Department of Conservation (NZDOC) recognizes the Codfish Island fernbird as a valid subspecies, however. Because New Zealand recognizes the subspecies, and absent peer-reviewed information to the contrary, we currently consider *Bowdleria punctata wilsoni* to be a valid subspecies within a multi-species genus.

Conservation Status. Varying levels of conservation status and protections are in place for this species. IUCN categorizes *Bowdleria punctata* as "Least concern" (BLI 2010k). The 2008 New Zealand Threat Classification System manual indicates that the two "at risk" categories, "range restricted" and "sparse," have been replaced by a single category called "naturally uncommon" (p. 10). The NZDOC categorizes this subspecies as "naturally uncommon." It is not listed in any appendices of CITES (CITES 2010).

Several specific conservation measures have been undertaken by the

NZ DOC with respect to *Bowdleria punctata wilsoni* as well as *Bowdleria punctata;* however the current population size of the subspecies is unclear. The weka and possum were eradicated from Codfish Island in 1984 and 1987, respectively (McClelland 2007). The Polynesian rat was believed to have been eradicated in 1997 (Conservation News 2002; McClelland 2007). The Codfish Island fernbird population was reported to have rebounded strongly with the removal of invasive predator species. Additionally, it successfully colonized the forest habitat, which greatly expanded its range. However, because there is always the chance that rats could reestablish a population on the island, the island is being monitored for rats.

To safeguard the Codfish Island fernbird, the NZ DOC established a second population on Putauhinu Island, a small 144-ha (356-ac), privately owned island located approximately 40 km (25 mi) south of Codfish Island. The Putauhinu population established rapidly, and McClelland (2007) reported that it is also believed to be stable. While there are no accurate data on the population size or trends on Putauhinu, as of 2007, the numbers were estimated to be 200 to 300 birds spread over the island (McClelland 2007). Even with a second population, the Codfish Island fernbird still remains vulnerable to naturally occurring storm events due to its restricted range and small population size.

In our 2009 ANOR, the Codfish Island fernbird received an LPN of 12. After reevaluating the available information, we find that a change in the LPN for this subspecies is not warranted. The information available indicates that the subspecies faces threats that are low to moderate in magnitude because: (1) It exists on an island that is a nature reserve and (2) the removal of invasive predator species and the establishment of a second population have allowed for a rebound in the subspecies' population. Although the actual population numbers for this subspecies are unknown (possibly around 500 individuals), threats are nonimminent because the conservation measures to prevent the invasion of predatory invasive species indicate that they have been successful; the subspecies is being actively managed. Therefore, a priority rank of 12 remains valid for this subspecies. However, we will continue to monitor the status of this subspecies.

M. Ghizo White-Eye (*Zosterops luteirostris*), LPN = 2

The Ghizo white-eye (also known as the splendid white-eye) is endemic to the island of Ghizo. Ghizo is a very densely populated island in the Solomon Islands in the South Pacific ocean, east of Papua New Guinea (BLI 2010m). The Ghizo white-eye is described as a "warbler-like" bird. The island of Ghizo is 11 km long and 5 km wide (7 by 3 mi), and the human population is estimated to be approximately 6,670 as of 2005 (*http://www.adb.org,* accessed September 9, 2010.)

This species was characterized as being locally common in the 1990s in the remaining tall or old-growth forest, which is very fragmented and is now less than 1 km^2 (0.39 mi^2). It has been reported to be less common in scrub close to large trees and in plantations (Buckingham *et al.* 1995 and Gibbs 1996, as cited in BLI 2008). It is unclear whether these remaining habitats can support sustainable breeding populations (Buckingham *et al.* 1995, as cited in BLI 2008).

The most recent population estimate for this species is 250 to 999 birds (BLI 2010m). Biologists have recommended that systematic surveys be conducted for this species to verify its conservation status (Sherley 2001). While there are no data on population trends, the species is very likely declining due to habitat loss and degradation (BLI 2010m).

The very tall old-growth forest on Ghizo is still under threat from clearance for local use as timber, firewood, and gardens, as are the areas of other secondary growth, which are suboptimal habitats for this species. The species is also under considerable threat from deforestation for agricultural land (BLI 2008).

Conservation Status. Few, if any, protections are in place for this species. The IUCN Red List classifies this species as "Endangered," because of its very small population that is considered to be declining due to habitat loss (BLI 2010m). It is not listed in any appendices of CITES (CITES 2010).

In our 2009 ANOR, the Ghizo white-eye received an LPN of 8. After reevaluating the available information, we find that a change in the LPN for this species is warranted. The Ghizo white-eye does not represent a monotypic genus. It faces threats that are high in magnitude due to declining suitable habitat; its range is estimated to be less than 35 km^2 (13.5 mi^2); of which less than 1 km^2 (0.39 mi^2) is old growth forest. The best available information indicates that forest clearing is proceeding at a pace that is rapidly denuding the habitat; secondary growth is being converted for agricultural purposes. Further, the human population on the small island is increasing, which is likely contributing to the reduction in old-growth forest for local uses such as gardens and timber. Additionally, the last estimate of the Ghizo white-eye population was believed to be between 250 and 999 individuals, but its population trend is believed to be declining. These threats to the species are ongoing, of high magnitude, and imminent. Thus, based on the best available scientific and commercial information, we have changed the LPN from an 8 to a 2.

N. Black-Backed Tanager (*Tangara peruviana*), LPN = 8

The black-backed tanager is endemic to the coastal Atlantic forest region of southeastern Brazil. The species has been documented in Rio de Janeiro, Sao Paulo, Parana, Santa Catarina, Rio Grande do Sul, and Espirito Santo (Argel-de-Oliveira in litt. 2000, as cited in BLI 2008; BLI 2010n). The species is generally restricted to coastal sand-plain forest and restinga, but has also been located in secondary forests (BLI 2008). Restinga is a Brazilian term that describes white sand forest habitat consisting of a patchwork of vegetation types, such as beach vegetation; open shrubby vegetation; herbaceous, shrubby coastal sand dune habitat; and dry and swamp forests distributed over coastal plains from northeastern to southeastern Brazil (Rocha *et al.* 2005, p. 263; McGinley 2007, pp. 1–2).

The Atlantic Forest, on which this species depends, extends up to 600 km (373 mi) west of the Atlantic Ocean. It consists of tropical and subtropical moist forests, tropical dry forests, and mangrove forests at mostly low-to-medium elevations less than 1,000 m (3,281 ft); however, altitude can reach as high as 2,000 m (6,562 ft) above sea level. Between 7 and 10 percent of this habitat remains intact (Morellato and Haddad 2000, p. 786; Oliveira-Filho and Fontes 2000, p. 794). Based on a number of other estimates, 92 to 95 percent of the area historically covered by tropical forests within the Atlantic Forest biome has been converted or severely degraded as a result of various human activities (Morellato and Haddad 2000, p. 786; Myers *et al.* 2000, pp. 853–854; Saatchi *et al.* 2001, p. 868; Butler 2007, p. 2; Conservation International 2007a, p. 1; Höfling 2007, p. 1; TNC 2007, p. 1; WWF 2007, pp. 2–41). In addition to the overall loss and degradation of habitat, the remaining tracts of habitat are severely fragmented.

This species' physical characteristics include an underbody color of blue-turquoise and a pale red-brown vent or cloaca. The male has a chestnut colored head and black back. The female is

duller and greener. It has a complex distribution with seasonal fluctuations in response to the ripening of areoira *Schinus* fruit, at least in Rio de Janeiro and Sao Paulo (BLI 2010n). It has been observed visiting gardens and orchards of houses close to forested areas. Its diet consists primarily of fruit, and to a smaller extent, insects (Moraes and Krul 1997).

The black-backed tanager is generally not considered rare within suitable habitat (BLI 2010n). This species is more common in Sao Paulo during the winter, and records from Espirito Santo are only from the winter season. Clarification of the species' seasonal movements would provide an improved understanding of the species' population status and distribution, but currently populations appear small and fragmented and are declining rapidly; likely in response to extensive habitat loss (BLI 2010n). Population estimates range from 2,500 to 10,000 individuals (BLI 2010n).

The primary threat impacting this species is the rapid and widespread loss of habitat for beachfront development. A minor threat may be that it occasionally appears in the illegal bird trade (BLI 2010n). The remaining tracts of suitable habitat in Rio de Janeiro and São Paulo are threatened by ongoing development of coastal areas, primarily for tourism enterprises (*e.g.,* large hotel complexes, beachside housing) and associated infrastructure support (del Hoyo 2003, p. 616; WWF 2007, pp. 7 and 36–37). These activities have drastically reduced the species' abundance and extent of its occupied range. These activities are currently a risk to the species' continued existence because populations are being limited to highly fragmented patches of habitat (BLI 2010n). Although this species seems to tolerate some environmental degradation if there are well preserved stretches in its territory in which the birds can seek shelter, we expect the degree of these threats will continue and likely increase within the foreseeable future.

Because this species inhabits coastal areas, sea level rise may also affect this species (Alfredini *et al.* 2008, pp. 377–379). In Santos Bay on the coast, sea level rise scenarios were conducted based on predictions of increases between 0.5 and 1.5 m (1.6 and 4.9 ft) by the year 2100 (Alfredini *et al.* 2008, pp. 378). Even small increases in sea level could cause flooding, cause erosion, and change salt marsh zones (Alfredini *et al.* 2008, pp. 377–379) within this species' habitat. As sea level rises, habitat will be less available for this species, compounded by an increased demand by humans to utilize land for housing. The black-backed tanager may attempt to move inland in search of new suitable habitat as its current habitat disappears, however, there may not be suitable habitat remaining for the species. Although Brazil has several laws requiring resource protection for species such as the black-backed tanager, its habitat is under pressure from the intense development that occurs in coastal areas, particularly south of Rio de Janeiro. Threats to the black-backed tanager's remaining habitat are ongoing due to the challenges that Brazil faces to balance its competing development and environmental priorities.

Conservation Status. The species is considered "Vulnerable" by the IUCN (BLI 2010n). The black-backed tanager is not listed in any appendices of CITES (CITES 2010). Portions of the tanager's range are in six protected areas, although the protections are not always effective (BLI 2010n).

In our 2009 ANOR, the black-backed tanager received an LPN of 8. After reevaluating the available information, we find that a change in the LPN for this species is not warranted at this time. The black-backed tanager does not represent a monotypic genus. Threats (primarily habitat loss) to the species are moderate in magnitude due to the species' fairly large range, population size, and apparent flexibility in diet and habitat suitability. Threats are however, imminent because the species is at risk by ongoing and widespread loss of habitat due to beachfront and related development. Therefore, a priority rank of 8 remains valid for this species.

O. Lord Howe Pied Currawong (*Strepera graculina crissalis*), LPN = 6

The Lord Howe pied currawong is a subspecies separate from the five mainland pied currawongs (*Strepera graculina* spp.). In 2004, it was suggested that its taxonomy be reviewed to determine if it warrants recognition as a distinct species (McAllan *et al.* 2004). ITIS recognizes the species as *S. graculina* (ITIS 2010, accessed September 13, 2010). Because Australia recognizes the subspecies, and absent peer-reviewed information to the contrary, we consider *S. graculina crissalis* to be a valid subspecies within a multi-species genus.

This subspecies is endemic to Lord Howe Island, New South Wales, Australia. Lord Howe Island is 600 km (373 mi) northeast of Sydney, Australia. This is also the distance to the subspecies' closest relative, the mainland Pied Currawong (*S. graculina*). The Lord Howe pied currawong is limited to a 12-km^2 (4.6 mi^2) area on the 20-km^2 (7.7-mi^2) island (Hutton 1991; Garnett and Crowley 2000). It has been recorded to a limited extent on small nearby islets of the Admiralty group (Garnett and Crowley 2000; New South Wales Department of Environment & Climate Change (NSW DECC) 2010). Lord Howe Island is unique among inhabited Pacific Islands in that less than 10 percent of the island has been cleared (WWF 2001) and less than 24 percent has been disturbed (NSW Department of Environment and Conservation (DEC) 2007a). In 1982, the island was added to the World Heritage List (NSW Department of the Environment and Water Resources 2007).

The Lord Howe pied currawong breeds in rainforests and palm forests, particularly along streams. Its territories include sections of streams or gullies that are lined by tall timber (Garnett and Crowley 2000). The highest densities of Lord Howe pied currawong nests have been located on the slopes of Mount Gower and in the Erskine Valley, with smaller numbers on the lower land to the north (Knight 1987, as cited in Garnett and Crowley 2000). The nests are typically situated high in trees and are made in a cup shape with sticks and lined with grass and palm thatch (NSW DECC 2005). As of 2001, most of Lord Howe Island was still forested, and the removal of feral animals resulted in the recovery of the forest understory (WWF 2001).

The Lord Howe pied currawong is omnivorous and eats a wide variety of food, including native fruits and seeds (Hutton 1991). It is the only remaining native island vertebrate predator (NSW DECC 2010). It has been recorded eating seabird chicks, poultry, and chicks of the Lord Howe woodhen (*Tricholimnas sylvestris*) and white tern (*Gygis alba*). It also feeds on both live and dead rats (Hutton 1991). Food brought to Lord Howe pied currawong nestlings was observed to be, in decreasing order: Invertebrates, fruits, reptiles, and nestlings of other bird species (Lord Howe Island Board (LHIB) 2006).

In the 2000 Action Plan for Australian Birds (Garnett and Crowley 2000), the Lord Howe pied currawong population was estimated at approximately 80 mature individuals. In 2007, the Foundation for National Parks & Wildlife (FNPW 2007) estimated the breeding population of the Lord Howe pied currawong was 80 to 100 pairs, with a nesting territory in the tall forest areas of about 5 ha (12 ac) per pair. The population size is limited by the amount of available habitat and the lack of food during the winter (FNPW 2007). The

most recent population estimate is 100 to 200 individuals (from surveys in 2005–2006) (NSW DECC 2010, p. 3).

The main threat identified for the Lord Howe pied currawong is habitat clearing and modification. Other threats include non-target poisoning, and effects associated with extremely small population sizes (NSW DECC 2010). A lesser threat to the Lord Howe pied currawong is human interaction with the species. Prior to the 1970s, locals would shoot this currawong because it preys on nestling birds (Hutton 1991). The Lord Howe pied currawong remains unpopular with some residents, likely because of its predatory nature on nestlings. It is unclear what effect this localized killing has on the overall population size and distribution of the species (Garnett and Crowley 2000). Also, because the Lord Howe pied currawong often preys on ship (black) rats, it may be subject to nontarget poisoning during rat-baiting programs (DEC 2007b). Close monitoring of the population is needed because this small, endemic population is highly susceptible to catastrophic events, such as disease or introduction of a new predator (Garnett and Crowley 2000).

Conservation Status. Various levels of conservation and protections exist for this species. The Lord Howe Island Biodiversity Management Plan was finalized in 2007, and is the formal National and NSW Recovery Plan for threatened species and communities of the Lord Howe Island Group (DEC 2007a). The NSW Threatened Species Conservation Act of 1995 lists the Lord Howe pied currawong as "Vulnerable" because it has a limited range, only occurring on Lord Howe Island (NSW DECC 2010). It also is listed as vulnerable under the Australian Commonwealth Environment Protection and Biodiversity Conservation Act of 1999. These laws provide a legislative framework to protect and encourage the recovery of vulnerable species (NSW DEC 2006a). The Lord Howe Island Act of 1953, as amended, established the Lord Howe Island Board (LHIB), made provisions for the LHIB to care, control, and manage the island; and established 75 percent of the land area as a permanent park preserve (NSW DEC 2007). Although the subspecies is not specifically addressed by BLI or IUCN, the species is considered "Least Concern" by the IUCN (BLI 2010o). It is not listed in any appendices of CITES.

In our 2009 ANOR, the Lord Howe pied currawong received an LPN of 12. After re-evaluating the threats to the Lord Howe pied currawong, we have determined that a change in the LPN representing the magnitude and imminence of threats to the subspecies is warranted. The Lord Howe pied currawong does not represent a monotypic genus. It faces threats that are high in magnitude due to its extremely small population size, non-target poisoning, and habitat clearing and modification. Despite conservation efforts, the population of the Lord Howe pied currawong has remained around 100 to 200 individuals. Species with small, declining population sizes such as these may be at greater risk of extinction due to synergistic effects (Davies *et al.* 2004, pp. 265–271). Because conservation efforts for the species have been implemented, we find that the threats are non-imminent. Thus, based on the best available information, the LPN has been changed from 12 to 6 to reflect non-imminent threats of high magnitude.

Invertebrates

P. Harris' Mimic Swallowtail (*Mimoides* (*syn. Eurytides*) *lysithous harrisianus*), LPN = 6

Harris' mimic swallowtail butterfly is a subspecies endemic to Brazil (Collins and Morris 1985). Although the species' range includes Paraguay, the subspecies has not been confirmed in Paraguay (Collins and Morris 1985; Finnish University and Research Network 2004). Occupying the lowland swamps and sandy flats above the tidal margins of the coastal Atlantic Forest, the subspecies prefers alternating patches of strong sun and deep shade (Collins and Morris 1985; Brown 1996). This subspecies is polyphagous, meaning that its larvae feed on more than one plant species (Kotiaho *et al.* 2005). Information on its preferred host plants and adult nectar-sources was published in the status review (also known as a 12-month finding) on December 7, 2004 (69 FR 70580). The Harris' mimic swallowtail butterfly mimics at least three butterfly species in the *Parides* genus, including the fluminense swallowtail (described below). This mimicry system may cause problems in distinguishing this subspecies from the species that it mimics (Brown in litt. 2004; Monteiro *et al.* 2004).

The Harris' mimic swallowtail was previously known in Espirito Santo, however, there are no recent confirmations of its occurrence there (Collins and Morris 1985; New and Collins 1991). In Rio de Janeiro, Harris' mimic swallowtail has been confirmed in three localities. Two colonies were identified on the east coast of Rio de Janeiro, at Barra de São João and Macaé, and the other in Poço das Antas Biological Reserve, farther inland. The Barra de São João colony is the best-studied. Between 1984 and 2004, it maintained a stable size, varying between 50 to 250 individuals (Brown 1996; Collins and Morris 1985; Brown in litt. 2004), and was reported to be viable, vigorous, and stable in 2004 (Brown, Jr. in litt. 2004). There are no estimates of the size of the colony in Poço das Antas Biological Reserve where it had not been seen for 30 years prior to its rediscovery there in 1997 (Brown, Jr. in litt. 2004). Population estimates are lacking for the colony at Macaé, where the subspecies was netted in Jurubatiba National Park in the year 2000, after having not been seen in the area for 16 years (Monteiro *et al.* 2004).

Both Barra de São João and the Poço das Antas Biological Reserve lie within the São João River Basin. Conditions at Barra de São João appear to be suitable for long-term survival of this subspecies. The Barra de São João River Basin encompasses a 216,605-ha (535,240-ac) area, 150,700 ha (372,286 ac) of which is managed as protected area. The Harris' mimic swallowtail's preferred environment of open and shady areas continues to be present in the region, with approximately 541 forest patches averaging 127 ha (314 ac) in size, covering nearly 68,873 ha (170,188 ac), and a minimum distance between forest patches of 276 meters (m) (0.17 mi) (Teixeira 2007). In studies between 1984 and 1991, Brown (1996) determined that Harris' mimic swallowtails in Barra de São João flew a maximum distance of 1000 m (0.62 mi). It follows that the average flying distance would be less than this figure. Thus, the average 276 m (0.17 mi) distance between forest patches in the Barra de São João River Basin is clearly within the flying distance of this subspecies. Because the colony at Barra de São João has maintained a stable population for 20 years, it is probable that the conditions available there remain suitable.

Habitat destruction has been the main threat to this subspecies (Collins and Morris 1985; Brown 1996), especially urbanization in Barra de São João, industrialization in Macaé (Jurubatiba National Park), and previous fires that occurred in the Poço das Antas Biological Reserve. As described in detail for the fluminense swallowtail (below), Atlantic Forest habitat has been reduced to 5 to 10 percent of its original cover. More than 70 percent of the Brazilian population lives in the Atlantic forest, and coastal development is ongoing throughout the Atlantic Forest region (Hughes *et al.* 2006; Butler 2007; Conservation International 2007; CEPF 2007a; Höfling 2007; Peixoto and

Silva 2007; Pivello 2007; World Food Prize 2007; WWF 2007; TNC 2009).

Another factor affecting many butterfly species is illegal collection. The wildlife trade is extremely lucrative and as wildlife becomes rarer; it is worth more. Although there are laws on illegal wildlife trade, in some countries, many times laws are rarely enforced due to inadequate resources; and only a fraction of smuggled wildlife is caught (*http://www.traffic.org*). For example, in 1998, in the United States 100 Golden Birdwing (*Troides aeacus,* CITES Appendix II) butterflies were seized; no permit had been issued for the specimens which had been falsely labeled before being exported from Thailand (TRAFFIC 2010, p. 28). In 2001, two Russian insect collectors were arrested in India and were found to have approximately 2000 butterflies in their possession (p. 52). In 2007, a Japanese individual was convicted for illegal sale of $38,831 U.S. dollars (USD) worth of protected butterfly species. This individual is apparently known as the world's top smuggler of protected butterflies. One of the smuggled butterfly species was Homerus Swallowtail (*Papilio homerus,* CITES Appendix I). During this investigation, 43 butterflies were sold to undercover agents, including 2 Alexandra's birdwings (*Ornithoptera alexandrae,* CITES Appendix I), 2 Luzon Peacock swallowtails (*Papilio chikae,* CITES Appendix I), and 6 Corsican swallowtails (*Papilio hospiton,* CITES Appendix I) (p. 122). In 2009, in Japan an individual was sentenced to one year and six months' imprisonment and fined one million yen ($10,750 USD) due to illegally importing and selling rare butterfly species. He was found to have illegally imported 145 butterflies from France. Among the specimens were 3 Queen Alexandra's Birdwings (*Ornithoptera alexandrae,* CITES Appendix I) and 1 Apollo Butterfly (*Parnassius apollo,* CITES Appendix II) (p. 179). Although we do not know the full extent of illegal trade, according to the 2010 TRAFFIC report, this represents only a small fraction of the illegal collection of butterfly species that occurs.

Conservation Status. The Brazilian Institute of the Environment and Natural Resources (Instituto Brasileiro do a Meio Ambiente de do Recursos Naturais Renováveis; IBAMA) considers this subspecies to be critically imperiled (Portaria No. 1,522 1989; Ministerio de Meio Ambiente 2003). As of 1996, collection and trade of the subspecies was prohibited (Brown 1996). In 1998, Brazil enacted a more effective law, Lei de Crimes Ambientais ou Lei da Natureza—Law no 9.605/98, which addresses environmental crimes and sets forth penal and administrative penalties resulting from activities that are harmful to the environment (IBAMA 2011). This law addresses the integrity of air, water bodies, forests and biodiversity; and assesses civil, administrative, and criminal penalties to private individuals, corporations, and business. Harris' mimic swallowtail was categorized on the IUCN Red List as "Endangered" in the 1988, 1990, and 1994 IUCN Red Lists (IUCN 1996). However, it currently is not included in the current IUCN Redlist (IUCN 2010; Xerces Society 2010a). This species is not listed on any appendices of CITES.

Harris' mimic swallowtail ranges within two protected areas: Poço das Antas Biological Reserve and Jurubatiba National Park. These protected areas are described in detail for the fluminense swallowtail below. The Poço das Antas Biological Reserve (Reserve) was established to protect the golden lion tamarin (*Leontopithecus rosalia*) (Decree No. 73,791, 1974), but the Harris' mimic swallowtail, which occupies the same range, likely benefits as a result of efforts to conserve golden-lion-tamarin habitat (De Roy 2002; WWF 2003; Teixeira 2007). Habitat destruction caused by fires in Poço das Antas Biological Reserve appears to have abated. The revised management plan indicates that the Reserve will be used for research and conservation, with limited public access (IBAMA 2005; CEPF 2007a). The Jurubatiba National Park (Park) is located in a region that is undergoing continuing development pressures from urbanization and industrialization (Otero and Brown 1984; Brown 1996; IFC 2002; CEPF 2007b; Khalip 2007; Savarese 2008), and there is no management plan in place for the Park (CEPF 2007b). However, as discussed for the fluminense swallowtail, the Park, as of 2007, was considered to be in a very good state of conservation (Rocha *et al.* 2007).

In our 2009 ANOR, the Harris' mimic swallowtail received an LPN of 12. After reevaluating the threats to this species, we have determined that a change in the listing prioritization number is warranted. Harris' mimic swallowtail is a subspecies and is not within a monotypic genus. Although the best-studied colony has maintained a stable and viable size for nearly two decades, there is limited suitable habitat remaining for this subspecies. Habitat destruction remains a threat. These threats are high in magnitude due to its small endemic population and potential catastrophic events such as severe tropical storms or introduction of a new disease or predator. The only known populations are within close proximity to a major, expanding city in Brazil—Rio de Janiero, the second largest city in Brazil. As this species becomes rarer, it becomes even more desirable to collectors (Traffic 2010, pp. 52, 122, 179). Although the species exists in a protected area, collectors will take risks to obtain these rare and desirable species. Because the population is very small and limited to only two small areas, we find the threats are of high magnitude. However, we do not find that these threats are imminent because the subspecies is protected by Brazilian law; and the two colonies are located within protected areas. Based on the best available information, we have changed the LPN from a 12 to a 6 to reflect non-imminent threats of high magnitude.

Q. Jamaican Kite Swallowtail (*Protographium marcellinus, syn. Eurytides*), LPN = 2

The Jamaican kite swallowtail is endemic to Jamaica, preferring wooded, undisturbed habitat containing its only known larval host plant West Indian lancewood (*Oxandra lanceolata*). The food preferences of adults have not been reported (Collins and Morris 1985; Bailey 1994). Since the 1990s, adult Jamaican kite swallowtails have been observed in the parishes of St. Thomas and St. Andrew in the east; westward in St. Ann, Trelawny, and St. Elizabeth; and in the extreme western coast Parish of Westmoreland (Bailey 1994; Smith *et al.* 1994; WRC 2001; Harris 2002; Möhn 2002).

The Jamaican kite swallowtail maintains a low population level. It occasionally becomes locally abundant in Rozelle during the breeding season in early summer and again in early fall (Brown and Heineman 1972; Collins and Morris 1985; Garraway *et al.* 1993; Bailey 1994; Smith *et al.* 1994), and experiences episodic population explosions, as described in the December 7, 2004, 12-month finding (69 FR 70580) and in the 2007 ANOR (72 FR 20184; April 23, 2007). There is only one known breeding site in the eastern coast town of Rozelle (also known as Roselle), St. Thomas Parish, although it is possible that other sites exist given the widely dispersed nature of the larval food plant (Collins and Morris 1985; Garraway *et al.* 1993; Bailey 1994; Smith *et al.* 1994; Robbins in litt. 2004).

Habitat destruction has been considered a primary threat to the Jamaican kite swallowtail. Monophagous butterflies (meaning that their larvae feed only on a single plant species) such as the Jamaican kite

swallowtail tend to be more threatened than polyphagous species. This is in part due to their specific habitat requirements (Kotiaho *et al.* 2005). Harvest and clearing reduces the availability of the only known larval food plant. Habitat modification poses an additional threat because the swallowtail does not thrive in disturbed habitats (Collins and Morris 1985). In Rozelle, extensive habitat modification for agricultural and industrial purposes such as mining has occurred (Gimenez Dixon 1996; WWF 2001). West Indian lancewood, the Jamaican kite swallowtail's larval food plant, is threatened by clearing for cultivation and by felling for the commercial timber industry (Collins and Morris 1985; Windsor Plywood 2004).

Rozelle is also subject to naturally occurring, high-impact stochastic events, such as regularly-occurring hurricanes, as described in the 2007 ANOR (72 FR 20184; April 23, 2007). Hurricane-related weather damage in the last two decades along the coastal zone of Rozelle has resulted in the erosion and virtual disappearance of the once-extensive recreational beach (Economic Commission for Latin America and the Caribbean (ECLAC), United Nations Development Programme (UNDP), and the Planning Institute of Jamaica (PIOJ) (2004)). Hurricane Ivan, a category 5 hurricane, caused severe local damage to Rozelle Beach in 2004, including road collapse caused by the erosion of the cliff face and shoreline. The estimated restoration cost from Hurricane Ivan damage was $23 million USD ($1.6 million Jamaican dollars (J$) (ECLAC *et al.* 2004), indicating the severity of the damage inflicted by these hurricanes. While we do not consider stochastic events to be a primary threat factor for this species, we believe that the damage caused by hurricanes is contributing to habitat loss.

In western parishes, habitat destruction also threatens adult Jamaican kite swallowtails. Cockpit Country, encompassing 30,000 ha (74,131 ac) of rugged forest-karst (a specialized limestone habitat) terrain, spans four western parishes, including Trelawny and St. Elizabeth, where adult Jamaican kite swallowtails have been observed (Gordon and Cambell 2006). As of 2006, 81 percent of this region remained forested, although fragmentation was occurring as a result of human-induced activities (Tole 2006). Threats to Cockpit Country include bauxite mining, unregulated plant collecting, extensive logging, conversion of forest to agriculture, illegal drug cultivation, and expansion of human settlements. These activities contribute to threats to the hydrology system from in-filling, siltation, accumulation of solid waste, and invasion by nonnative, invasive species (Cockpit Country Stakeholders Group and JEAN (Gordon and Cambell 2006; Tole 2006; Jamaica Environmental Advocacy Network 2007)).

The Blue and John Crow Mountains National Park, located on the inland portions of St. Thomas and St. Andrew and the southeast portion of St. Mary Parishes, is the only protected area in which adult Jamaican Kite swallowtails have been observed (Bailey 1994; Jamaica Conservation and Development Trust (JCDT) 2006). Established in 1990, this Park encompasses 49,520 ha (122,367 ac) of mountainous, forested terrain that ranges in elevation from 150 to 2,256 m (492 to 7,402 ft) and is considered one of the best-managed protected areas in Jamaica (JCDT 2006). However, deforestation consisting of slash-and-burn agriculture and illegal timber harvesting continues to be a threat in the Blue Mountains (Tole 2006; TNC 2010).

The Jamaican kite swallowtail has been collected for commercial trade in the past (Collins and Morris 1985; Melisch 2000; Schütz 2000). The Jamaican Wildlife Protection Act of 1998 carries a maximum penalty of U.S. $1,439 (J $100,000) or 12 months of imprisonment for violating its provisions. This deterrent appears to be effectively protecting this species from illegal trade (NEPA 2005). As of 2008, we were unaware of any recent seizures or smuggling in this species into or out of the United States (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia in litt.).

Conservation Status. Various levels of conservation exist for the species. In addition to being protected under Jamaica's Wildlife Protection Act of 1998, it is also included in Jamaica's National Strategy and Action Plan on Biological Diversity. This strategy established specific goals and priorities for the conservation of Jamaica's biological resources (Schedules of The Wildlife Protection Act 1998). Since 1985, the Jamaican kite swallowtail has been categorized on the IUCN Red List as "Vulnerable" (IUCN 2010). This species is not listed in any of the appendices of CITES.

In our 2009 ANOR, the Jamaican kite swallowtail received an LPN of 8. After reevaluating the threats to the Jamaican kite swallowtail, we have determined that a change in the listing priority number is warranted. The Jamaican kite swallowtail does not represent a monotypic genus. The current threats to the species are high in magnitude particularly since it only has one known larval host plant. Slash-and-burn agriculture and illegal timber harvesting continues to occur within this species' habitat (TNC 2010). These threats are occurring at the species' only known breeding site and they are exacerbated by the species' restricted distribution of its larval food plant and range. In addition, stochastic events such as hurricanes, tropical storms, and introduction of a new disease are unpredictable. Illegal collection of butterfly species (refer to discussion under Harris' mimic swallowtail) continues to occur which further adds to the pressures affecting this species. Although Jamaica has taken regulatory steps to preserve native swallowtail habitat, the threats affecting this species are imminent; its habitat is decreasing; and this loss of habitat is ongoing. Based on a reevaluation of the threats to this species, we have changed the LPN from an 8 to a 2 to reflect imminent threats of high magnitude.

R. Fluminense Swallowtail (*Parides ascanius*), LPN = 5

The fluminense swallowtail is endemic to Brazil's restinga habitat within the Atlantic Forest region in the tropical and subtropical moist broadleaf forests of coastal Brazil (Thomas 2003). Its habitat is characterized by medium-sized trees and shrubs that are adapted to coastal conditions (Kelecom 2002). During the caterpillar stage of its lifecycle, it feeds on a species in the Dutchman's pipe genus (*Aristolochia macroura*) and is believed to be monophagous (Otero and Brown 1984).

The fluminense swallowtail is sparsely distributed throughout its range, reflecting the patchy distribution of its preferred habitat (Otero and Brown 1984; Tyler *et al.* 1994; Uehara-Prado and Fonseca 2007). The species can be seasonally common, with sightings of up to 50 individuals seen in one morning in the Barra de São João area. It was historically seen in Rio de Janeiro, Espirito Santo, and Sao Paulo (Gelhaus *et al.* 2004). However, there are no recent confirmations of this species in either Espirito Santo or Sao Paulo. In Rio de Janeiro, the species has been documented in five localities including: Barra de São João and Macaé (in the Restinga de Jurubatiba National Park) along the coast; and Poço das Antas Biological Reserve, farther inland (Brown in litt. 2004; Soler 2005). Another verified occurrence was in the Área de Tombamento do Mangue do Rio Paraíba do Sul (Uehara-Prado and Fonseca 2007). Additionally, the fluminense swallowtail has been

documented in Parque Natural Municipal do Bosque da Barra (Instituto Iguacu 2008).

A population estimate reported in 1984 in Barra de São João was between 20 and 100 individuals (Otero and Brown 1984). The colony within the Poço das Antas Biological Reserve was rediscovered in 1997, after a nearly 30-year absence from this locality (Brown, Jr. in litt. 2004). Researchers noted only that "large numbers" of swallowtails were observed (Brown, Jr. in litt. 2004; Robbins in litt. 2004). There are no population estimates for the other colonies. However, individuals from the viable population in Barra de São João migrate widely in some years, and this is likely to enhance interpopulation gene flow among existing colonies (Brown, Jr. in litt. 2004).

Habitat destruction has been the main threat to this species (Collins and Morris 1985; Brown 1996; Gimenez Dixon 1996). Monophagous butterflies tend to be more threatened than polyphagous species (Kotiaho *et al.* 2005), and the restinga habitat preferred by fluminense swallowtails is a highly specialized environment that is restricted in distribution (Otero and Brown 1986; Brown, Jr. in litt. 2004; Ueraha-Prado and Fonseca 2007). Moreover, fluminense swallowtails require large areas to maintain viable populations (Brown, Jr. in litt. 2004; Otero and Brown 1986; Ueraha-Prado and Fonseca). The Atlantic Forest habitat, which once covered 1.4 million km^2 (540,543 mi^2), has been reduced to 5 to 10 percent of its original cover. It harbors more than 70 percent of the Brazilian human population (Butler 2007; Conservation International 2007; CEPF 2007a; Höfling 2007; WWF 2007; TNC 2009). The restinga habitat upon which this species depends has been reduced by 17 km^2 (6.56 mi^2) each year between 1984 and 2001, equivalent to a loss of 40 percent of restinga vegetation over the 17-year period (Temer 2006). The major ongoing human activities that have resulted in habitat loss, degradation, and fragmentation include: Conversion to agriculture, plantations, livestock pastures, human settlements, hydropower reservoirs, commercial logging, subsistence activities, and coastal development (Hughes *et al.* 2006; Butler 2007; Pivello 2007; TNC 2007; Peixoto and Silva 2007; World Food Prize 2007; WWF 2007).

One estimate concluded that Rio de Janeiro contains 1,675,457 ha (4,140,127 ac) of suitable habitat (Uehara-Prado and Fonseca 2007). While the presence of suitable habitat should not be used to infer the presence of a species (Uehara-Prado and Fonseca 2007), it should facilitate more focused efforts to identify and confirm additional localities and the conservation status of the fluminense swallowtail. Evaluating the correlation between the distribution of fluminense swallowtail and the existing protected areas within Rio de Janeiro revealed that only two known occurrences of the fluminense swallowtail correlated with protected areas, including the Poço das Antas Biological Reserve (Uehara-Prado and Fonseca 2007). The Poço das Antas Biological Reserve and the Jurubatiba National Park are the only two protected areas considered large enough to support viable populations of the fluminense swallowtail (Otero and Brown 1984; Brown, Jr. in litt. 2004; Robbins in litt. 2004). The Poço das Antas Biological Reserve, established in 1974, encompasses 13,096 ac (5,300 ha) of inland Atlantic Forest habitat (CEPF 2007a; Decree No. 73,791, 1974).

According to the 2005 revised management plan (IBAMA 2005), the Reserve is used solely for protection, research, and environmental education. Public access is restricted, and there is an emphasis on habitat conservation, including protection of the Río São João. This river runs through the Reserve and is integral to creating the restinga conditions preferred by the fluminense swallowtail. The Reserve was plagued by fires in the late 1980s through the early 2000s, but fire is not currently thought to be a threat. Between 2001 and 2006, there was an increase in the number of private protected areas near or adjacent to the Poço das Antas Biological Reserve and Barra de São João (Critical Ecosystem Partnership Fund (CEPF) 2007a). Corridors are being created between existing protected areas and 13 privately protected forests, by planting and restoring habitat previously cleared for agriculture or by fires (De Roy 2002).

The Jurubatiba National Park (14,860 ha; 36,720 mi^2), located in Macaé and established in 1998 (Decree of April 29 1998), is one of the largest contiguous restingas (specialized sandy, coastal habitats) under protection in Brazil (CEPF 2007b; Rocha *et al.* 2007). The Macaé River Basin forms the outer edge of the Jurubatiba National Park (Park) (International Finance Corporation (IFC) 2002) and consists of the habitat preferred by the fluminense swallowtail (Brown 1996; Otero and Brown 1984). Rocha *et al.* (2007) described the habitat as being in a very good state of conservation, but lacking a formal management plan. Threats to the Macaé region include industrialization for oil reserve and power development (IFC 2002) and intense population pressures (including migration and infrastructural development) (Brown 1996; CEPF 2007b; IFC 2002; Khalip 2007; Otero and Brown 1984; Savarese 2008). The researchers concluded that the existing protected area system may be inadequate for the conservation of this species.

Commercial exploitation has been identified as a potential threat to the fluminense swallowtail (Collins and Morris 1985; Melisch 2000; Schütz 2000). The species is easy to capture, and species with restricted distributions or localized populations, such as the fluminense swallowtail, tend to be more vulnerable to overcollection than those with a wider distribution (Brown, Jr. in litt. 2004; Robbins in litt. 2004). However, based on the conservation measures in place, we believe that overutilization is not currently a threat to the fluminense swallowtail.

Parasitism has been indicated to be a factor affecting the fluminense swallowtail. Recently, Tavares *et al.* (2006) discovered four species of parasitic chalcid wasps (*Brachymeria* and *Conura* species; Hymenoptera family) associated with fluminense swallowtails. Parasitoids are species whose immature stages develop on or within an insect host of another species, ultimately killing the host (Weeden *et al.* 1976). This is the first report of parasitoid association with fluminense swallowtails (Tavares *et al.* 2006). To date, there is no information regarding the magnitude of effect these parasites are having on the fluminense swallowtail. At this time, we do not find that it affects the species to the extent that it is a threat to the species.

Although Harris' mimic swallowtail and the fluminense swallowtail face similar threats, there are several dissimilarities that influence the magnitude of these threats. Fluminense swallowtails are monophagous (Otero and Brown 1984; Kotiaho *et al.* 2005). In contrast, Harris' mimic swallowtail is polyphagous (Collins and Morse 1985; Brown 1996); its larvae feed on more than one species of plant (Kotiaho *et al.* 2005). In addition, although their ranges overlap, Harris' mimic swallowtails tolerate a wider range of habitat than the highly specialized restinga habitat preferred by fluminense swallowtail. Also unlike the Harris' mimic swallowtail, fluminense swallowtails require a large area to maintain a viable population (Brown, Jr. in litt. 2004; Monteiro *et al.* 2004); in part because they are known to only feed on one food source.

Conservation Status. Brazil categorizes the fluminense swallowtail to be "Imperiled" (Portaria No. 1,522

1989; MMA 2003). It is strictly protected from commerce (Brown, Jr. in litt. 2004). According to the 2010 IUCN Red List, the fluminense swallowtail has been classified as "Vulnerable" since 1983, based on its small distribution and a decline in the number of populations caused by habitat fragmentation and loss. However, this species has not been reevaluated using the 1997 IUCN Red List categorization criteria. This species has not been formally considered for listing in the Appendices of CITES (*www.cites.org*). However, the European Commission listed fluminense swallowtail on Annex B of Regulation 338/97 in 1997 (Grimm in litt. 2008), and the species continues to be listed on this Annex (Eur-Lex 2008). This listing requires that imports from a non-European Union country be accompanied by a permit that is only issued if the CITES Scientific Authority has made a finding that trade in the species will not be detrimental to the survival of the species in the wild (Grimm in litt. 2008). There would be no requirement that the non-European Union exporting country make such a finding or issue a document if the species is not CITES-listed. There has been no legal trade in this species into the European Union since its listing on Annex B (Grimm in litt. 2008), and we are not aware of any recent reports of seizures or smuggling in this species into or out of the United States (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia in litt. 2008).

In our 2009 ANOR, the fluminense swallowtail received an LPN of 5. After reevaluating the threats to the fluminense swallowtail, we have determined that a change in the listing priority number is not warranted. The fluminense swallowtail does not represent a monotypic genus. The species is currently at risk from habitat destruction; however, we have determined that overutilization and parasitism are not currently occurring such that they are threats to the fluminense swallowtail. The current threat of habitat destruction is of high magnitude because the species: (1) Occupies highly specialized habitat; (2) requires large areas to maintain a viable colony; and (3) is only found within two protected areas considered to be large enough to support viable colonies. However, additional populations have been reported, increasing previously known population numbers and distribution. The threat of habitat destruction is nonimminent because most habitat modification is the result of historical destruction that has resulted in fragmentation of the current landscape; however, the potential for continued habitat modification exists, and we will continue to monitor the situation. On the basis of this information, the fluminense swallowtail retains a priority rank of 5.

S. Hahnel's Amazonian Swallowtail (*Parides hahneli*), LPN = 2

Hahnel's Amazonian swallowtail is endemic to Brazil and is found only on sandy beaches where the habitat is overgrown with dense scrub vegetation (Collins and Morris 1985; New and Collins 1991; Tyler *et al.* 1994). Hahnel's Amazonian swallowtail is likely to be monophagous. The swallowtail depends upon highly specialized habitat—stranded beaches of river drainage areas. Wells *et al.* (1983) describes the habitat as ancient sandy beaches covered by scrubby or dense vegetation that is not floristically diverse. The larval host-plant is believed to be a species in the Dutchman's pipe genus, either *Aristolochia lanceolato-lorato* or *A. acutifolia* (69 FR 70580; December 7, 2004).

Hahnel's Amazonian swallowtail is known in three localities along the tributaries of the middle and lower Amazon River basin in the states of Amazonas and Pará (Collins and Morris 1985; New and Collins 1991; Tyler *et al.* 1994; Brown 1996). Two of these colonies were rediscovered in the 1970s (Collins and Morris 1985; Brown 1996). Hahnel's Amazonian swallowtail is highly localized, reflecting the distribution of its highly specialized preferred habitat (Brown in litt. 2004). The population size of Hahnel's Amazonian swallowtail is not known. However, within the area of its range, Hahnel's Amazonian swallowtail populations are small (Brown in litt. 2004).

Habitat alteration (*e.g.,* for dam construction and waterway crop transport) and destruction (*e.g.,* clearing for agriculture and cattle grazing) are ongoing in Pará and Amazonas, where this species is found (Fearnside 2006; Hurwitz 2007). Current research on population trends is lacking. However, researchers believe that, because Hahnel's Amazonian swallowtail has extremely limited habitat preferences, any sort of river modification such as impoundment, channelization, or levee construction would have an immediate and highly negative impact on the species (Wells *et al.* 1983; New and Collins 1991).

This species of swallowtail has been collected for commercial trade (Collins and Morris 1985; Melisch 2000; Schütz 2000). Species with restricted distributions or localized populations, such as the Hahnel's Amazonian swallowtail, are more vulnerable to overcollection than those with a wider distribution (Brown in litt. 2004; Robbins in litt. 2004). Although not strictly protected from collection throughout Brazil, the state of Pará recently declared the capture of Hahnel's Amazonian swallowtail for purposes other than research to be forbidden (Decreto No. 802, 2008). It is not listed in any appendices of CITES. As of 2008, seizures of Hahnel's Amazonian swallowtail into or out of the United States had not been reported (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia in litt. 2008). The best available information does not indicate that overutilization is a threat to the species.

Competition for host plants has been identified as a potential threat to Hahnel's Amazonian swallowtail. Researchers in the past believed that this species might suffer from host plant competition with other butterfly species in the region (Wells 1983; Collins and Morris 1985; Brown 1996); however, this competition has not been confirmed. It occupies the same range with another swallowtail butterfly, *Parides chabrias ygdrasilla,* and mimics at least two other genera that occupy the same area, *Methona* and *Thyrides* (Brown 1996). At this time, there is insufficient information to conclude that competition is a threat affecting this species.

Conservation Status. Hahnel's Amazonian swallowtail is not nationally protected (Portaria No. 1522 1989; MMA 2003), although the state of Pará listed it as endangered on its list of threatened species (Resolução 054 2007; Decreto No. 802 2008; Secco and Santos 2008). Hahnel's Amazonian swallowtail continues to be listed as "Data Deficient" by the IUCN Red List (IUCN 2010). Hahnel's Amazonian swallowtail has not been formally considered for listing in the Appendices of CITES (CITES 2009). Hahnel's Amazonian swallowtail is listed on Annex B of Regulation 338/97 (Eur-Lex 2008), and there has been no legal trade in this species into the European Union since its listing on Annex B in 1997 (Grimm in litt. 2008).

After reevaluating the threats to the Hahnel's Amazonian swallowtail, we have determined that a change in listing priority number is warranted. Hahnel's Amazonian swallowtail does not represent a monotypic genus. It faces threats that are high in magnitude and imminent due to its small endemic population, and limited and decreasing availability of its highly specialized

habitat (stranded beaches of river drainage area) and food sources. The primary threats of dam construction, waterway crop transport, clearing for agriculture and cattle grazing are ongoing in Pará and Amazonas. These threats are imminent due to the species' highly localized and specialized habitat requirements. Secondary concerns are possible illegal collection, competition with other species, and potential catastrophic events such as severe tropical storms or introduction of a new disease or predator. Based on a reevaluation of the threats, we have changed the LPN from an 8 to a 2 to reflect imminent threats of high magnitude.

T. Kaiser-I-Hind Swallowtail (*Teinopalpus imperialis*), LPN = 8

The Kaiser-I-Hind swallowtail is native to the Himalayan regions of Bhutan, China, India, Laos, Myanmar, Nepal, Thailand, and Vietnam (Shrestha 1997; FRAP 1999; Osada *et al.* 1999; Tordoff *et al.* 1999; Trai and Richardson 1999; Masui and Uehara 2000; Food and Agriculture Organization (FAO) 2001; Igarashi 2001; Baral *et al.* 2005; TRAFFIC 2007). This species prefers undisturbed (primary), heterogeneous, broad-leaved-evergreen forests or montane deciduous forests, and flies at altitudes of 1,500 to 3,050 m (4,921 to 10,000 ft) (Collins and Morris 1985; Tordoff *et al.* 1999; Igarashi 2001). This species is polyphagous. Larval host-plants may differ across the species' range, and include: *Magnolia campbellii* in China (Igarashi and Fukuda 2000; Sung and Yan 2005; Yen and Yang 2001); *Magnolia* spp. in Vietnam (Funet 2004); *Daphne* spp. in India, Nepal, and Myanmar (Funet 2004); and *Daphne nipalensis* also in India (Robinson *et al.* 2004). It has been reported that the adult Kaiser-I-Hind swallowtails do not feed (Collins and Morris 1985).

Habitat destruction is the greatest threat to this species, which prefers undisturbed high-altitude habitat (Collins and Morris 1985; Tordoff *et al.* 1999; Igarashi 2001). In China and India, the Kaiser-I-Hind swallowtail populations are at risk from habitat modification and destruction due to commercial and illegal logging (Yen and Yang 2001; Maheshwari 2003). In Nepal, the species is at risk from habitat disturbance and destruction resulting from mining, fuel wood collection, agriculture, and grazing animals (Collins and Morris 1985; Shrestha 1997; Baral *et al.* 2005). Nepal's Forest Ministry considered habitat destruction to be a critical threat to all biodiversity, including the Kaiser-I-Hind swallowtail, in the development of their biodiversity strategy (HMGN 2002). Habitat degradation and loss caused by deforestation and land conversion for agricultural purposes is a primary threat to the species in Thailand (Hongthong 1998; FAO 2001). The species is afforded some protection from habitat destruction in Vietnam, where it has been confirmed in three nature reserves that have low levels of disturbance (Tordoff *et al.* 1999; Trai and Richardson 1999).

Conservation Status

Since 1996, the Kaiser-I-Hind swallowtail has been categorized on the IUCN Red List as a species of "Lower Risk/near threatened"; it has not been reevaluated using the 1997 criteria (Gimenez Dixon 1996; IUCN 2010). The species was considered "Rare" by Collins and Morris (1985). Despite its widespread distribution, local populations are not abundant (Collins and Morris 1985). The known localities and conservation status of the species within each range country follows:

Bhutan: The species was reported to be extant in Bhutan (Gimenez Dixon 1996; FRAP 1999), although details on localities or status information were not provided.

China: The species has been reported in Fuji, Guangxi, Hubei, Jiangsu, Sichuan, and Yunnan Provinces (Collins and Morris 1985; Gimenez Dixon 1996; UNEP–WCMC 1999; Igarashi and Fukuda 2000; Sung and Yan 2005). The species is classified by the 2005 China Species Red List as "Vulnerable" (China Red List 2006).

India: Assam, Manipur, Meghalaya, Sikkim, and West Bengal (Bahuguna 1998; Collins and Morris 1985; Gimenez Dixon 1996; Ministry of Environment and Forests 2005). There is no recent status information on this species (Bombay Natural History Society in litt. 2007).

Laos: The species has been reported (Osada *et al.* 1999), but no further information is available (Vonxaiya in litt. 2007).

Myanmar: The species has been reported in Shan, Kayah (Karen) and Thaninanthayi (Tenasserim) states (Collins and Morris 1985; Gimenez Dixon 1996). There is no status information.

Nepal: The species has been reported in Nepal (Collins and Morris 1985; Gimenez Dixon 1996), in the Central Administrative Region at two localities: Phulchoki Mountain Forest (Baral *et al.* 2005; Collins and Morris 1985) and Shivapuri National Park (Nepali Times 2002; Shrestha 1997). There is no status information.

Thailand: The species has been reported in the northern province of Chang Mai (Pornpitagpan 1999). The CITES Scientific Authority of Thailand recently confirmed that the species has limited distribution in the high mountains (>1,500 m (4,921 ft)) of northern Thailand and is found within three national parks. However, no biological or status information was available (Choldumrongkul in litt. 2007).

Vietnam: The species has been confirmed in three Nature Reserves (Tordoff *et al.* 1999; Trai and Richardson 1999), and the species is listed as "Vulnerable" in the 2007 Vietnam Red Data Book, due to declining population sizes and area of occupancy (Canh in litt. 2007).

The Kaiser-I-Hind swallowtail is highly valued and has been collected for commercial trade, despite range country regulations prohibiting or restricting such activities (Collins and Morris 1985; Schütz 2000). In China, where the species is protected by the Animals and Plants (Protection of Endangered Species) Ordinance (1989), which restricts import, export, and possession of the species, species purportedly derived from Sichuan were being advertised for sale on the Internet for 60 U.S. Dollars (US$). In India, the Kaiser-I-Hind swallowtail is listed on Schedule II of the Indian Wildlife Protection Act of 1972, which prohibits hunting without a license (Collins and Morris 1985; Indian Wildlife Protection Act 2006). However, between 1990 and 1997, illegally collected specimens were selling for 500 Rupees (12 US$) per female and 30 Rupees (0.73 US$) per male (Bahuguna 1998). In Nepal, the Kaiser-I-Hind swallowtail is protected by the National Parks and Wildlife Conservation Act of 1973 (His Majesty's Government of Nepal (HMGN) 2002). However, the Nepal Forestry Ministry determined in 2002 that the high commercial value of its "Endangered" species on the local and international market may result in local extinctions of species such as the Kaiser-I-Hind (HMGN 2002).

In Thailand, the Kaiser-I-Hind swallowtail and 13 other invertebrates are listed under Thailand's Wild Animal Reservation and Protection Act (WARPA) of 1992 (B.E. 2535 1992), which makes it illegal to collect wildlife (whether alive or dead) or to have the species in one's possession (Hongthong 1998; Pornpitagpan 1999; FAO 2001; Choldumrongkul in litt. 2007). In addition to prohibiting possession, WARPA prohibits hunting, breeding, and trading. Import and export are only allowed for conservation purposes

(Jaisielthum in litt. 2007). According to the Thai Scientific Authority, there are no captive breeding programs for this species; however, the species is offered for sale by the Lepidoptera Breeders Association (2009). It was marketed as derived from a captive breeding program in Thailand, although specimens were recently noted as being "out of stock" (Lepidoptera Breeders Association 2009).

In Vietnam, Kaiser-I-Hind swallowtails are reported to be among the most valuable of all butterflies (World Bank 2005). In 2006, the species was listed on Schedule IIB of Decree No. 32 on "Management of endangered, precious and rare forest plants and animals." A Schedule IIB-listing restricts the exploitation or commercial use of species with small populations or that are considered by the country to be in danger of extinction (Canh in litt. 2007). In a recent survey conducted by TRAFFIC Southeast Asia (2007), of 2000 residents in Ha Noi, Vietnam, the Kaiser-I-Hind swallowtail was among 37 Schedule IIB-species that were actively being collected (p. 36). The majority of the survey respondents were unaware of legislation prohibiting collection of Schedule IIB-species (p. 7). This is a highly desirable species, and there is a culture within Vietnam of consuming rare and expensive wild animal dishes, particularly in Ha Noi among the elite (TRAFFIC 2007, p. 9). This practice does not seem to be decreasing; rather it appears to be increasing. Thus, we find that overutilization for illegal domestic use is a threat to this species. Although Vietnam has implemented several action plans to strengthen control of trade in wild fauna and flora (TRAFFIC 2007, p. 9), within-country protections are inadequate to protect the species from illegal collection throughout its range.

The Kaiser-I-Hind swallowtail has been listed in CITES Appendix II since 1987 (UNEP–WCMC 2008a). Between 1991 and 2005, 160 Kaiser-I-Hind swallowtail specimens were traded internationally under CITES permits (UNEP WCMC 2006), and between 2000 and 2008, 157 specimens were traded (UNEP WCMC 2009). Reports that the Kaiser-I-Hind swallowtail is being captive-bred in Taiwan (Yen and Yang 2001) remain unconfirmed. Since 1993, there have been no reported seizures or smuggling of this species into or out of the United States (Office of Law Enforcement, U.S. Fish and Wildlife Service, Arlington, Virginia in litt. 2008). Therefore, on the basis of global trade data, we do not consider legal international trade to be a threat to this species.

After reevaluating the threats to this species, we have determined that a change in listing priority number is not warranted. The Kaiser-I-Hind swallowtail does not represent a monotypic genus. The current threats of habitat destruction and illegal collection are moderate in magnitude due to the species' wide distribution and to the protections in place. We find that the threats are imminent due to ongoing habitat destruction, high market value for specimens, and inadequate domestic protections for the species or its habitat. Based on our reassessment of the threats, we have retained an LPN of 8 to reflect imminent threats of moderate magnitude.

Preclusion and Expeditious Progress

This section describes the actions that continue to preclude the immediate proposal of listing rules for the 20 species described above. In addition, we summarize the expeditious progress we are making, as required by section 4(b)(3)(B)(iii)(II) of the Act, to add qualified species to the lists of endangered or threatened species and to remove from these lists species for which protections of the Act are no longer necessary.

Section 4(b) of the Act states that the Service may make warranted-but-precluded findings only if it can demonstrate that (1) An immediate proposed rule is precluded by other pending proposals and that (2) expeditious progress is being made on other listing actions. Preclusion is a function of the listing priority of a species in relation to the resources that are available and competing demands for those resources. Thus, in any given fiscal year (FY), multiple factors dictate whether it will be possible to undertake work on a proposed listing regulation or whether promulgation of such a proposal is warranted-but-precluded by higher priority listing actions.

The resources available for listing actions are determined through the annual Congressional appropriations process. The appropriation for the Listing Program is available to support work involving the following listing actions: Proposed and final listing rules; 90-day and 12-month findings on petitions to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists) or to change the status of a species from threatened to endangered; annual determinations on prior "warranted-but-precluded" petition findings as required under section 4(b)(3)(C)(i) of the Act; critical habitat petition findings; proposed and final rules designating critical habitat; and litigation-related, administrative, and program-management functions (including preparing and allocating budgets, responding to Congressional and public inquiries, and conducting public outreach regarding listing and critical habitat).

The work involved in preparing various listing documents can be extensive and may include, but is not limited to: Gathering and assessing the best scientific and commercial data available and conducting analyses used as the basis for our decisions; writing and publishing documents; and obtaining, reviewing, and evaluating public comments and peer review comments on proposed rules and incorporating relevant information into final rules. The number of listing actions that we can undertake in a given year also is influenced by the complexity of those listing actions; that is, more complex actions generally are more costly. The median cost for preparing and publishing a 90-day finding is $39,276; for a 12-month finding, $100,690; for a proposed rule with critical habitat, $345,000; and for a final listing rule with critical habitat, the median cost is $305,000.

We cannot spend more than is appropriated for the Listing Program without violating the Anti-Deficiency Act (see 31 U.S.C. 1341(a)(1)(A)). In addition, in FY 1998 and for each fiscal year since then, Congress has placed a statutory cap on funds which may be expended for the Listing Program, equal to the amount expressly appropriated for that purpose in that fiscal year. This cap was designed to prevent funds appropriated for other functions under the Act (for example, recovery funds for removing species from the Lists), or for other Service programs, from being used for Listing Program actions (see House Report 105–163, 105th Congress, 1st Session, July 1, 1997).

Since FY 2002, the Service's budget has included a critical habitat subcap to ensure that some funds are available for other work in the Listing Program ("The critical habitat designation subcap will ensure that some funding is available to address other listing activities" (House Report No. 107–103, 107th Congress, 1st Session, June 19, 2001)). In FY 2010, we are using some of the critical habitat subcap funds to fund actions with statutory deadlines.

Thus, through the listing cap, the critical habitat subcap, and the amount of funds needed to address court-mandated critical habitat designations, Congress and the courts have in effect determined the amount of money available for other listing activities. Therefore, the funds in the listing cap, other than those needed to address

court-mandated critical habitat for already listed species, set the limits on our determinations of preclusion and expeditious progress.

In FY 2010, expeditious progress is that amount of work that can be achieved with $10,471,000, which is the amount of money that Congress appropriated for the Listing Program (that is, the portion of the Listing Program funding not related to critical habitat designations for species that are already listed). However, these funds were not enough to fully fund all our court-ordered and statutory listing actions in FY 2010, so we used $1,114,417 of our critical habitat subcap funds in order to work on all of our required petition findings and listing determinations. This brings the total amount of funds we had for listing actions in FY 2010 to $11,585,417. Our process is to make our determinations of preclusion on a nationwide basis to ensure that the species most in need of listing will be addressed first and also because we allocate our listing budget on a nationwide basis. The $11,585,417 is being used to fund work in the following categories: Compliance with court orders and court-approved settlement agreements requiring that petition findings or listing determinations be completed by a specific date; section 4 (of the Act) listing actions with absolute statutory deadlines; essential litigation-related, administrative, and listing program-management functions; and high-priority listing actions for some of our candidate species. In 2009, the responsibility for listing foreign species under the Act was transferred from the Division of Scientific Authority (DSA), International Affairs Program, to the Endangered Species Program. Starting in FY 2010, a portion of our funding is being used to work on the actions described above as they apply to listing actions for foreign species.

For FY 2011, on September 29, 2010, Congress passed a continuing resolution which provides funding at the FY 2010 enacted level. Until Congress appropriates funds for FY 2011, we will fund listing work based on the FY 2010 amount.

In addition, available staff resources are also a factor in determining high-priority species provided with funding. Finally, proposed rules for reclassification of threatened species to endangered are lower priority, because as listed species, they are already afforded the protection of the Act and implementing regulations.

Starting in FY 2010, the Washington Office (WO) Endangered Species Program has full responsibility for foreign species' listing actions under the Act. The Branch of Foreign Species (BFS) was established in June 2010 to specifically work on petitions and other actions under Section 4 of the Act for foreign species.

Our expeditious progress also includes work on listing actions that we funded in FY 2010 and FY 2011 but have not yet been completed to date. These actions are listed below. Actions in the top section of the table are being conducted under a deadline set by a court. Actions in the bottom section of the table are being conducted to meet statutory timelines, that is, timelines required under the Act. The funding for domestic and foreign species was not appropriated separately in FY 2010. In addition to the actions demonstrating expeditious progress mentioned above, we list the progress in adding qualified species to the Federal List of Endangered and Threatened Species for domestic species in the 2010 Candidate Notice of Review (75 FR 69822, published November 10, 2010).

BFS may, based on available staff resources, work on species described within this ANOR with an LPN of 2 or 3, and when appropriate, species with a lower priority if they overlap geographically or have the same threats as the species with the high priority. Including these species together in the same proposed rule results in considerable savings in time and funding, when compared to preparing separate proposed rules for each of them in the future. Because the actions below are either the subject of a court-approved settlement agreement or subject to an absolute statutory deadline and, thus, are higher priority than work on proposed listing determinations for the 20 species described above, publication of proposed rules for these 20 species is precluded. For expeditious progress on domestic actions, see the Candidate Notice of Review, published November 10, 2010.

ESA Foreign Species Listing Actions Funded in FY 2010 But Not Yet Completed

Species	Action
Actions Subject to Court Order/Settlement Agreement	
12 parrots [1]	12-month status determination.
Actions with Statutory Deadlines	
5 Bird species in Colombia and Ecuador	Final listing determination.
6 Bird species in Europe and Asia [1]	Final listing determination.
6 Bird species in Peru and Bolivia [1]	Final listing determination.
7 Bird species in Brazil	Final listing determination.
Peary and Dolphin-Union caribou	90-day petition finding.
Queen charlotte goshawk	Final listing determination.

[1] Partially funded with FY 2010 funds; also will be funded with FY 2011 funds.

Despite the priorities that preclude publishing proposed listing rules for these 20 species described in this notice, we are making expeditious progress in adding to and removing species from the Federal lists of threatened and endangered species. Our expeditious progress for foreign species since publication of the 2009 Notice of Review, August 12, 2009 (74 FR 40540) to the current date includes preparing and publishing the following:

ESA FOREIGN SPECIES LISTING ACTIONS PUBLISHED IN FY 2010

Publication date	Title	Action	FR pages
11/03/2009	Listing the Salmon-Crested Cockatoo as Threatened Throughout its Range with Special Rule.	Proposed Listing Threatened	74 FR 56770–56791
1/05/2010	Listing Foreign Bird Species in Peru and Bolivia as Endangered Throughout Their Range.	Proposed Listing Endangered	75 FR 605–649
1/05/2010	Listing Six Foreign Birds as Endangered Throughout Their Range.	Proposed Listing Endangered	75 FR 286–310
1/05/2010	Withdrawal of Proposed Rule to List Cook's Petrel	Proposed rule, withdrawal	75 FR 310–316
1/05/2010	Final Rule to List the Galapagos Petrel and Heinroth's Shearwater as Threatened Throughout Their Ranges.	Final Listing Threatened	75 FR 235–250
6/23/2010	90-Day Finding on a Petition to List the Honduran Emerald Hummingbird as Endangered.	Notice of 90-day Petition Finding, Substantial.	75 FR 35746–35751
7/27/2010	Determination on Listing the Black-Breasted Puffleg as Endangered Throughout its Range; Final Rule.	Final Listing Endangered	75 FR 43844–43853
7/27/2010	Final Rule to List the Medium Tree-Finch (*Camarhynchus pauper*) as Endangered Throughout its Range.	Final Listing Endangered	75 FR 43853–43864
8/3/2010	Determination of Threatened Status for Five Penguin Species.	Final Listing Threatened	75 FR 45497–45527
8/17/2010	Listing Three Foreign Bird Species from Latin America and the Caribbean as Endangered Throughout Their Range.	Final Listing Endangered	75 FR 50813–50842
9/28/2010	Determination of Endangered Status for the African Penguin.	Final Listing Endangered	75 FR 59645–59656
02/22/2011	Determination of Threatened Status for Southern rockhopper penguin—Campbell Plateau population.	Final Listing Endangered	76 FR 9681–9692

As explained above, a determination that listing is warranted-but-precluded must also demonstrate that expeditious progress is being made to add or remove qualified species to and from the Lists of Endangered and Threatened Wildlife and Plants. (Although we do not discuss it in detail here, we are also making expeditious progress in removing species from the Lists under the Recovery program, which is funded by a separate line item in the budget of the Endangered Species Program. As with our "precluded" finding, expeditious progress in adding qualified species to the Lists is a function of the resources available and the competing demands for those funds. Given that limitation, we find that we are making progress in FY 2010 in the Listing Program.

We have endeavored to make our listing actions as efficient and timely as possible, given the requirements of the relevant law and regulations, and constraints relating to workload and personnel. We are continually considering ways to streamline processes or achieve economies of scale, such as by batching related actions together. Given our limited budget for implementing section 4 of the Act, these actions described above collectively constitute expeditious progress.

Our expeditious progress also includes work on pending listing actions described above in our "precluded finding," but for which decisions had not been completed at the time of this publication.

Monitoring

Section 4(b)(3)(C)(iii) of the Act requires us to "implement a system to monitor effectively the status of all species" for which we have made a warranted-but-precluded 12-month finding, and to "make prompt use of the [emergency listing] authority [under section 4(b)(7)] to prevent a significant risk to the well being of any such species." For foreign species, the Service's ability to gather information to monitor species is limited. The Service welcomes all information relevant to the status of these species, because we have no ability to gather data in foreign countries directly and cannot compel another country to provide information. Thus, this ANOR plays a critical role in our monitoring efforts for foreign species. With each ANOR, we request information on the status of the species included in the notice. Information and comments on the annual findings can be submitted at any time. We review all new information received through this process as well as any other new information we obtain using a variety of methods. We collect information directly from range countries by correspondence, from peer-reviewed scientific literature, unpublished literature, scientific meeting proceedings, and CITES documents (including species proposals and reports from scientific committees). We also obtain information through the permit application processes under CITES, the Act, and the Wild Bird Conservation Act (16 U.S.C. 4901 et seq.). We also consult with the IUCN species specialist groups and staff members of the U.S. CITES Scientific and Management Authorities, and the Division of International Conservation; and we attend scientific meetings to obtain current status information for relevant species. As previously stated, if we identify any species for which emergency listing is appropriate, we will make prompt use of the emergency listing authority under section 4(b)(7) of the Act.

Request for Information

We request the submission of any further information on the species in this notice as soon as possible, or whenever it becomes available. We especially seek information: (1) Indicating that we should remove a taxon from consideration for listing; (2) documenting threats to any of the included taxa; (3) describing the immediacy or magnitude of threats facing these taxa; (4) identifying taxonomic or nomenclatural changes for any of the taxa; or (5) noting any mistakes, such as errors in the indicated historic ranges.

References Cited

A list of the references used to develop this notice is available upon request (*see* **ADDRESSES** section).

Authors

This Notice of Review was authored by the staff of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service (*see* **ADDRESSES** section).

Authority

This Notice of Review is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 15, 2011.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–10286 Filed 5–2–11; 8:45 am]

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FEDERAL REGISTER

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Part IV

Environmental Protection Agency

40 CFR Part 52
Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas's Prevention of Significant Deterioration Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–1033; FRL–9299–9]

RIN 2060–AQ68

Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas's Prevention of Significant Deterioration Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a correction to its previous full approval of Texas's Clean Air Act (CAA) Prevention of Significant Deterioration (PSD) program to be a partial approval and partial disapproval and is also promulgating a Federal Implementation Plan (FIP) for Texas. These actions are based on EPA's determination that at the time EPA approved Texas's PSD program, the program was flawed because the state did not address how the program would apply to all pollutants that would become newly subject to regulation in the future, including non-National Ambient Air Quality Standard (NAAQS) pollutants, among them greenhouse gases (GHGs). The partial disapproval requires EPA to promulgate a FIP and EPA is doing so to assure that GHG-emitting sources in Texas are able to proceed with plans to construct or expand.

DATES: This action is effective on May 1, 2011.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2010–1033. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Air Docket, EPA/DC, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information on this rule, contact Ms. Cheryl Vetter, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504–03), Environmental Protection Agency, Research Triangle Park, NC 27711; *telephone number:* (919) 541–4391; *fax number:* (919) 541–5509; *e-mail address: vetter.cheryl@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

The only governmental entity potentially affected by this rule is the State of Texas. Other entities potentially affected by this rule include sources in all industry groups within the State of Texas, which have a direct obligation under the CAA to obtain a PSD permit for GHGs for projects that meet the applicability thresholds set forth in the Tailoring Rule.[1] This independent obligation on sources is specific to PSD and derives from CAA section 165(a). The majority of entities potentially affected by this action are expected to be in the following groups:

Industry Group	NAICS [a]
Utilities (electric, natural gas, other systems)	2211, 2212, 2213.
Manufacturing (food, beverages, tobacco, textiles, leather)	311, 312, 313, 314, 315, 316.
Wood product, paper manufacturing	321, 322.
Petroleum and coal products manufacturing	32411, 32412, 32419.
Chemical manufacturing	3251, 3252, 3253, 3254, 3255, 3256, 3259.
Rubber product manufacturing	3261, 3262.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.
Nonmetallic mineral product manufacturing	3271, 3272, 3273, 3274, 3279.
Primary and fabricated metal manufacturing	3311, 3312, 3313, 3314, 3315, 3321, 3322, 3323, 3324, 3325, 3326, 3327, 3328, 3329.
Machinery manufacturing	3331, 3332, 3333, 3334, 3335, 3336, 3339.
Computer and electronic products manufacturing	3341, 3342, 3343, 3344, 3345, 4446.
Electrical equipment, appliance, and component manufacturing	3351, 3352, 3353, 3359.
Transportation equipment manufacturing	3361, 3362, 3363, 3364, 3365, 3366, 3369.
Furniture and related product manufacturing	3371, 3372, 3379.
Miscellaneous manufacturing	3391, 3399.
Waste management and remediation	5622, 5629.
Hospitals/nursing and residential care facilities	6221, 6231, 6232, 6233, 6239.
Personal and laundry services	8122, 8123.
Non-residential (commercial)	Not available. Codes only exist for private households, construction and leasing/sales industries.

[a] North American Industry Classification System.

B. How is the preamble organized?

The information presented in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. How is the preamble organized?
II. Overview of Rulemaking
III. Background
A. Requirements for SIP Submittals and EPA Action
B. General Requirements for the PSD Program
C. Regulatory Background: Texas SIP and PSD Program
D. Regulatory Background: GHG Rules
IV. Final Action and Response to Comments
A. Response to General Comments on the Operation of the PSD Program

[1] Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule. 75 FR 31,514 (June 3, 2010). The Tailoring Rule is described in more detail later in this preamble.

B. Determination That EPA's Previous Approval of Texas's PSD Program Was in Error
C. Error Correction: Conversion of Previous Approval to Partial Approval and Partial Disapproval
D. Reconsideration Under CAA Section 301, Other CAA Provisions, and Case Law
E. Relationship of This Action to GHG PSD SIP Call
F. Relationship of This Rulemaking to Other States
G. Federal Implementation Plan
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
VI. Judicial Review

II. Overview of Rulemaking

This notice-and-comment final rulemaking is intended to assure that large GHG-emitting sources in Texas, which became subject to PSD on January 2, 2011, will continue to be able to obtain preconstruction permits under the CAA New Source Review (NSR) PSD program beyond the April 30, 2011, expiration date of the FIP that EPA put in place for this purpose via an Interim Final Rule. "Determinations Concerning Need for Error Correction, Partial Approval and Partial Disapproval, and Federal Implementation Plan Regarding Texas Prevention of Significant Deterioration Program; Interim Final Rule." 75 FR 82,430 (Dec. 30, 2010). In this manner, this rulemaking will allow those sources to avoid delays in construction or modification.

As in the interim final rulemaking, EPA is determining in this rulemaking that it erred in fully approving Texas's PSD program in 1992 because at that time, the program had a gap, which recent statements by Texas have made particularly evident. The program did not address its application to, or provide assurances that it has adequate legal authority to apply to, all pollutants newly subject to regulation, including non-NAAQS pollutants, among them GHGs. As a result, EPA is correcting its previous full approval to be a partial approval and partial disapproval. EPA is taking this action through the error-correction mechanism provided under CAA section 110(k)(6). The partial disapproval requires EPA, under CAA section 110(c)(1)(B), to promulgate a FIP within 2 years, and, as part of this rulemaking, EPA is exercising its discretion to promulgate the FIP immediately. Under the FIP, EPA will become the permitting authority for, and apply Federal PSD requirements to, large GHG-emitting sources in accordance with the thresholds established under what we call the Tailoring Rule, which EPA published by notice dated June 3, 2010, 75 FR 31,514.[2]

By becoming the permitting authority, EPA will be able to process preconstruction PSD permit applications for GHG-emitting sources and thereby allow the affected sources to avoid delays in construction and modification. According to Texas, 167 GHG-emitting sources will require PSD permits during 2011. These sources have a real need to have a permitting authority in place in Texas. Although the CAA allows states to implement PSD, and Texas has been implementing an EPA-approved PSD program since 1992, Texas has recently informed EPA that it does not have the intention or the authority to apply PSD to GHG-emitting sources, and that it could very well maintain this position even if the U.S. Court of Appeals for the DC Circuit (the DC Circuit) upholds the GHG rules against legal challenges that Texas and other parties have recently brought. Texas's unwillingness to implement this aspect of the Federal PSD program leaves EPA no choice but to resume its role as the permitting authority for this portion, in order to assure that businesses in Texas are not subject to delays or potential legal challenges and are able to move forward with planned construction and expansion projects that will create jobs and otherwise benefit the state's and the nation's economy. EPA has determined that this action is necessary at this time so that there is no period of time when sources are unable to obtain necessary PSD permits.

In order to assure no gap in permitting, EPA is establishing May 1, 2011, as the effective date for the FIP, which immediately follows the expiration of the interim-final FIP EPA published by notice dated December 30, 2010. EPA stated in the interim final rule that the FIP would remain in place until April 30, 2011.

III. Background

A. Requirements for SIP Submittals and EPA Action

This section reviews background information concerning the CAA requirements for what SIPs must include, the process for state submittals of SIPs, requirements for EPA action on SIPs and SIP revisions, and FIPs.

1. Requirements for What SIPs Must Include

Congress enacted the NAAQS and SIP requirements in the 1970 CAA Amendments. CAA section 110(a)(1) requires that states adopt and submit to EPA for approval SIPs that implement the NAAQS. CAA section 110(a)(2) contains a detailed list of requirements that all SIPs must include to be approvable by EPA.

Of particular relevance for this action, subparagraph (E)(i) of CAA section 110(a)(2) provides that SIPs must "provide * * * necessary assurances that the state * * * will have adequate personnel, funding, and authority under State * * * law to carry out such implementation plan.* * *" As applicable to PSD programs, this provision means that EPA may approve the SIP PSD provisions only if EPA is satisfied that the state will have adequate legal authority under state law.

2. EPA Action on SIP Submittals

After a SIP or SIP revision has been submitted, EPA is authorized to act on it under CAA section 110(k)(3)–(4). Those provisions authorize a full approval or, if the SIP or SIP revision meets some but not all of the applicable requirements, a conditional approval, a partial approval and disapproval, or a full disapproval. If EPA disapproves a required SIP or SIP revision, then EPA must promulgate a FIP at any time within 2 years after the disapproval, unless the state corrects the deficiency within that period of time by submitting a SIP revision that EPA approves. CAA section 110(c)(1).[3]

[2] Texas will continue to be the permitting authority for non-GHG pollutants for sources that triggered PSD requirements due to such other pollutants. EPA will be the permitting authority for all pollutants for sources that trigger PSD solely because of their GHGs, which may occur after July 1, 2011, under the Tailoring Rule. This permitting process will also take place in the seven other states for which EPA is implementing a GHG PSD FIP.

[3] States are subject to sanctions for failure to submit, or for EPA disapproval of, SIPs for nonattainment areas, under CAA section 179. These

Continued

3. SIP Call

The CAA provides a mechanism for the correction of SIPs with certain types of inadequacies, under CAA section 110(k)(5), which provides:

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to * * * comply with any requirement of this Act, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.

This provision by its terms authorizes the Administrator to "find[] that [a SIP] * * * is substantially inadequate to * * * comply with any requirement of this Act," and, based on that finding, to "require the State to revise the [SIP] * * * to correct such inadequacies." This latter action is commonly referred to as a "SIP call." In addition, this provision authorizes EPA to establish a "reasonable deadline[] (not to exceed 18 months after the date of such notice)" for the submission of the corrective SIP revision.

If EPA does not receive the corrective SIP revision by the deadline, CAA section 110(c) authorizes EPA to "find[] that [the] State has failed to make a required submission." CAA section 110(c)(1)(A). Once EPA makes that finding, CAA section 110(c)(1) requires EPA to "promulgate a Federal implementation plan at any time within 2 years after the [finding] * * * unless the State corrects the deficiency, and [EPA] approves the plan or plan revision, before [EPA] promulgates such [FIP]."

CAA section 110(k)(5), by its terms—specifically, the use of the term "[w]henever"—authorizes, but does not require, EPA to make the specified finding and does not impose any time constraints for EPA to do so. As a result, EPA has discretion in determining whether and when to make the specified finding. *See New York Public Interest Research Group* v. *Whitman,* 321 F.3d 316, 330–31 (2d Cir. 2003) (opening phrase "Whenever the Administrator makes a determination" in CAA section 502(i)(1) grants EPA "discretion whether to make a determination"); *Her Majesty the Queen in Right of Ontario* v. *EPA,* 912 F.2d 1525, 1533 (DC Cir. 1990) ("whenever" in CAA section 115(a) "impl[ied] a degree of discretion" in whether EPA had to make a finding).

sanctions provisions are not relevant for this rule because they do not apply to PSD SIPs.

4. Authority for EPA to Revise Previous Action on SIPs

EPA has authority to revise its previous actions concerning SIP submittals. Two mechanisms are available to EPA: The error correction mechanism provided under CAA section 110(k)(6), and EPA's general administrative authority to reconsider its own actions under CAA sections 110 and 301(a), in light of case law.

(a) Error Correction Under CAA Section 110(k)(6)

CAA section 110(k)(6) provides as follows:

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

The key provisions for present purposes are that the Administrator has the authority to "determine[]" when a SIP approval was "in error," and when she does so, she may then revise the SIP approval "as appropriate," in the same manner as the approval, and without requiring any further submission from the state.

As quoted previously, CAA section 110(k)(6) provides EPA with the authority to correct its own "error," but nowhere does this provision or any other provision in the CAA define what qualifies as "error." Thus, the term should be given its plain language, everyday meaning, which includes all unintentional, incorrect or wrong actions or mistakes.

The legislative history of CAA section 110(k)(6) is silent regarding the definition of error, but the timing of the enactment of the provision suggests a broad interpretation. The provision was enacted shortly after the Third Circuit decision in *Concerned Citizens of Bridesburg* v. *U.S. EPA,* 836 F.2d 777 (1987). In *Bridesburg,* the court adopted a narrow interpretation of EPA's authority to unilaterally correct errors. The court stated that such authority was limited to typographical and other similar errors, and stated that any other change to a SIP must be accomplished through a SIP revision. *Id.* at 786. In *Bridesburg,* EPA determined that it lacked authority to include odor regulations as part of a SIP unless the odor regulations had a significant relationship to achieving a NAAQS, and so directly acted to remove 13-year-old odor provisions from the Pennsylvania SIP. *Id.* at 779–80. EPA found the previous approval of the provisions to have been an inadvertent error, and so used its "inherent authority to correct an inadvertent mistake" to withdraw its prior approval of the odor regulations without seeking approval of the change from Pennsylvania. *Id.* at 779–80, 785. After noting that Congress had not contemplated the need for revision on the grounds cited by EPA, *Id.* at 780, the court found that EPA's "inherent authority to correct an inadvertent mistake" was limited to corrections such as "typographical errors," and that instead EPA was required to use the SIP revision process to remove the odor provision from the SIP. *Id.* at 785–86.

When the court made its determination in *Bridesburg* in 1987, there was no provision explicitly addressing EPA's error correction authority under the CAA. In 1990, Congress passed CAA section 110(k)(6). The legislative history says little about the provision, and does not mention *Bridesburg.* Even so, the terms of the provision make it evident that Congress authorized EPA to undertake a broader set of revisions under the guise of error correction than the *Bridesburg* court read the pre-existing Clean Air Act to authorize, and that Congress did not intend to codify the holding of *Bridesburg.* This is apparent because CAA section 110(k)(6) both (i) authorizes EPA to correct SIP approvals and other actions that were "in error," which, as noted previously, broadly covers any mistake, and thereby contrasts with the holding in *Bridesburg* that EPA's pre-section 110(k)(6) authority was limited to correction of typographical or similar mistakes; and (ii) provides that the error correction need not be accomplished via the SIP revision or SIP call process, which contrasts with the holding of *Bridesburg* requiring a SIP revision. By the same token, because the *Bridesburg* decision stood for the proposition that EPA could not correct anything more than a narrow range of errors, had Congress intended to codify the decision in *Bridesburg,* it is logical that Congress would have described the type of error that EPA was authorized to correct in the same limited way that the decision did. In this manner, the fact that Congress adopted CAA section 110(k)(6) against the backdrop of the *Bridesburg* case confirms that the provision cover a broad range of errors.

EPA has used CAA section 110(k)(6) in the past to correct errors of a non-technical nature. Most recently, EPA withdrew its approval of SIP PSD

programs in 24 states to the extent they apply PSD to GHG-emitting sources below the thresholds in the final Tailoring Rule. "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule," 75 FR 82,536 (Dec. 30, 2010)(Narrowing Rule). In addition, EPA has used CAA section 110(k)(6) as authority to make substantive corrections to remove a variety of provisions from Federally approved SIPs that are not related to the attainment or maintenance of NAAQS or any other CAA requirement. *See, e.g.,* "Approval and Promulgation of Implementation Plans; Kentucky: Approval of Revisions to the State Implementation Plan," 75 FR 2,440 (Jan. 15, 2010) (correcting the SIP by removing a provision, approved in 1982, used to address hazardous or toxic air pollutants); "Approval and Promulgation of Implementation Plans; New York," 73 FR 21,546 (April 22, 2008) (issuing a direct final rule to correct a prior SIP correction from 1998 that removed general duties from the SIP but neglected to remove a reference to "odor" in the definition of "air contaminant or air pollutant"); "Approval and Promulgation of Implementation Plans; New York," 63 FR 65,557 (Nov. 27, 1998) (issuing direct final rule to correct SIP by removing a general duty "nuisance provision" that had been approved in 1984); "Correction of Implementation Plans; American Samoa, Arizona, California, Hawaii, and Nevada State Implementation Plans," 63 FR 34,641 (June 27, 1997) (correcting five SIPs by deleting a variety of administrative provisions concerning variances, hearing board procedures, and fees that had been approved during the 1970s).

CAA section 110(k)(6), by its terms—specifically, the use of the terms "[w]henever" and "may" and the lack of any time constraints—authorizes, but does not require, EPA to make the specified finding. As a result, EPA has discretion in determining whether and when to make the specified finding. *See New York Public Interest Research Group* v. *Whitman,* 321 F.3d 316, 330–31 (2d Cir. 2003) (opening phrase "Whenever the Administrator makes a determination" in CAA section 502(i)(1) grants EPA "discretion whether to make a determination"); *Her Majesty the Queen in Right of Ontario* v. *EPA,* 912 F.2d 1525, 1533 (DC Cir. 1990) ("whenever" in CAA section 115(a) "impl[ied] a degree of discretion" in whether EPA had to make a finding).

(b) Inherent Authority To Reconsider

The provisions in CAA section 110 that authorize EPA to take action on a SIP revision inherently authorize EPA to, on its own initiative, reconsider and revise that action as appropriate. The courts have found that an administrative agency has the inherent authority to reconsider its decisions, unless Congress specifically proscribes the agency's discretion to do so. *See, e.g., Gun South, Inc.* v. *Brady,* 877 F.2d 858, 862 (11th Cir. 1989) (holding that agencies have implied authority to reconsider and rectify errors even though the applicable statute and regulations do not provide expressly for such reconsideration); *Trujillo* v. *General Electric Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980) ("Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider"); *see also New Jersey* v. *EPA,* 517 F.3d 574 (DC Cir. 2008) (holding that an agency normally can change its position and reverse a prior decision but that Congress limited EPA's ability to remove sources from the list of hazardous air pollutant source categories, once listed, by requiring EPA to follow the specific delisting process at CAA section 112(c)(9)).[4]

Section 301(a) of the CAA, read in conjunction with CAA section 110 and the case law just described, provides further statutory authority for EPA to reconsider its actions under CAA section 110. CAA section 301(a) authorizes EPA "to prescribe such regulations as are necessary to carry out [EPA's] functions" under the CAA. Reconsidering prior rulemakings, when necessary, is part of "[EPA's] functions" under the CAA—in light of EPA's inherent authority as recognized under the case law to do so—and, as a result, CAA section 301(a) confers such authority upon EPA.

EPA finds further support for its authority to narrow its approvals in the Administrative Procedures Act (APA) section 553(e), which requires EPA to give interested persons "the right to petition for the issuance, amendment, or repeal of a rule," and CAA section 307(b)(1), which expressly contemplates that persons may file a petition for reconsideration under certain circumstances (at the same time that a rule is under judicial review). These authorizations for other persons to petition EPA to amend or repeal a rule suggest that EPA has inherent authority, on its own, to issue such amendment or repeal. This is because EPA may grant a petition from another person for an amendment to or repeal of a rule only if justified under the CAA, and if such an amendment or repeal is justified under the CAA, then EPA should be considered as having inherent authority to initiate the process on its own, even without a petition from another person.

EPA recently used its authority to reconsider prior actions and limit its prior approval of a SIP in connection with California conformity SIPs. *See, e.g.,* 68 FR 15,720, 15,723 (discussing prior action taken to limit approvals); 67 FR 69,139 (taking final action to amend prior approvals to limit their duration); and 67 FR 46,618 (proposing to amend prior approvals to limit their duration, based on CAA sections 110(k) and 301(a)). EPA had previously approved SIPs with emissions budgets based on a mobile source model that was current at the time of EPA's approval. Later, EPA updated the mobile source model. But, even though the model had been updated, emissions budgets would continue to be based on the older, previously approved model in the SIPs, rather than the updated model. To rectify this problem, EPA conducted a rulemaking that revised the previous SIP approvals so that the approvals of the emissions budgets would expire early, when the new ones were submitted by states and found adequate, rather than when a SIP revision was approved. This helped California more quickly adjust its regulations to incorporate the newer model. EPA is using its authority to reconsider and limit its prior approval of SIPs generally in the same manner as it did in connection with California conformity SIPs.

5. FIPs

As noted previously, if the state fails to submit a required SIP revision, or does so but EPA then disapproves that SIP revision, then the CAA requires EPA to promulgate a FIP and thereby, in effect, federalize the part of the air pollution control requirements for which the state, through the required SIP revision, would otherwise have been responsible. Specifically, under CAA section 110(c)(1), EPA is required to:

> promulgate a [FIP] at any time within 2 years after the Administrator (A) finds that a State has failed to make a required submission * * *, or (B) disapproves a [SIP] submission in whole or in part, unless the State corrects the deficiency, and the Administrator

[4] For additional case law, *see Belville Mining Co.* v. *United States,* 999 F.2d 989, 997 (6th Cir. 1993); *Dun & Bradstreet Corp.* v. *United States Postal Service,* 946 F.2d 189, 193 (2d Cir. 1991); *Iowa Power & Light Co.* v. *United States,* 712 F.2d 1292 (8th Cir. 1983).

approves the plan or plan revision, before the Administrator promulgates such [FIP].

Although this provision, by its terms, mandates that EPA promulgate a FIP under the specified circumstances, and mandates that EPA do so within 2 years of when those circumstances occur, the provision gives EPA discretion to promulgate the FIP "at any time within [that] 2 year[]" period. Thus, EPA is authorized to promulgate a FIP immediately after either the specified state failure to submit or EPA disapproval.

However, CAA section 110(c)(1), as quoted earlier, further provides that if EPA delays promulgating a FIP until later in the 2-year period, and, in the meantime, the state corrects the deficiency by submitting an approvable SIP revision that EPA approves, then EPA is precluded from promulgating the FIP. Similarly, once EPA promulgates a FIP, it stays on the books until the state submits an approvable SIP that EPA then approves.

B. General Requirements for the PSD Program

The PSD program is a preconstruction review and permitting program applicable, under EPA rules, to large new stationary sources and, in general, expansions of existing sources. The PSD program applies in areas that are designated "attainment" or "unclassifiable" for a NAAQS, and is contained in part C of title I of the CAA.[5] Specifically, under EPA's regulations, PSD applies to a "major stationary source" that newly constructs or that undertakes a "major modification." 40 CFR 52.166(a)(7), (b)(1)(i), (b)(2)(i). A "major stationary source" is any source that emits or has the potential to emit 100 or 250 tpy or more, depending on the source category, of any "regulated NSR pollutant." 40 CFR 51.166(b)(1)(i)(a). The regulations define that term to include four classes of air pollutants, including, as a catch-all, "any pollutant that otherwise is subject to regulation under the Act." 40 CFR 51.166(b)(49)(iv). As discussed later in this preamble, the phrase "subject to regulation" began to include GHGs on January 2, 2011, under our interpretation of that phrase as described in the Tailoring Rule, 75 FR at 31,580/3, and what we call the "Johnson Memo Reconsideration" (or the "Timing Decision").[6]

The CAA contemplates that the PSD program be implemented by the states through their SIPs. CAA section 110(a)(2)(C) requires that:

> Each implementation plan * * * shall * * * include a program to provide for * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in part[] C * * * of this subchapter.

CAA section 110(a)(2)(J) requires that:

> Each implementation plan * * * shall * * * meet the applicable requirements of * * * part C of this subchapter (relating to significant deterioration of air quality and visibility protection).

CAA section 161 provides that:

> Each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part [C], to prevent significant deterioration of air quality for such region * * * designated * * * as attainment or unclassifiable.

These provisions, read in conjunction with the PSD applicability provisions, CAA sections 165(a)(1) and 169(1), mandate that SIPs include PSD programs that are applicable to any air pollutant that is subject to regulation under the CAA, including, as discussed later in this preamble, GHGs as of January 2, 2011.[7]

Most states have EPA-approved SIP PSD programs, and as a result, in those states, PSD permits are issued by state or local air pollution control agencies. In states that do not have EPA-approved SIP PSD programs, EPA issues PSD permits under its own authority, although in some cases, EPA has delegated such authority to the state or local agency.

1. Applicability of PSD to Non-NAAQS Pollutants

EPA has long held the view that PSD applies to "any pollutant subject to regulation under the CAA," and that includes non-NAAQS pollutants. EPA's long-standing regulations have interpreted CAA section 165(a) broadly enough to capture non-NAAQS pollutants. A detailed discussion of these positions was provided in the Tailoring Rule at 75 FR 31,560/3, and in the Interim Final Rule at 75 FR 82,443.

2. Automatic Application of PSD to Newly Regulated Pollutants

Under the PSD applicability requirements, PSD applies to sources automatically, that is, by operation of law, as soon as their emissions of pollutants become subject to regulation under the CAA. This is because CAA section 165(a)(1) prohibits "major emitting facilit[ies]" from constructing or modifying without obtaining a permit that meets the PSD requirements, and CAA section 169(1) defines a "major emitting facility" as a source that emits a specified quantity of "any air pollutant," which, as noted earlier, EPA has long interpreted as any pollutant subject to regulation. Whenever EPA promulgates control requirements for a pollutant for the first time, that pollutant becomes subject to regulation, and any stationary source that emits that pollutant in sufficient quantities becomes a "major emitting facility" that, when it constructs or modifies, becomes subject to PSD without any further action from EPA or a state or local government.

EPA regulations have long codified automatic PSD applicability. *See* 43 FR 26,380, 26403/3, 26406 (June 19, 1978) (promulgating 40 CFR 51.21(b)(1)(i)) and 42 FR 57,479, 57,480, 57,483 (November 3, 1977) (proposing 40 CFR 51.21(b)(1)(i)) (applying PSD requirements to a "major stationary source" and defining that term to include sources that emit specified quantities of "any air pollutant regulated under the Clean Air Act"). Most recently, in the 2002 NSR Reform Rule, EPA reiterated these requirements, although changing the terminology to "any regulated NSR pollutant." 67 FR 80,186. EPA stated in the preamble: "The PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS applicable to a previously unregulated pollutant." 67 FR at 80,240/1.

In most states with approved PSD programs, PSD does apply automatically. However, in a minority of

[5] In contrast, the "nonattainment new source review (NSR)" program applies in areas not in attainment of a NAAQS and in the Ozone Transport Region and is implemented under the requirements of part D of title I of the CAA. We commonly refer to the PSD program and the nonattainment NSR program together as the major NSR program. The EPA rules governing both programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, Appendices S and W. There is no NAAQS for CO_2 or any of the other well-mixed GHGs, nor has EPA proposed any such NAAQS; therefore, unless and until we take further such action, the nonattainment NSR program does not apply to GHGs.

[6] "Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs." 75 FR 17,004 (April 2, 2010). This action finalizes EPA's response to a petition for reconsideration of "EPA's Interpretation of Regulations that Determine Pollutants Covered by Federal Prevention of Significant Deterioration (PSD) Permit Program" (commonly referred to as the "Johnson Memo"), December 18, 2008.

[7] In the Tailoring Rule, we noted that commenters argued, with some variations, that the PSD provisions applied only to NAAQS pollutants, and not GHGs, and we responded that the PSD provisions apply to all pollutants subject to regulation, including GHGs. *See* 75 FR 31,560–62; "Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments," May 2010, pp.38–41. We did not reopen that issue in this rulemaking.

states with approved PSD programs, it does not.[8] Instead, each time EPA subjects a previously unregulated air pollutant to regulation, these states must submit a SIP revision incorporating that pollutant into their programs. Despite the time needed for the state to submit a SIP revision and EPA to approve it, the pollutant-emitting sources in the state become subject to PSD under the CAA as soon as EPA first subjects that pollutant to control. Because under CAA section 165(a)(1) and 169(1), as interpreted by EPA, a source that emits specified quantities of any air pollutant subject to regulation cannot construct or modify unless it first receives a PSD permit, as a practical matter, in a state with an approved PSD program that does not automatically update and that has not been revised to include the newly regulated pollutant, the sources may find themselves subject to the CAA requirement to obtain a permit, but without a permitting authority to issue that permit. As discussed later, this action is needed because GHG-emitting sources in Texas would otherwise confront that situation.

In a recent decision, the U.S. Court of Appeals for the 7th Circuit (7th Circuit), mistakenly citing to PSD provisions when the issue before the court involved the separate and different non-attainment provisions of CAA sections 171–193, concluded that sources could continue to abide by permitting requirements in an existing SIP until amended, even if that SIP does not comport with the law. *United States* v. *Cinergy Corp.,* No. 09–3344, 2010 WL 4009180 (7th Cir. Oct. 12, 2010). In stark contrast to the nonattainment provisions actually at issue in Cinergy—which are not self-executing and must therefore be implemented through a SIP — PSD is self-executing; it is the statute (CAA section 165), not just the SIP, that prohibits a source from constructing a project without a permit issued in accordance with the Act.

C. Regulatory Background: Texas SIP and PSD Program

1. Texas's Initial Attainment SIP Revision

In 1972, shortly after the enactment of the 1970 CAA Amendments, Texas submitted to EPA its SIP to attain and maintain the NAAQS that EPA had promulgated by that time. As part of that SIP revision, Texas provided assurances that it had legal authority to carry out the SIP, in accordance with the predecessor to CAA section 110(a)(2)(E)(i). EPA approved Texas's SIP, including the assurances of legal authority, by notice dated May 31, 1972. 37 FR 10,842.

2. Texas Initial PSD SIP Revision

In the 1977 CAA Amendments, Congress enacted the PSD program. In the immediate aftermath, EPA acted as the PSD permitting authority in the states, but EPA began to delegate to various state authorities all or part of EPA's authority to issue PSD permits. In addition, at this time, EPA revised its pre-existing regulations, which had established a preconstruction permitting program, to conform to the 1977 CAA requirements. Each state was required to adopt a PSD program and submit it for approval as a SIP revision, and, if the PSD program met CAA requirements, EPA approved the program, and the state then became the PSD permitting authority. This process occurred for most of the states in the nation, including Texas. A brief history of Texas's initial PSD SIP approval follows.[9]

a. Texas's Receipt of Delegation Authority for the PSD Program

Beginning in 1980, when EPA was still the permitting authority for Federally required PSD permits in Texas, the State requested delegation of certain aspects of the Federal PSD program, and in a series of actions, EPA granted that authority.[10] During this time, Texas also revised its state—*i.e.,* Texas Air Control Board (TACB)—PSD regulations. EPA commented on an early set of proposed revisions to TACB regulations by letter dated December 23, 1980 and made clear that PSD applies to non-NAAQS pollutants.[11] EPA reiterated these statements to Texas in 1983.[12]

b. Texas's SIP PSD Program

During 1985–1988, Texas submitted a series of SIP revisions comprising its PSD program to EPA for approval. In these SIP revisions, Texas established key components of its PSD rules by incorporating by reference EPA's PSD rules found in 40 CFR 52.21. Of most importance for present purposes, Texas incorporated by reference (IBR'd) EPA's PSD applicability regulations in 52.21.[13] Under EPA's regulations, as then written, PSD applied to "any pollutant subject to regulation under the [Clean Air] Act." 40 CFR 52.21(b)(1)(i)) (1985–1988). It bears emphasis that this provision, by its terms, applied PSD to each and every air pollutant subject to regulation under the CAA, which, as discussed elsewhere, has been EPA's consistent interpretation of the CAA requirements for PSD applicability. CAA section 165(a)(1), 169(1).[14]

(1) Incorporation by Reference

In adopting a particular SIP revision that IBR'd EPA's regulations, however, Texas intended that IBR to apply to only the EPA regulations as they read as of the date that Texas adopted the SIP revision. Texas did not intend that IBR in that SIP revision to apply to subsequent revisions to those regulations. This became readily apparent during the course of EPA's review of Texas's SIP revisions. The TACB adopted the first SIP revision on July 26, 1985.[15] This SIP revision consisted, in relevant part, of a revision to TACB Regulation VI—§ 116.3.(a) to add subparagraph (13), which read, in relevant part,

(13) The proposed facility shall comply with the Prevention of Significant Deterioration of Air Quality regulations promulgated by the [EPA] in the Code of Federal Regulations at 40 CFR 52.21 as amended * * *, hereby incorporated by

[8] 75 FR at 53,897/3 (proposed GHG PSD SIP call).

[9] This history is described in "Approval and Promulgation of Implementation Plan, State of Texas; Prevention of Significant Deterioration—Final rulemaking, 57 FR 28,093, 28,094 (June 24, 1992); "Approval and Promulgation of Implementation Plan, State of Texas; Prevention of Significant Deterioration—Proposed rulemaking, 54 FR 52,823, 52,824 (December 22, 1989).

[10] *See, e.g.,* 48 FR 60236,023 (February 9, 1983).

[11] Letter from Jack S. Divita, U.S EPA, Region 6, to Roger Wallis, Texas Air Control Board (December 23, 1980), p. 2. In that letter, EPA objected to Texas's proposed definitions of the terms "major facility/stationary source" and "major modification" on grounds they are not equivalent to the definition of those terms in EPA's PSD and nonattainment NSR regulations because Texas's proposed definitions —

include only those stationary sources and modifications with emissions of air contaminants for which a [NAAQS] has been issued. Under the PSD and [nonattainment] NSR requirements, [Texas's] definitions must include sources with emissions of "*any* air pollutant subject to regulation under the Act." * * * Since the proposed definitions would exclude PSD and [nonattainment] NSR coverage for those sources emitting pollutants subject to regulations under the Act, but for which a NAAQS has not been issued, they are not equivalent to the federal definitions of "major stationary source" and "major modification."

Id. (emphasis in original).

[12] Environmental Protection Agency—Region 6, "EPA Review of Texas Revisions to the General Rules and Regulations VI," p. 4 (August 1983), *cited in* 48 FR 55,483/1 & n.1 (December 13, 1983).

[13] For convenience, we will use the acronym "IBR" for the various grammatical usages of incorporate by reference, including the noun form, *i.e.,* IBR, for incorporation by reference; as well as the verb form, *e.g.,* IBR'd, for incorporated by reference.

[14] As also discussed elsewhere, this is a narrowing interpretation of the PSD applicability requirements in CAA section 169(1), which, read literally, apply PSD to "any air pollutant."

[15] TACB Board Order No. 85–7 (July 26, 1985).

reference, except for [certain identified] paragraphs [not here relevant].[16]

The TACB submitted this SIP revision to EPA on December 11, 1985.[17] EPA responded with a letter to Texas, dated July 3, 1986, commenting on several aspects of the SIP revision, including inquiring whether the state had authority to IBR Federal rules prospectively, asking for "legal clarification" on the subject, and recommending that if the TACB did not have such authority, then the TACB should clarify the IBR by "referencing the appropriate date."[18]

Texas responded with a letter dated October 24, 1986,[19] in which it stated:

> An issue of concern * * * is whether the [TACB] intended to incorporate by reference Federal rules prospectively in the PSD rule § 116.3(a)(13) and in the stack height rule § 116.3(a)(14). [A]lthough our intention was not prospective rulemaking and we do not believe the rule language implies such, we have no specific objection to including the date of Federal adoption of any Federal material adopted by reference by the TACB in future SIP revisions (including the proposed PSD and stack height revisions). By initiating the public hearing process for PSD rules again (to incorporate requested revisions), Federal PSD regulations amended on July 12, 1985 will be subject to the state public participation process. This should eliminate the concern expressed in your July 3, 1986 letter.[20]

Accordingly, on July 17, 1987, the TACB adopted a revision to its PSD rule, § 116.3(a)(13), so that the rule continued to IBR EPA's PSD regulatory requirements at 40 CFR 52.21, but referenced the date of November 7, 1986.[21] Texas submitted that as a SIP revision to EPA on October 26, 1987.[22]

However, some 8 months later, by notice published on July 1, 1987, EPA adopted the PM_{10} NAAQS,[23] and thereby subjected to PSD sources emitting PM_{10}. Recognizing this, the TACB, on July 15, 1988, adopted still another revision to its PSD rule to change the referenced date to August 1, 1987, and thereby incorporated EPA's application of PSD to PM_{10}-emitting sources into Texas's PSD program.[24] Texas submitted that revised rule to EPA as a SIP revision on September 29, 1988.[25] As so revised, the Texas PSD rule (again, § 116.3(a)(13)) read, in relevant part, as follows:

> (13) The proposed facility shall comply with the Prevention of Significant Deterioration (PSD) of Air Quality regulations promulgated by the Environmental Protection Agency (EPA) in the Code of Federal Regulations at 40 CFR 52.21 as amended August 1, 1987 * * *, except for [certain identified] paragraphs [not here relevant].[26]

EPA proposed to approve this SIP revision, with this iteration of the Texas PSD rule, by notice dated December 22, 1989,[27] and EPA issued a final approval by notice dated June 24, 1992.[28] In the preambles to the proposed and final rules, and in supporting documents, EPA recounted part of this history of Texas revising its regulations to IBR the current EPA regulatory requirements.[29]

This history shows that both EPA and Texas were well aware that Texas's method of incorporating by reference EPA's regulatory requirements into Texas's PSD rule was not prospective and therefore did not automatically update to incorporate a pollutant newly subject to regulation.[30] In fact, during the time that EPA was reviewing Texas's PSD SIP, Texas revised its SIP to apply PSD to PM_{10}, which EPA subjected to regulation for the first time during that time. However, after stating simply that it does not intend prospective IBR, Texas did not explicitly address this issue. That is, Texas did not acknowledge that following approval of Texas's PSD program, EPA could well subject to regulation additional pollutants—whether through a revised NAAQS or regulation under another CAA provision—and Texas did not discuss how it would respond.[31] Simply put, Texas failed to look down the road and address a problem with its PSD SIP—the mechanism for applying PSD to pollutants newly subject to regulation—that was bound to recur.

(2) Legal Authority

The record of Texas's PSD program includes limited references to, or discussion of, legal authority that may be relevant to whether Texas provided assurances that it had adequate legal authority to apply PSD to pollutants newly subject to regulation. The following merit review:

First, in adopting and submitting the PSD SIP revisions, the TACB—the agency charged with taking that action—relied on its general legal authority to adopt and submit the SIP revisions. The TACB adopted regulatory amendments through "Board Orders," and then submitted those Board Orders to EPA as SIP revisions. The Board Orders typically cited general authority under the Texas CAA. One example is TACB Board Order No. 88–08 (July 15, 1988), which revised the Texas PSD rule to provide a later date for IBR'ing EPA's PSD program, and which comprised one of the SIP revisions that formed the basis for the Texas PSD program that EPA approved by notice dated June 24, 1992 (57 FR 28,093). This Board Order provides, in relevant part, "Section 3.09(a) of the Texas CAA gives the Board authority to make rules and regulations consistent with the general intent and purposes of the Act and to

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[16] *Id.*

[17] Letter from Mark White, Governor of Texas, to Lee M. Thomas, Administrator of U.S. EPA, December 11, 1985.

[18] Letter from William B. Hathaway, Director, Air, Pesticides and Toxics Division, EPA Region 6, to Allen Eli Bell, Executive Director, TACB (July 3, 1986). Specifically, EPA stated—State's authority to IBR Federal rules prospectively—The Board approved and signed the incorporation of the PSD regulations on July 26, 1985, An amendment to the Federal PSD regulations [40 CFR 52.21(o)(3), p(1) and p(3)] occurred on July 12, 1985. However, the TACB proposed to adopt the Federal regulations and carried out the public participation process before the July 12, 1985, promulgation date of the amendments. We need a legal analysis from the state concerning the TACB's legal authority to incorporate by reference the federal rules prospectively. We recognize that the proposed federal rules were unchanged on the final promulgation; however, the Texas Water Commission believes that the state cannot adopt prospective Federal rules under the State laws. We would appreciate a legal clarification on this subject. If the State did not intend prospective adoption, the rules should be clarified by referencing the appropriate date.

Id. p. 2 and Enclosure p. 5.

[19] Letter from Steve Spaw, Deputy Executive Director, TACB, to William B. Hathaway, Director, Air, Pesticides and Toxics Division, EPA Region 6 (October 24, 1986).

[20] *Id.* 1–2.

[21] TACB Board Order No. 87–09 (July 17, 1987). *See* 12 Tex. Reg. 2575/2 (August 7, 1987) (discussing revision to section 116.3(a)(13) in response to request from U.S. EPA).

[22] Letter from William P. Clements, Jr., Governor of Texas, to Lee M. Thomas, Administrator of U.S. EPA (October 26, 1987).

[23] 52 FR 24,634 (July 1, 1987).

[24] TACB Board Order No. 88–08 (July 15, 1988).

[25] Letter from William P. Clements, Jr., Governor of Texas, to Lee M. Thomas, Administrator of U.S. EPA (September 29, 1988).

[26] TACB Board Order No. 88–08 (July 15, 1988).

[27] 54 FR 52,823.

[28] 57 FR 28,093.

[29] 57 FR 28,093, 28,094/2 (June 24, 1992) (final rule); 54 FR 52,823, 52,824/1 (December 22, 1989) (proposed rule); Technical Support Document: Texas State Implementation Plan for Prevention of Significant Deterioration, U.S. Environmental Protection Agency, 4 (November 28, 1988). Moreover, Texas submitted another SIP revision on February 18, 1991, to change the date in section 116.3(a)(13) from "August 1, 1987" to "October 17, 1988" to reflect the amendments to 40 CFR 52.21 as promulgated in the **Federal Register** on October 17, 1988 (53 FR 40,656) (Nitrogen Oxides PSD increments). EPA did not act on this SIP revision when it approved the Texas PSD program on June 24, 1992, but did approve this SIP revision later, on September 9, 1994 (59 FR 46,556). *See* 62 FR 44,084/2.

[30] It should be noted that although Texas subsequently made certain commitments, discussed below, none of those commitments, on its face, suggested that Texas's PSD SIP should be interpreted to automatically update to incorporate a pollutant newly subject to regulation.

[31] Following EPA approval of Texas's PSD program, Texas has occasionally submitted SIP revisions to update its PSD program to accommodate further EPA regulatory revisions. *See, e.g.,* 69 FR 43,752, 43,753 (July 22, 2004).

amend any rule or regulation it makes" and "the Board hereby certifies that the amendments as adopted have been reviewed by legal counsel and found to be a valid exercise of the Board's legal authority." Board Order No. 88–08, page 2.

Second, the 1990 CAA Amendments amended CAA section 169(1) to add another type of source that was subject to PSD: Large municipal combustors. Shortly after the 1990 amendments, and before issuing final approval for the Texas PSD program, EPA asked Texas for assurances that its PSD program would apply to large municipal waste combustors. In a March 30, 1992, letter, EPA stated the following:

> Since we proposed approval of this SIP before enactment of the 1990 Clean Air Act Amendments (CAAA), it is necessary that we address several issues in the final approval notice in order to be in conformance with the CAAA.
>
> * * * * *
>
> Municipal Waste Combustion—Section 169(1) is amended by expanding the list of major emitting facilities that are subject to PSD requirements if they emit or have the potential to emit 100 tons per year or more of any regulated pollutant. This list now includes municipal incinerators capable of charging more than fifty tons of refuse per day. This requirement has been effective since November 15, 1990, for all applicable PSD sources. In the conference call [with EPA Region 6], the * * * TACB * * * legal representative said that the TACB has the existing legal authority, and can and will be reviewing such sources for PSD applicability and permitting.[32]

Thus, according to this letter, Texas provided oral statements in a conference call with EPA Region 6 that Texas has legal authority to apply its state PSD rules to large municipal waste combustors.

Texas responded in a letter dated April 17, 1992:

> We understand that you need confirmation in several areas to conform with the requirements of the 1990 Federal Clean Air Act Amendment * * * before the final delegation will be made.
>
> * * * * *
>
> We will address as a major source subject to PSD review, municipal waste combustors capable of cha[n]ging more than 50 tons of refuse per day as one of the sources subject to PSD review if they emit or have the potential to emit 100 tons per year or more of any regulated pollutant.[33]

Although the TACB Board Order referred to the TACB's general legal authority, the record reveals no discussion or assurances that this legal authority was adequate to apply PSD to pollutants newly subject to regulation. Similarly, the oral assurance that the TACB apparently provided that it had legal authority to apply PSD to large municipal combustors, as required under the then-newly enacted 1990 CAA Amendments, does not address whether Texas had adequate authority to apply PSD to each pollutant that EPA newly subjects to regulation.

(3) Texas's Commitments

The rulemaking record of EPA's approval of Texas's PSD SIP shows that Texas provided two commitments that are relevant for present purposes:

(a) 1987 Texas PSD Commitments Statement

The TACB adopted revisions to TACB Regulation VI on July 17, 1987, which the Governor submitted on October 27, 1987. Those revisions included the following statement, which we call the 1987 Texas PSD Commitments Statement:

> Revision To The Texas State Implementation Plan For Prevention Of Significant Deterioration Of Air Quality
>
> The Texas Air Control Board (TACB) will implement and enforce the Federal requirements for Prevention of Significant Deterioration of Air Quality (PSD) as specified in 40 CFR 51.166(a) by requiring all new major stationary sources and major modifications to obtain air quality permits as provided in TACB regulation VI, Control of Air Pollution by Permits for New Construction and Modification. In addition, the TACB will adhere to the following conditions in the implementation of the PSD program:
>
> * * * * *
>
> 4. Plan assessment
>
> The TACB will review the adequacy of the Texas PSD plan on an annual basis and within 60 days of the time information becomes available that an applicable increment may be violated. If the TACB determines that an increment is being exceeded due to the violation of a permit condition, appropriate enforcement action will be taken to stop the violation. If an increment is being exceeded due to a deficiency in the state PSD plan, the plan will be revised and the revisions will be subject to public hearing.

This 1987 Texas PSD Commitments Statement does not specifically address the application of PSD to pollutants newly subject to regulation. The first paragraph, as quoted previously in this preamble, commits TACB to require "all new major stationary sources and major modifications to obtain air quality permits as provided in TACB regulation VI * * *," but this does not commit TACB to address pollutants newly subject to regulation. Instead, this limits the TACB requirement to application of PSD to sources "as provided in TACB regulation VI," and that regulation VI does not automatically update. As for "4, Plan assessment," although the first sentence calls for the TACB to review the adequacy of the Texas PSD plan on an annual basis, and although the rest of the provision requires a plan revision if an increment violation is determined to result from a deficiency in the plan, this does not address what happens when a new pollutant becomes subject to regulation and does not require a plan revision to apply to the new pollutant. The fact that Texas agreed to revise the plan if the plan is found to be deficient and that deficiency results in an increment being exceeded serves to highlight the lack of any comparable focus on how the plan would deal with pollutants newly subject to regulation.

EPA's technical support document supporting its proposed approval stated, with respect to this 1987 Texas PSD Commitments Statement:

> The "Revision to Texas State Implementation Plan for Prevention of Significant Deterioration of Air Quality" specifies how the TACB will fulfill the requirements of 40 CFR 51.166(a), plan revisions, and plan assessment. The EPA has reviewed the State's commitment and has determined that the TACB has addressed the continuous plan revisions and assessments adequately.[34]

This general discussion by EPA does not indicate that EPA considered the Texas statement to apply to pollutants newly subject to regulation.

(b) 1989 Texas Commitment Letter

In 1989, as EPA considered Texas's SIP revision submittal, EPA became concerned that a Texas official had made statements that led EPA to question whether Texas would adhere to EPA's interpretation that Best Available Control Technology (BACT) must be implemented through the Top-Down process.[35] Accordingly, EPA advised Texas that EPA would not approve Texas's PSD program unless Texas provided a letter assuring EPA that Texas would follow EPA requirements in general, and particularly with respect to the interpretation of BACT. Texas provided

[32] Letter from A. Stanley Meiburg, Director, Air, Pesticides & Toxics Division, EPA Region 6, to Steve Spaw, Executive Director, TACB (March 30, 1992).

[33] Letter from Steve Spaw, Executive Director, TACB, to A. Stanley Meiburg, Director, Air, Pesticides and Toxics Division, EPA Region 6 (April 17, 1992).

[34] Technical Support Document: Texas State Implementation Plan for Prevention of Significant Deterioration, U.S. Environmental Protection Agency, 6 (November 28, 1988).

[35] Letter from Allen Eli Bell, Executive Director, Texas Air Control Board to Robert Layton Jr., Regional Administrator, U.S. EPA (September 5, 1989) 1 (Texas's Commitments Letter).

this letter, which we call the Texas PSD Commitments Letter, on September 5, 1989.[36] In this letter, Texas acknowledged EPA's concern that a Texas official had—

indicated a lack of intent to follow Federal interpretations of the Clean Air Act and Environmental Protection Agency (EPA) operating policies, most specifically, the "Top-Down" approach for Best Available Control Technology (BACT) analysis in reviewing PSD permit applications.

Texas went on to state:

[Y]ou may be assured that the position of the [Texas Air Control Board (TACB)] is, and will continue to be, to implement EPA requirements relative to programs for which we have received State Implementation Plan approval, and to do so as effectively as possible. * * * Again, the TACB is committed to the implementation of EPA decisions regarding PSD program requirements. We look forward [37] approval of the PSD revisions and believe EPA will find the management of that program in Texas to be capable and effective.[38]

By notice dated December 22, 1989, EPA proposed to fully approve Texas's PSD program.[39] In this proposal, EPA focused on the issue of how EPA's current and future interpretations of PSD statutory requirements would be reflected in the state-implemented program. EPA stated:

In adopting the Clean Air Act, Congress designated EPA as the agency primarily responsible for interpreting the statutory provisions and overseeing their implementation by the states. The EPA must approve state programs that meet the requirements of 40 CFR 51.166. Conversely, EPA cannot approve programs that do not meet those requirements. However, PSD is by nature a very complex and dynamic program. It would be administratively impracticable to include all statutory interpretations in the EPA regulations and the SIPs of the various states, or to amend the regulations and SIPs every time EPA interprets the statute or regulations or issues guidance regarding the proper implementation of the PSD program, and the Act does not require EPA to do so. Rather, action by the EPA to approve this PSD program as part of the SIP will have the effect of requiring the state to follow EPA's current and future interpretations of the Act's PSD provisions and EPA regulations, as well as EPA's operating policies and guidance (but only to the extent that such policies are intended to guide the implementation of approved state PSD programs). Similarly, EPA approval also will have the effect of negating any interpretations or policies that the state might otherwise follow to the extent they are at variance with EPA's interpretation and applicable policies. Of course, any fundamental changes in the administration of PSD would have to be accomplished through amendments to the regulations in 40 CFR 52.21 and 51.166, and subsequent SIP revisions.

54 FR 52,824/2–3.

EPA went on to state that it was basing its proposed approval of Texas's PSD program on Texas's agreement, as contained in the September 5, 1989, letter, that Texas would "implement that PSD SIP approved program in compliance with all of the EPA's statutory interpretations and operating policies." 54 FR 82,825/2. EPA stated—

* * * EPA's approval of the Texas PSD SIP requires the state to follow EPA's statutory interpretations and applicable policies[], including those concerning [BACT]. * * *

In support of the discussion above, the Executive Director of the TACB has submitted a letter, dated September 5, 1989, which commits the TACB to implement the PSD SIP approved program in compliance with all of the EPA's statutory interpretations and operating policies. Specifically, the TACB's letter states that (1) "* * * you may be assured that the position of the agency is, and will continue to be, to implement EPA requirements relative to programs for which we have received [SIP] approval, and to do so as effectively as possible * * *", and (2) "* * * the TACB is committed to the implementation of the EPA decisions regarding PSD program requirements * * *". The EPA has evaluated the content of this letter and has determined that the letter sufficiently commits the TACB to carry out the PSD program in accordance with the Federal requirements as set forth in the [CAA] applicable regulations, and as further clarified in the EPA's statutory and regulatory interpretations, including the proper conduct of BACT analyses. The EPA also interprets this letter as committing the TACB to follow applicable EPA policies such as the "Top-Down" approach. This letter will be incorporated into the SIP upon the final approval action.

54 FR 52,825/1–2.

EPA issued a final rule to give full approval to the program by notice dated June 24, 1992, 57 FR 28,093. In the final rule, EPA indicated that it had received adverse comments concerning its statements in the proposal that Texas was required to adopt all of EPA's interpretations of the PSD requirements. Accordingly, EPA refined its views. EPA stated:

Comment 1: The commenters expressed concern with the preamble language in the proposal notice, suggesting that final approval would require that the State follow EPA's current and future interpretations of the Act's PSD provisions and EPA regulations as well as EPA's operating policies and guidance. The commenter contended that such a condition would be unlawful * * * and would improperly limit the State's flexibility * * *.

Response 1: The EPA did not intend to suggest that Texas is required to follow EPA's interpretations and guidance issued under the Act in the sense that those pronouncements have independent status as enforceable provisions of the Texas PSD SIP, such that mere failure to follow such pronouncements, standing alone, would constitute a violation of the Act. As clarified herein, EPA's intent is merely to place the State and the public on notice of EPA's longstanding views that the Agency must continue to oversee the State's implementation of the PSD SIP * * *.

* * * Texas and other states [have] considerable discretion to implement the PSD program as they see fit.

* * * PSD–SIP approved states remain free to follow their own course, provided that state action is consistent with the letter and spirit of the SIP, when read in conjunction with the applicable statutory and regulatory provisions.

* * *

Comment 4: One commenter noted that the TACB's letter, dated September 5, 1989, cannot reasonably be interpreted as a legal requirement that the State follow the EPA's present and future new source review interpretations, policies and guidance, including the BACT "Top-Down" approach, because it only commits Texas to implement properly established EPA requirements and legally-binding EPA decisions. The commenter said that the Clean Air Act specifically requires that, if at all, any such change in EPA policy for BACT determinations be accomplished through notice and comment rulemaking, and that the EPA first prepare an economic impact assessment.

Response 4: In certain circumstances, EPA's approval of a SIP revision through notice-and-comment rulemaking procedures can serve to adopt specific interpretations or decisions of the Agency. For example, a state may commit in writing to follow particular EPA interpretations or decisions in administering the PSD program. As part of the SIP revision process, EPA may incorporate that State's commitment into the SIP by reference. This process has been followed in today's action. Of course, EPA agrees with the commenter that the Agency must act reasonably in construing the terms of a commitment letter, so as to avoid approving it in a manner that would contravene the state's intent in issuing the letter in the first place. Moreover, the State commitment must be consistent with the plain language of the applicable statutory or regulatory provisions at issue. Similarly, EPA cannot unilaterally change the clear meaning of any approved SIP provision by later guidance or policy. Rather, as stated in the proposed approval notice, such fundamental change must be accomplished through the SIP revision process.

Consistent with the terms of the TACB letter dated September 5, 1989, EPA views that letter as a commitment on the part of the TACB to "implement EPA program requirements * * * as effectively as possible," and as a commitment "to the implementation of the EPA decisions regarding PSD program requirements." EPA

[36] Texas's 1989 Commitments Letter, p. 1.

[37] *Sic:* the word "to" should be between "forward" and "approval".

[38] Texas's 1989 Commitments Letter, p. 1.

[39] 54 FR 52,823.

agrees, however, that the TACB letter need not be interpreted as a specific commitment by the State to follow a "Top-Down" approach to BACT determinations.

57 FR 28,095/1–2; 28,096/1.

As for the fact that Texas's PSD program was limited to pollutants that were regulated as of the date Texas adopted the program as a SIP revision, but did not automatically apply to newly regulated pollutants, the preamble to the final rule alluded to this limitation:

The State's regulation VI requires review and control of air pollution from new facility construction and modification and allows the TACB to issue permits for stationary sources subject to this regulation. Section 116.3(a)(13) of the TACB Regulation VI incorporates by reference the Federal PSD regulations (40 CFR 52.21) as they existed on August 1, 1987, which include revisions associated with the July 1, 1987, promulgation of revised National Ambient Air Quality Standards for particulate matter (52 FR 24872) and the visibility NSR requirements noted above.

57 FR 28,094.

However, there is no indication in the preamble for the final rule that (i) Texas specifically addressed the requirement that its PSD program apply to pollutants newly subject to PSD, including non-NAAQS pollutants, or (ii) Texas provided assurances that it had adequate authority under State law to carry out the PSD program, including applying PSD to pollutants newly subject to regulation, among them non-NAAQS pollutants. Nor is there any indication that EPA asked Texas to do so.[40]

As discussed previously, in 1996 EPA proposed, and in 2002 finalized, what we call the NSR Reform Rule,[41] which included a set of amendments to the PSD provisions that included revisions to conform to the 1990 CAA Amendments. *See* 61 FR 38,250 (July 23, 1996), 67 FR 80,186 (December 31, 2002). The NSR Reform Rule revised the terminology for PSD applicability. In 2006, Texas submitted a SIP revision to incorporate the NSR Reform Rule into its PSD program, including revising its applicability provisions. EPA disapproved this SIP revision by notice dated September 15, 2010.[42] Accordingly, the applicable Texas PSD applicability provisions remain the ones in the state's currently approved SIP.

D. Regulatory Background: GHG Rules

1. GHGs and Their Sources

As discussed in detail in the rule EPA calls the "Endangerment Finding," [43] greenhouse gases trap the Earth's heat that would otherwise escape from the atmosphere into space, and form the greenhouse effect that helps keep the Earth warm enough for life. Greenhouse gases are naturally present in the atmosphere and are also emitted by human activities. Human activities are intensifying the naturally occurring greenhouse effect by increasing the amount of GHGs in the atmosphere, which is changing the climate in a way that endangers human health, society, and the natural environment.

Some GHGs, such as carbon dioxide (CO_2), are emitted to the atmosphere through natural processes as well as human activities. Other gases, such as fluorinated gases, are created and emitted solely through human activities. The well-mixed GHGs of concern directly emitted by human activities include CO_2, methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF_6). These six GHGs will, for the purposes of this final rule, be referred to collectively as "the six well-mixed GHGs," or, simply, GHGs, and together constitute the "air pollutant" upon which the GHG thresholds in the Tailoring Rule are based. These six gases remain in the atmosphere for decades to centuries where they become well-mixed globally in the atmosphere. When they are emitted more quickly than natural processes can remove them from the atmosphere, their concentrations increase, thus increasing the greenhouse effect. The heating effect caused by the human-induced buildup of GHGs in the atmosphere is very likely the cause of most of the observed global warming over the last 50 years. A detailed explanation of greenhouse gases, climate change, and its impact on health, society, and the environment is included in EPA's technical support document (TSD) for the Endangerment Finding Final Rule (Docket ID No. EPA–HQ–OAR–2009–0472–11292).

In the United States, the combustion of fossil fuels (*e.g.,* coal, oil, gas) is the largest source of CO_2 emissions and accounts for 80 percent of the total GHG emissions. Anthropogenic CO_2 emissions released from a variety of sources, including fossil fuel combustion and industrial manufacturing processes that rely on geologically stored carbon (*e.g.,* coal, oil, and natural gas) that is hundreds of millions of years old, as well as anthropogenic CO_2 emissions from land-use changes such as deforestation, all perturb the atmospheric concentration of CO_2 and cause readjustments in the distribution of carbon within different reservoirs. More than half of the energy-related emissions come from large stationary sources such as power plants, while about a third comes from transportation. Of the six well-mixed GHGs, four (CO_2, CH_4, N_2O, and HFCs) are emitted by motor vehicles. In the United States industrial processes (such as the production of cement, steel, and aluminum), agriculture, forestry, other land use, and waste management are also important sources of GHGs.

Different GHGs have different heat-trapping capacities. The concept of Global Warming Potential (GWP) was developed to compare the heat-trapping capacity and atmospheric lifetime of one GHG to another. The definition of a GWP for a particular GHG is the ratio of heat trapped by one unit mass of the GHG to that of one unit mass of CO_2 over a specified time period. When quantities of the different GHGs are multiplied by their GWPs, the different GHGs can be summed and compared on a CO_2-equivalent (CO_2e) basis. For example, CH_4 has a GWP of 21, meaning each ton of CH_4 emissions would have 21 times as much impact on global warming over a 100-year time horizon as 1 ton of CO_2 emissions. Thus, on the basis of heat-trapping capability, 1 ton of CH_4 would equal 21 tons of CO_2e. The GWPs of the non-CO_2 GHGs range from 21 (for CH_4) up to 23,900 (for SF_6). Aggregating all GHGs on a CO_2e basis at the source level allows a facility to evaluate its total GHG emissions contribution based on a single metric.

2. GHG Regulatory Actions

Over the past year, EPA has completed four distinct actions related to greenhouse gases under the CAA. The result of these rules, in conjunction with the operation of the CAA, has been to trigger PSD applicability for GHG sources on and after January 2, 2011, but to limit the scope of sources covered by PSD. These actions include, as they are commonly called, the "Endangerment Finding" and "Cause or Contribute Finding," which we issued in a single

[40] *See* "Technical Support Document (TSD): State of Texas State Implementation Plan for Prevention of Significant Deterioration" (November 28, 1988).

[41] "Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects—Final Rule," 67 FR 80,186 (December 31, 2002) (NSR Reform rule).

[42] 75 FR 56,424 (September 15, 2010).

[43] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66,496 (December 15, 2009).

final action;[44] the Johnson Memo Reconsideration, noted previously; the "Light-Duty Vehicle Rule" (LDVR or Vehicle Rule);[45] and the "Tailoring Rule," also noted previously.

a. Endangerment Finding, Vehicle Rule, Johnson Memo Reconsideration

In the Endangerment and Cause or Contribute Finding, which is governed by CAA section 202(a), the Administrator exercised her judgment, based on an exhaustive review and analysis of the science, to conclude that "six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations." 74 FR at 66,496. The Administrator also found "that the combined emissions of these greenhouse gases from new motor vehicles and new motor vehicle engines contribute to the greenhouse gas air pollution that endangers public health and welfare under CAA section 202(a)." *Id.*

The Endangerment Finding led directly to promulgation of the Vehicle Rule, also governed by CAA section 202(a), in which EPA set standards for the emission of greenhouse gases for new motor vehicles built for model years 2012–2016. 75 FR 25,324. The Vehicle Rule established the first controls for GHGs under the CAA.

The Johnson Memo Reconsideration—as well as the Tailoring Rule, which we discuss later—is governed by the PSD and Title V provisions in the CAA. It was issued to address the automatic statutory triggering of the PSD and Title V programs for GHGs due to the Vehicle Rule establishing controls for GHGs. The Johnson Memo Reconsideration provided EPA's interpretation of a pre-existing definition in its PSD regulations delineating the "pollutants" that are taken into account in determining whether a source must obtain a PSD permit and the pollutants each permit must control. The Johnson Memo Reconsideration stated that when the Vehicle Rule takes effect on January 2, 2011, it will, in conjunction with the applicable CAA requirements, trigger the application of PSD to GHG-emitting sources. 75 FR 17,004.

b. Tailoring Rule

In the Tailoring Rule, EPA limited PSD applicability, at the outset, to only the largest GHG-emitting sources, and to phase-in PSD applicability, as appropriate, to smaller sources over time. 75 FR 31,514. In the Tailoring Rule, EPA identified the air pollutant that, if emitted or potentially emitted by the source in excess of specified thresholds, would subject the source to PSD requirements, as the aggregate of six GHGs: CO_2, CH_4, N_2O, HFCs, PFCs, and SF_6. EPA based this identification on the Vehicle Rule, which included applicability provisions specifying that the rule "contains standards and other regulations applicable to the emissions of those six greenhouse gases." 75 FR at 25,686 (promulgating 40 CFR 86.1818–12(a)). The Tailoring Rule noted that it was because the Vehicle Rule subjected to regulation the pollutant that is comprised of the six GHGs, that PSD was triggered for that pollutant and that, as a result, the pollutant must be defined for PSD purposes in the same way as it is identified in the Vehicle Rule. 75 FR 31,527. The Vehicle Rule identified the pollutant as the aggregate of the six gases because in the Endangerment Finding, the Administrator found that those six gases—which she described as long-lived and directly emitted GHGs — may reasonably be anticipated to endanger public health and welfare.

3. Implementation of GHG PSD Requirements

Because PSD is implemented through the SIP system, EPA has taken a series of actions to address the obligations of states (including localities and other jurisdictions, as appropriate) to implement PSD requirements for GHG-emitting sources. EPA has taken these actions through the Tailoring Rule discussed elsewhere in this preamble and a series of subsequent actions.[46]

a. Tailoring Rule

In the Tailoring Rule, EPA incorporated the PSD thresholds for GHGs in the definition of the term "subject to regulation." As noted previously, under EPA's PSD regulations, PSD applies to a "major stationary source;" a "major stationary source" is defined as a source that emits 100/250 tons per year (tpy) on a mass basis of a "regulated NSR pollutant;" and a "regulated NSR pollutant," in turn, is defined as, among other things, a pollutant that is "subject to regulation" under the CAA.[47] In the Tailoring Rule, EPA added a limitation to the term "subject to regulation" so that the only GHG emissions that would be treated as "subject to regulation" (and therefore subject to PSD) are those emitted at or above specified thresholds of, depending on the circumstances, 75,000 and/or 100,000 tpy on a CO_2e basis.[48] EPA explained in the Tailoring Rule that it intends these levels to be the first steps in a phase-in approach for PSD applicability, and EPA committed in that rule to conduct additional rulemaking by 2012 and 2016 that would consider taking additional steps.

Some states advised EPA that it is likely they would be able to implement the Tailoring Rule thresholds by interpreting the term "subject to regulation" in their SIPs, and without having to take further action. A state's ability to take this approach would have implications for how EPA needed to implement the Tailoring Rule.[49] Accordingly, in the Tailoring Rule, EPA began a process to gather more information about how states would implement permitting for GHG-emitting sources.

b. 60-Day Letters

To gather this information, EPA, in the Tailoring Rule, asked states to submit letters within 60 days of publication of the Tailoring Rule, which we refer to as the 60-day letters, concerning the status of their PSD program and their legal authority for applying PSD program to GHG-emitting sources. This information would help clarify, for each state, the two central issues for PSD applicability to GHG-emitting sources: (i) Whether the state has an approved PSD program that applies to GHG-emitting sources; and (ii) if so, what action the state would take to limit the applicability of its PSD program to GHG-emitting sources at or

[44] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act." 74 FR 66,496 (December 15, 2009).

[45] "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule." 75 FR 25,324 (May 7, 2010).

[46] A detailed description of EPA's implementation efforts, and the status of state compliance with those efforts, is included in Declaration of Regina McCarthy, *Coalition for Responsible Regulation* v. *EPA,* DC Cir. No. 09–1322 (and consolidated cases) (McCarthy Declaration), including Attachment 1 (Tables 1, 2, and 3), which can be found in the docket for this rulemaking.

[47] 40 CFR 51.166(a)(7)(i), (b)(1)(i)(a), (b)(49).

[48] Specifically, under the revised definition of "subject to regulation," sources that emit at least the 75,000 and/or 100,000 tpy CO_2e threshold amount of GHGs are subject to PSD as long as the amount of GHG emissions also exceeds, in general, 100/250 tpy on a mass basis for new sources and zero tpy on a mass basis for modifications of existing sources. 40 CFR 51.166(b)(48), 75 FR at 31,606; see EPA Office of Air Quality Planning and Standards, "PSD and Title V Permitting Guidance for Greenhouse Gases." (March 2011 update).

[49] Specifically, a state's implementation of the Tailoring Rule in this manner prior to January 2, 2011 would obviate the need for EPA to narrow its approval of that state's SIP, as EPA had proposed in the proposed Tailoring Rule. Thus, in the Final Tailoring Rule, EPA delayed final action on its narrowing proposal so that EPA could gather information about the process and time-line for states to implement the Tailoring Rule.

above the Tailoring Rule thresholds.[50] This information would assist EPA to determine what, if any, action it needed to take with respect to the states.

Almost all states submitted 60-day letters, generally by August 4, 2010. The letters, along with other information EPA received through review of state requirements and further communications with state officials, indicate that the states, localities, and other jurisdictions may be divided into three categories, described later in this preamble, for purposes of EPA's implementation of the PSD program to GHG-emitting sources.

c. The Three Categories of States and EPA's Implementation Process

The first category, which includes 7 states, 35 subsections of states, the District of Columbia, American Samoa, Guam, Puerto Rico, the U.S. Virgin Islands, and Indian Territory, does not have an approved SIP PSD permitting program. Instead, Federal requirements apply. Thus, implementation of PSD for GHG-emitting sources in these jurisdictions is the simplest of all the states: GHG-emitting sources became subject to PSD and the thresholds in the Tailoring Rule as of January 2, 2011, without further action.[51]

The second category includes 13 states and a number of districts within states that have approved PSD SIPs, but those SIPs do not apply the PSD program to GHG-emitting sources. This group includes Texas, which is the focus of this action. The implementation process for this category is discussed later.[52]

The third category includes the remaining states, which have an approved SIP PSD program that applies to GHG-emitting sources. As for the implementation process for this category, some of these states have indicated that they are able to interpret their SIPs to apply PSD only to GHG emissions at or above the Tailoring Rule thresholds, and that they do not need to revise their SIPs to do so. However, most indicated that they would need to submit SIP revisions to EPA in order to incorporate the Tailoring Rule thresholds. This means that in these states, until they do submit their SIP revisions and EPA approves them, sources emitting GHGs at or above the 100/250 tpy levels are subject to PSD requirements as of January 2, 2011, if they construct or modify. EPA has encouraged these states to submit SIP revisions adopting the Tailoring Rule thresholds as soon as possible and some of these states have already done so. Moreover, almost all of these states are proceeding to revise their state law to reflect the Tailoring Rule thresholds and either did so by January 2, 2011, or very soon thereafter, or are currently in the process of revising their SIPs. In the meantime, EPA has finalized what we call the Narrowing Rule so that as of January 2, 2011, at least for Federal purposes, PSD will apply to GHG-emitting sources only at the Tailoring Rule thresholds or higher.[53] As a result of these state actions and EPA's Narrowing Rule, as of January 2, 2011, or shortly thereafter, in all or almost all of these states, only GHG-emitting sources at or above the Tailoring Rule thresholds are subject to PSD requirements.[54]

d. SIP Call States, Including Texas

As just noted, the second category, which includes Texas, includes 13 states and some districts within states whose SIPs have an approved PSD program but do not have the authority to apply that program to GHG-emitting sources. For most of these states, including Texas, the reason is that their PSD applicability provision applies to any "pollutant subject to regulation" under the CAA (or a similar term), but other provisions of state law preclude automatic updating. As a result, this applicability provision covers only pollutants—not including GHGs—that were subject to regulation at the time the state adopted the applicability provision.

After proposing action by notice dated September 2, 2010,[55] EPA promulgated the final SIP call for 13 states, including Texas, by notice signed on December 1, 2010, and published on December 13, 2010, 75 FR 77,698, which we call the GHG PSD SIP Call or, simply, the SIP call.[56] In this action, consistent with the requirements of CAA section 110(k)(5), EPA (i) issued a finding that the SIPs for 13 states (comprising 15 state and local programs) are "substantially inadequate to * * * comply with any requirement of this Act" because their PSD programs do not apply to GHG-emitting sources as of January 2, 2011; (ii) issued a SIP call requiring submission of a corrective SIP revision; and (iii) established a "reasonable deadline[] (not to exceed 18 months after the date of such notice)" for the submission of the corrective SIP revision. This deadline ranges, for different states, from 3 weeks to 12 months after the date of the final SIP call, as discussed later in this preamble.

EPA justified its finding that the affected SIPs are "substantially inadequate" to comply with CAA requirements on grounds that (i) the CAA requires that PSD requirements apply to any stationary source that emits specified quantities of any air pollutant subject to regulation under the CAA, and those PSD requirements must be included in the approved SIPs; (ii) as of January 2, 2011, GHG-emitting sources will become subject to PSD; (iii) as a result, the CAA requires PSD programs to apply to GHG-emitting sources; and (iv) accordingly, the failure of any SIP PSD applicability provisions to apply to GHG-emitting sources means that the SIP fails to comply with these CAA requirements.

In the SIP call proposal, EPA discussed in some detail the SIP submittal deadline under CAA section 110(k)(5). Under this provision, in issuing a SIP call, EPA "may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions." EPA proposed to allow each of the affected states up to 12 months from the date of signature of the final finding of substantial inadequacy and SIP call within which to submit the SIP revision, unless, during the comment period, the state expressly advised that it would not object to a shorter period—as short as 3 weeks from the date of signature of the

[50] Alternatively, a state could choose to apply its PSD program to sources below the Tailoring Rule thresholds and acquire sufficient resources to implement the program as expanded, but no state had indicated an intention to proceed in this manner.

[51] McCarthy Declaration, paragraphs 28–33, page 8, and Attachment 1, Table 1.

[52] *Id.,* paragraphs 34–55, pages 8–12, and Attachment 1, Table 2.

[53] "Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting Sources in State Implementation Plans; Final Rule, 75 FR 82535 (December 30, 2010). Specifically, in the Narrowing Rule, EPA narrowed its approval of the affected states' SIP PSD applicability provisions to only the extent they apply PSD to GHG-emitting sources at or above the Tailoring Rule thresholds. In addition, recognizing that GHG-emitting sources also have permitting obligations under state law, EPA has strongly encouraged states to revise their state law as promptly as possible to eliminate the state PSD obligations of sources below the Tailoring Rule thresholds. *McCarthy Declaration* paragraph 92, page 19.

[54] *Id.* paragraphs 62–94, pages 13–20, and Attachment 1, Table 3.

[55] "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Proposed Rule," 75 FR 53,892 (September 2, 2010); "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan—Proposed Rule," 75 FR 53,883 (September 2, 2010).

[56] "Action to Ensure Authority to Issue Permits under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call—Final Rule," 75 FR 77,698 (December 13, 2010).

final rule—in which case EPA would establish the shorter period as the deadline. EPA stated that, assuming that EPA were to finalize the SIP call on or about December 1, 2010, as EPA said it intended to do in the proposal, then the earliest possible SIP submittal deadline would be December 22, 2010.

EPA made clear that the purpose of establishing the shorter period as the deadline for any interested state is to accommodate states that wish to ensure that a FIP is in effect as a backstop to avoid any gap in PSD permitting. EPA also made clear that if a state did not advise EPA that it does not object to a shorter deadline, then the 12-month deadline would apply. EPA emphasized that for any state that receives a deadline after January 2, 2011, the affected GHG-emitting sources in that state may be delayed in their ability to receive a Federally approved permit authorizing construction or modification. This is because after January 2, 2011, these sources may not have available a permitting authority to review their permit applications until the date that EPA either approves the SIP submittal or promulgates a FIP.

EPA asked that each of the affected states write EPA a letter during the comment period to identify the deadline for SIP submission to which the state would not object if EPA established. We call these the 30-day letters. Each affected state wrote a 30-day letter to EPA, as requested. Except for Texas, each state identified a SIP submittal deadline, which differed among the states, and which ranged from three weeks to 12 months. In the final SIP call, EPA established SIP submittal deadlines identified by the states, except that EPA established a deadline of 12 months for Texas, in accordance with EPA's proposal. Except for Texas, each state explained in its 30-day letter and in subsequent communications with EPA, that it was planning on either receiving a FIP or adopting a SIP and that it chose a deadline that would result in having either the FIP or an approved SIP, as appropriate, in place by January 2, 2011 or soon enough thereafter so as to avoid any hardship to its sources. In the final SIP call, EPA justified approving this 3-week-to-12-month time period, although expeditious, as meeting the CAA section 110(k)(5) requirement to be a "reasonable" deadline in light of: (i) The SIP development and submission process; (ii) the preference of the state; and (iii) the imperative to minimize the period when sources will be subject to PSD but will not have available a PSD permitting authority to act on their permit application and therefore may face delays in constructing or modifying.

In the final SIP call, based on the states' 30-day letters and other communications, EPA established a SIP submittal deadline of December 22, 2010, for seven states. Each of the states indicated that it did not expect to submit a SIP revision by that date and instead expected to receive a FIP. On December 23, 2010, for each of the seven states, EPA issued a finding of failure to submit its corrective SIP revision by that deadline, and EPA promulgated a FIP.

Except for Texas, EPA expected each of the other states subject to the SIP call to adopt a SIP revision and receive EPA approval of it, or receive a FIP, within the first half of 2011, and, in most cases, substantially sooner. Although none of these states had a permitting authority in place as of January 2, 2011, none of these states expected that gap to pose meaningful difficulties for sources because, depending on the state, the gap would be brief, and the state did not expect any sources to seek a permit during the gap, or even if the state had been the permitting authority during the gap, it could not have completed processing the permits during that time.[57]

As discussed later, Texas has responded to the SIP call differently than the other states. As a result, its GHG-emitting sources do face the prospect of permitting delays. This rulemaking action addresses that situation.

4. Summary of the Effect of EPA's Implementation Actions in States Other Than Texas

EPA recently summarized the status of its implementation efforts, for all three categories of sources, as follows:

> Overall, EPA has received information about the status of 99 jurisdictions (49 states,[58] 4 territories, 45 localities, and the District of Columbia), and included that information in Attachment 1. Of these jurisdictions, 94 will have, for Federal law purposes, a PSD permitting program for GHG emissions at the Tailoring Rule thresholds on Jan. 2, 2011. Of these 94 entities, 84 will have made any necessary amendments to state or local law to ensure that state or local permits are not required for GHG emissions below Tailoring Rule thresholds. By the end of the first quarter of 2011, only one jurisdiction will not have authority to permit GHG sources, and that jurisdiction will obtain authority by July 1, 2011 and in the meantime, does not expect large sources seeking permits for their GHGs. In addition, by the end of the first quarter of 2011, all but one more state will have made any necessary amendments to state or local law to ensure that permits are not required for GHG emissions below Tailoring Rule levels. 1 program with GHG permitting authority at the lower statutory levels has not yet determined how, and on which timeline, it will incorporate the Tailoring Rule thresholds into its state law.[59]

Thus, under EPA's implementation program, (i) in every state, (a) only sources at or above the Tailoring Rule thresholds will be subject under Federal law to obtain a PSD permit when they construct or modify as of January 2, 2011, and (b) only those same sources will be subject under state law to obtain a PSD permit when they construct or modify as of January 2, 2011 or very soon thereafter; and (ii) in every state, except for Texas, as of January 2, 2011 or very soon thereafter, GHG sources that construct or modify will be able to receive permits when they need them, so that the sources will not face obstacles to constructing and modifying. Again, Texas has responded to EPA's implementation program in a manner that has resulted in its sources facing obstacles to constructing and modifying, as discussed next, which this rulemaking addresses.

5. EPA's Implementation Approach for Texas and Texas's Response

The following describes the progress to date of implementing PSD for GHG emissions in Texas, based on extensive communications between EPA and TCEQ. It should be borne in mind, as noted earlier, that Texas is in the second of the three categories of states: that is, it has an approved PSD program that does not apply to GHGs-emitting sources.

a. Texas's 60-Day Letter

Texas's 60-day letter provides the State's clearest articulation of its response to EPA's efforts to implement PSD for GHG-emitting sources at the Tailoring Rule thresholds beginning January 2, 2011. As noted previously, in the preamble to the final Tailoring Rule, EPA asked each state to send EPA a

[57] McCarthy Declaration, p. 12, paragraph 55.

[58] California's PSD program is administered in its entirety by local jurisdictions.

[59] McCarthy Declaration, p. 20, paragraph 98. There have been a few changes in the status of individual states since this time, but the overall picture remains the same. EPA has been in close communication with almost every state and many other jurisdictions, along with multi-state organizations such as the National Association of Clean Air Agencies (NACAA). In addition to the letters that states have sent responding to the Tailoring Rule (the 60-day letters) and proposed SIP Call (the 30-day letters), EPA officials, primarily through the Regional Offices, have had numerous communications with their state counterparts. It is as a result of the prompt action taken by the states that implementation efforts have been so successful to date.

letter within 60 days to identify which category the state was in and what action the state intended to take. Specifically, with regard to sources in Category 2, EPA stated:

> In our proposed rule, we also noted that a handful of EPA-approved SIPs fail to include provisions that would apply PSD to GHG sources at the appropriate time. This is generally because these SIPs specifically list the pollutants subject to the SIP PSD program requirements, and do not include GHGs in that list, rather than include a definition of NSR regulated pollutant that mirrors the Federal rule, or because the state otherwise interprets its regulations to limit which pollutants the state may regulate. At proposal, we indicated that we intended to take separate action to identify these SIPs, and to take regulatory action to correct this SIP deficiency.
>
> We ask any state or local permitting agency that does not believe its existing SIP provides authority to issue PSD permits to GHG sources to notify the EPA Regional Administrator by letter, and to do so no later than August 2, 2010. This letter should indicate whether the state intends to undertake rulemaking to revise its rules to apply PSD to the GHG sources that will be covered under the applicability thresholds in this rulemaking, or alternatively, whether the state believes it has adequate authority through other means to issue Federally-enforceable PSD permits to GHG sources consistent with this final rule. For any state that lacks the ability to issue PSD permits for GHG sources consistent with this final rule, we intend to undertake a separate action to issue a SIP call, under CAA section 110(k)(5). As appropriate, we may also impose a FIP through 40 CFR 52.21 to ensure that GHG sources will be permitted consistent with this final rule.

75 FR 31,582/3.

With regard to states in category 3, EPA requested that in the states' 60-day letter,

> the state should explain whether it will apply EPA's meaning of the term "subject to regulation" and if so, whether the state intends to incorporate that meaning of the term through interpretation, and without undertaking a regulatory or legislative process. If a state must undertake a regulatory or legislative process, then the letter should provide an estimate of the time needed to adopt the final rules. If a state chooses not to adopt EPA's meaning by interpretation, the letter should address whether the state has alternative authority to implement either our tailoring approach or some other approach that is at least as stringent, whether the state intends to use that authority. If the state does not intend to interpret or revise its SIP to adopt the tailoring approach or such other approach, then the letter should address the expected shortfalls in personnel and funding that will arise if the state attempts to carry out PSD permitting for GHG sources under the existing SIP and interpretation.
>
> For any state that is unable or unwilling to adopt the tailoring approach by January 2, 2011, and that otherwise is unable to demonstrate adequate personnel and funding, we will move forward with finalizing our proposal to limit our approval of the existing SIP.

75 FR 31,582/3.

On August 2, 2010, Texas submitted its 60-day letter, signed by the Texas Attorney General and the Chairman of the Texas Commission on Environmental Quality.[60] In that letter, Texas responded specifically to EPA's request that "any state * * * that does not believe its existing SIP provides authority to issue PSD permits to GHG sources to notify [EPA and] * * * indicate whether the state intends to * * * revise its rules to apply PSD to * * * GHG sources" by stating: "Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emission." *Id.* p. 1. Texas offered several explanations for this position. First, Texas noted:

> Texas' stationary source permitting program encompasses all "federally regulated new source review pollutants," including, "any pollutant that otherwise is subject to regulation under the [federal Clean Air Act]." 30 Tex. Admin. Code § 116.12(14)(D). The rules of the Texas Commission on Environmental Quality (TCEQ), like the EPA's rules, do not define the phrase "subject to regulation."

Id. p. 2. Texas then explained that it had several objections to interpreting the phrase "subject to regulation" to allow regulation of GHGs. For one thing, according to Texas, long-standing state case law precluded the term—and the PSD applicability provisions generally—from automatically incorporating newly regulated pollutants. Specifically, Texas said:[61]

> * * * Texas' stationary source permitting program encompasses all "federally regulated new source review pollutants," including "any pollutant that otherwise is subject to regulation under the [federal Clean air Act]." 30 Tex. Admin. Code § 116.12(14)(D). This delegation of legislative authority to the EPA is limited solely to those pollutants regulated when Texas Rule 116.12 was adopted (1993) and last amended (2006). As the Texas Supreme Court has explained, "The general rule is that when a statute is adopted by a specific descriptive reference, the adoption takes the statute as it exists at that time, and the subsequent amendment thereof would not be within the terms of the adopting act." *Trimmer* v. *Carlton,* 296 S.W. 1070 (1927). Thus, in order for Texas Rule 116.12 to pass constitutional muster, it must be limited to adopting by reference the definition of "subject to regulation" in existence when Rule 116.12 was last amended in 2006. In other words, Texas Rule 116.12 cannot delegate authority to the EPA to define "subject to regulation" in 2010 to include pollutants that were not "subject to regulation" in 2006.

Id. at 4.

Secondly, Texas took the position that PSD applies only to NAAQS pollutants, and not non-NAAQS pollutants. Texas stated:

> The only sensible interpretation of the Clean Air Act is one that requires the EPA to promulgate a National Ambient Air Quality Standard (NAAQS) for greenhouse gases before the EPA can require PSD permitting of greenhouse gases. * * * EPA, however, has not developed a NAAQS for greenhouse gases. * * *

Id. at 4–5.

Texas provided a more detailed exposition of its view that PSD applies only to NAAQS pollutants in its challenges before the DC Circuit to EPA's GHG actions, where Texas moved to stay the Endangerment Finding, the Vehicle Rule, and the Johnson Memo Reconsideration (Texas's Motion to Stay Three GHG Actions).[62] (In a separate motion, Texas also moved to stay the Tailoring Rule.[63]) There, Texas reiterated arguments based on the text of some of the CAA PSD provisions that, in Texas's view, lead to the conclusion that the CAA precludes applying PSD to non-NAAQS. As noted previously, these arguments were raised by commenters to the Tailoring Rule. Texas concluded that EPA's efforts to apply PSD to GHGs—

> thus violates the CAA. Moreover, [EPA's] interpretation of the CAA is not entitled to deference because the text of the statute is unambiguous. *Chevron, U.S.A.* v. *NRDC,* 467 U.S. 837, 842 (1984) (the Agency must give effect to the unambiguously expressed intent of Congress). Accordingly, EPA's attempt to short cut the CAA's NAAQS

[60] Letter from Bryan W. Shaw, Chairman, Texas Commission on Environmental Quality, and Greg Abbott, Attorney General of Texas, to Hon. Lisa Jackson, Administrator, U.S. Environmental Protection Agency, and Dr. Alfredo "Al" Armendariz, Regional Administrator, U.S. Environmental Protection Agency, Region 6 (August 2, 2010) (Texas's 60-day letter), included in the docket for this rulemaking.

[61] In this explanation, Texas was referring to the PSD applicability provision that Texas adopted under State law in 2006, which differed slightly from the applicability provision approved into the SIP in 1993.

[62] "State of Texas's Motion For A Stay Of EPA's Endangerment Finding, Timing Rule, and Tailpipe Rule," *Coalition for Responsible Regulation* v. *EPA,* No. 09–1322 (and consolidated cases) (September 15, 2010). On December 10, 2010, the DC Circuit denied Texas's, and other parties', motions to stay. Order, *Coalition for Responsible Regulation* v. *EPA,* No. 09–1322 (and consolidated cases) (December 10, 2010).

[63] "State of Texas's Motion For A Stay Of EPA's Greenhouse Gas Tailoring Rule," *Coalition for Responsible Regulation* v. *EPA,* No. 09–1322 (and consolidated cases) (September 15, 2010) (Texas's Motion to Stay the Tailoring Rule).

process in order to regulate GHG emissions from stationary sources through PSD and Title V must fail.[64]

At the close of its 60-day letter, Texas added, "In the event a court concludes EPA's actions comport with the law, Texas specifically reserves and does not waive any rights under the Federal Clean Air Act or other law with respect to the issues raised herein."[65]

b. Texas's 30-Day Letter

As noted previously, in the GHG PSD SIP call proposal, EPA proposed to establish, for each affected state, a deadline of 12 months from the date of signature of the final SIP call for submitting the corrective SIP revision, unless the state expressly advised EPA in its 30-day letter that it would not object to a shorter period. Texas submitted a 30-day letter on October 4, 2010,[66] and in that letter, voiced various objections to the proposed SIP call. Texas reiterated its view that PSD is limited to NAAQS pollutants, and therefore cannot apply to GHGs, and added that the SIP call is "based on an impermissible interpretation of the [Clean Air Act]. EPA cannot * * * impose permitting through [the PSD] program without first setting a NAAQS.* * * " Texas 30-day letter p. 2, 4. EPA responded to those objections in the final SIP call.[67]

In its 30-day letter, Texas went on to discuss the SIP submission schedule and FIP that EPA proposed, but Texas declined EPA's invitation to identify a specific deadline for the state's SIP submission. As a result, in the final SIP call, EPA was obliged to establish the default SIP submission deadline for Texas of December 1, 2011, in accordance with EPA's proposal. Because Texas has clearly stated that it does not intend, and, in its view, does not have the authority, to adopt a SIP revision to respond to the SIP Call, including to apply PSD to GHG-emitting sources, EPA expects to promulgate a FIP to continue to apply PSD to these sources in December, 2011. But, again, because Texas did not identify an earlier deadline for its SIP submittal, the earliest that EPA could promulgate such a FIP would be December 2, 2011. Under this approach, due to the position Texas has taken, absent further action, sources in Texas could not expect to have a permitting authority with authority to issue preconstruction permits for their GHG emissions until that December 2, 2011, date. As a result, absent further action, sources in Texas would face obstacles in constructing or modifying before that date.

Texas's 30-day letter indicates that Texas was well aware of the consequences of its decision not to identify a specific deadline for its SIP submission, but had several reasons for making that decision. These included its view, again, that PSD applies only to NAAQS pollutants, and also that EPA was required to employ a different process for requiring a SIP revision, one that would have provided the state with 3 years to adopt a SIP revision. Texas 30-day letter at 4–5. In addition, Texas asserted that there is no reason to allow EPA to promulgate an early FIP for the benefit of Texas's sources because, in Texas's view, for practical reasons, EPA could not issue those permits for the "foreseeable future" anyway. Specifically, Texas explained that EPA had not issued guidance for determining BACT, the key element of a PSD permit for a GHG source. Texas added that even after EPA issued that guidance, BACT will, in Texas's view, remain uncertain and contentious, and the guidance will be of limited usefulness until the control technology is proven. *Id.* at 5. Texas added that "[i]ndustry should be particularly concerned about EPA's lack of resources and experience to issue these permits.* * * " *Id.* at 6. Texas concluded, "The result of all this is that, even under a FIP, it is unlikely that construction of new major GHG sources or major modifications will commence in the foreseeable future." *Id.* at 6.

In order to reduce uncertainty for sources and permitting authorities, EPA has issued guidance for use in determining BACT, provided training for permitting authorities and sources, and is continuing to maintain and update resources for use in making these determinations. These resources include question and answer documents and white papers on proven and emerging technologies for reducing greenhouse gas emissions in different industries as well as continued close interaction between sources, permitting authorities, and EPA.

It should be noted that Texas stated in filings before the DC Circuit in which it challenged the Tailoring Rule that it believed 167 projects in Texas would be affected by the lack of a permitting authority during 2011.[68]

IV. Final Action and Response to Comments

In this action, EPA is taking the following actions to ensure that there is a mechanism for large, GHG-emitting sources in Texas to obtain PSD permits under a program that complies with the CAA. First, EPA is determining that the Administrator's action approving the Texas SIP PSD program was in error under CAA section 110(k)(6).

Second, EPA, in the same manner as its past action to approve the Texas SIP PSD program, is revising such action as appropriate without requiring any further submission from Texas. *Id.* The appropriate revision is to convert the previous approval to a partial approval and partial disapproval. The partial approval applies to the extent that Texas's PSD program actually covers pollutants that are required to be included in PSD. The partial disapproval applies to the extent that Texas failed to address or to include assurances of adequate legal authority (required under CAA section 110(a)(2)(E)(i)) for the application of PSD to each newly regulated pollutant, including non-NAAQS pollutants, under the CAA. Note that as an alternative basis to CAA section 110(k)(6) for taking these first two steps, EPA relies on its inherent administrative authority to reconsider its previous action.

Third, in this rulemaking, EPA is promulgating a FIP to apply appropriate measures to assure that EPA's PSD regulatory requirements will apply to non-NAAQS pollutants that are newly subject to regulation under the CAA that the Texas PSD program does not already cover. At present, the only such pollutant is GHGs. Therefore, EPA's FIP will at present apply the EPA regulatory PSD program for the GHG portion of PSD permits for GHG-emitting sources in Texas, and EPA commits to take whatever steps are appropriate if, in the future, Texas fails to apply PSD to another newly regulated non-NAAQS pollutant. In light of the immediate need of Texas's GHG-emitting sources for a permitting authority to process their permit applications for GHGs, this rule will be effective on May 1, 2011.

[64] Texas's Motion to Stay Three GHG Actions, at 27.

[65] *Id.* at 5.

[66] "Texas Commission on Environmental Quality Comments on Actions to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions, Finding of Substantial Inadequacy and SIP Call, Docket ID No. EPA–HQ–OAR–2010–0107, FRL–9190–7 Federal Implementation Plan (FIP), Docket ID No EPA–HQ–OAR–2010–0107, FRL–9190–8 (October 4, 2010) (Texas 30-day letter).

[67] Final SIP Call, 75 FR at 77,706/2–3 and n. 18.

[68] Texas's Motion to Stay the Tailoring Rule, pp. 2, 16.

A. Response to General Comments on the Operation of the PSD Program

1. Comments on the Self-Executing Nature of the PSD Program

Several commenters disagreed with EPA's position regarding section 165(a) of the CAA and argue that EPA's decision to regulate GHGs had no self-executing effect on the permitting requirements applicable to sources in Texas. These commenters state that the only CAA requirements that are self-executing are found in CAA section 168, a section of the statute that incorporated PSD changes made in the 1977 amendments to the Act. Instead, according to these commenters, GHG-emitting sources became subject to PSD requirements through EPA's revisions to the PSD regulations in 40 CFR 51.166, and those regulations provide states 3 years to revise their SIPS to incorporate changes in the PSD program. Accordingly, one commenter asserted that rather than imposing a "construction permitting moratorium" upon EPA's adoption of a new minimum PSD requirement, the PSD rules provide states a reasonable period of time for incorporating a new minimum PSD requirement, with prospective effect, into SIPs, during which time the EPA-approved SIP continues in force and the state may continue to issue permits under that SIP without addressing the new minimum requirement promulgated by EPA.

2. EPA Response

EPA indicated in the proposal for this rulemaking, 75 FR at 82,388/2, that in earlier rulemakings, EPA took comment on and resolved the issue of whether the CAA PSD requirements apply by their terms, so that EPA was not soliciting comment on that issue in this rulemaking. In those earlier rulemakings, EPA concluded that the CAA PSD requirements do apply by their terms, so that sources in a state are subject to PSD for their emissions of pollutants newly subject to regulation even if the state has an approved SIP that does not apply PSD to those pollutants. *See* 75 FR 31,514 (June 3, 2010) and 75 FR 77,698 (December 13, 2010). As noted earlier in this preamble, notwithstanding the proposal, EPA did receive comments on this issue in this rulemaking. Because EPA resolved this issue in those earlier rulemakings, and those dissatisfied with that resolution may challenge it in court—and in fact are so doing—and because the present rulemaking is based on those rulemakings, EPA is not obliged to respond to those comments in this rulemaking.

Even so, for the sake of completeness, and without reopening this issue in this rulemaking, EPA does provide the following response. EPA disagrees with these commenters and EPA continues to take the view that the CAA PSD requirements apply by their terms to pollutants newly subject to regulation, regardless of whether a state with an approved SIP applies PSD to such pollutants. As discussed at length in the preamble to the final PSD GHG SIP call (75 FR 77,707–77,709, Dec 13. 2010), the CAA requirements (i) prohibit a "major emitting facility" from constructing or modifying without obtaining a permit that meets the PSD requirements, CAA section 165(a)(1); and (ii) define a "major emitting facility" as a source that emits a specified quantity of "any air pollutant," CAA section 169(1), which EPA has long interpreted as any pollutant subject to regulation. 40 CFR 52.166(b)(49)(iv). In this manner, the CAA requirements for PSD applicability are what we call automatically updating, that is, at the very time EPA regulates a previously unregulated pollutant, any source emitting that pollutant in sufficient quantities becomes a "major emitting facility," and that source cannot construct or modify without receiving a PSD permit. That is, PSD applies to that pollutant at the time it becomes subject to regulation, without further regulatory action by EPA.

EPA regulations have codified this automatically updating aspect of the CAA PSD requirements. *See* 43 FR 26,380, 26,403/3, 26,406 (June 19, 1978) (promulgating 40 CFR 51.21(b)(1)(i)) and 42 FR 57,479, 57,480, 57,483 (November 3, 1977) (proposing 40 CFR 51.21(b)(1)(i)) (applying PSD requirements to a "major stationary source" and defining that term to include sources that emit specified quantities of "any air pollutant regulated under the Clean Air Act"). Most recently, in our 2002 NSR Reform rule, EPA reiterated these requirements, although changing the terminology. 67 FR 80,186 (December 31, 2002). Specifically, EPA required that emissions of "any regulated NSR pollutant" be subject to PSD requirements when emitted in specified quantities by sources and defined that term to include pollutants regulated under certain CAA requirements, as well as "any pollutant that otherwise is subject to regulation under the [CAA]." 40 CFR 52.166(b)(49)(iv). EPA made clear in the preamble to the NSR Reform rule that PSD applicability was automatically updating. 67 FR 80,240.

GHG-emitting sources became subject to PSD due to the operation of these CAA and regulatory provisions, in conjunction with the Light-Duty Vehicle Rule. The latter rule subjected GHGs to regulation for the first time, as of January 2, 2011, so that, by operation of the CAA PSD provisions and the associated regulatory provisions, PSD automatically applied to GHG-emitting stationary sources as of that date. The Tailoring Rule codified in 40 CFR 51.166 an interpretation that, read in conjunction with the Light-Duty Vehicle Rule regulations, had the effect of establishing the January 2, 2011 date by which GHGs became subject to regulation, *see* 40 CFR 51.166(b)(48) along with a phase-in schedule, *see id* at 51.166(b)(48)(iv)–(v). However, contrary to commenters arguments, the Tailoring Rule did not itself require that PSD apply to GHG-emitting sources, and the provisions that the Tailoring Rule incorporated into 40 CFR 51.166(b)(48), as just described, did not impose that requirement.

Accordingly, commenters are incorrect in arguing that the authorization for states to submit PSD SIP revisions within a three-year period, under 40 CFR 51.166(a)(6), means that PSD does not apply to GHG-emitting sources until states submit such a SIP revision. Section 51.166(a)(6) provides, in relevant part: "Any State required to revise its implementation plan *by reason of an amendment to this section* * * * shall adopt and submit such plan revision to the Administrator for approval no later than three years after such amendment is published in the Federal Register"; and "[a]ny [such] revision * * * shall take effect no later than the date of its approval and may operate prospectively. 40 CFR 51.166(a)(6)(i), (iii) (emphasis added). There are several reasons why this provision does not mean that PSD does not apply to GHG-emitting sources until after a state revises its SIP in accordance with the Tailoring Rule. For one thing, because this provision is a regulation, it cannot, no matter how it is interpreted, override the CAA requirements that apply PSD requirements to GHG-emitting sources so that those CAA requirements do not take effect as of January 2, 2011.

For another, this provision does not apply to the requirement that GHG-emitting sources became subject to PSD as of January 2, 2011. GHG-emitting sources became subject to PSD by operation of the CAA and existing regulations, in conjunction with the Light-Duty Vehicle Rule, not because of any amendment to 40 CFR 51.166. The Tailoring Rule did amend section 51.166, but, again, those amendments did not impose PSD applicability on

GHG-emitting sources; rather, they clarified the date of PSD applicability for GHG-emitting sources and provided a timetable for phasing-in PSD applicability. Therefore, no state is required "by reason of an amendment to * * * section [51.166]" to revise its SIP to apply PSD to GHG-emitting sources, and as a result, any three-year delay in section 51.166 does not apply to PSD applicability for GHG-emitting sources.

3. Comments on Stationary Sources' Ability To Rely on Approved State SIP

Several industry commenters stated that in light of their contention that the PSD program is not self-executing, as discussed earlier in this preamble, then it follows that stationary sources do not violate the CAA if they get permits in accordance with the requirements of an approved state SIP, and they may lawfully construct or modify in accordance with the terms of those permits, even though those permits do not cover their GHG emissions. According to these commenters, sources in Texas need only look to the content of Texas's existing SIP in determining the permitting requirements with which they must comply and sources in Texas can obtain permits now, without addressing GHGs, and lawfully construct or modify in accordance with those permits. One commenter states that CAA Section 113(a)(1) "provides a shield to these sources so long as they comply with the applicable SIP." Commenters cited the recent decision of the 7th Circuit, *United States* v. *Cinergy Corporation, 623 F.3d* 455 (7th Cir. 2010) to support the opinion that actions taken in compliance with an approved SIP are valid.

4. EPA Response

Here, too, EPA stated in the proposal for this rulemaking that because EPA addressed this comment in earlier rulemakings on which this rulemaking is based—including the Tailoring Rule and the GHG PSD SIP Call—EPA was not soliciting comment on this issue and was not required to respond to such comments. 75 FR at 82,388/2, *see* 75 FR 31,514 (June 3, 2010) and 75 FR 77,698 (December 13, 2010). Even so, for the sake of completeness, and without re-opening this issue in this rulemaking, EPA provides the following response: EPA disagrees with the comment. As we stated earlier in this preamble, EPA has long interpreted the PSD applicability provisions in the CAA to be self-executing,[69] that is, they apply by their terms so that a source that emits any air pollutant subject to regulation becomes subject to PSD—and, therefore, cannot lawfully construct or modify without obtaining a PSD permit—and these provisions apply by their terms in this manner regardless of whether the state has an approved SIP PSD program. What is more, until an applicable implementation plan is in place—either an approved SIP or a FIP—no permitting authority is authorized to issue a permit to the source.

In the recent *Cinergy* decision, the 7th Circuit confronted a case that, at the district court level, involved both nonattainment NSR and PSD claims, with the appeal involving a substantive nonattainment NSR issue and an evidentiary PSD issue. However, in its opinion, the 7th Circuit described the substantive nonattainment NSR issue as if it applied to both nonattainment NSR and PSD. On that issue, the Court held that sources could continue to abide by permitting requirements in an existing SIP until amended, even if that SIP does not comport with the law. Again, notwithstanding the Court's broader description of the case, that holding applied only to the nonattainment NSR claims because, again, only those claims were before the Court on that issue. *United States* v. *Cinergy Corp.,* 623 F.3d 455 (7th Cir. 2010). In stark contrast to the nonattainment provisions actually at issue in *Cinergy*—which are not self-executing and must therefore be enforced through a SIP—PSD is self-executing; it is the statute (CAA section 165), not just the SIP, that prohibits a source from constructing a project without a permit issued in accordance with the Clean Air Act.

B. Determination That EPA's Previous Approval of Texas's PSD Program was in Error

In this action, EPA is determining that EPA's previous approval of Texas's PSD program was in error under CAA section 110(k)(6). In applying CAA section 110(k)(6), EPA must first "determine[] that the Administrator's action approving * * * [the Texas PSD program] was in error * * *." EPA has determined that the Texas PSD program had flaws at the time Texas submitted it and EPA approved it, so that EPA's approval was in error.

1. Gaps in Texas's PSD Program Concerning Application of PSD to Pollutants Newly Subject to Regulation and Concerning Assurances of Legal Adequacy

Texas's PSD program, although approved by EPA, contained important gaps concerning the application of PSD to pollutants newly subject to regulation, including non-NAAQS pollutants, and Texas's legal authority for doing so.

a. Gaps in Texas's PSD Program at the Time of EPA Approval

The application of the PSD program to pollutants newly subject to regulation, including non-NAAQS pollutants, is a key component of the program. As noted earlier in this preamble, it is EPA's long-standing position that PSD applies to all such pollutants, and most of the states' PSD programs do apply to such pollutants automatically, as soon as those pollutants become subject to regulation.

In particular, as noted previously, EPA made clear to Texas during 1980 and again during 1983 that PSD applies to non-NAAQS pollutants. Because Texas's PSD program, unlike that of most states, did not automatically apply to such pollutants, it was important that during the time when Texas submitted SIP revisions and EPA acted on them, 1985–1992, that Texas address the application of PSD to pollutants newly subject to regulation, including non-NAAQS pollutants.

It is clear from the record that both Texas and EPA were well aware that the Texas PSD rules' IBR of EPA PSD regulatory requirements did not automatically update. Indeed, when EPA promulgated the NAAQS for PM_{10}, a previously unregulated pollutant, and thereby subjected that pollutant to PSD for the first time, Texas revised its PSD rules to update the IBR and thereby assure that the state PSD program applied to PM_{10}.

Had Texas recognized that following approval of its PSD program, EPA would in all likelihood continue to subject previously unregulated pollutants to regulation, and therefore to PSD for the first time, Texas could have addressed how it would handle that situation. For example, Texas could have provided assurances that the state would apply PSD to such pollutants, and could have included those assurances in the form of a SIP revision or as a separate letter. Texas could also have provided information as to the method and timing for applying PSD to such pollutants. The most likely method would be through a separate SIP revision, which would apply PSD specifically with respect to that pollutant. By comparison, as noted earlier in this preamble, Texas committed to submit a SIP revision if a SIP inadequacy led to an increments violation. Alternatively, another method would be to adopt the approach of most other states and adopt a SIP revision to update the program to apply

[69] EPA likewise did not reopen this issue in this rulemaking.

automatically to any pollutant newly subject to regulation.

In addition, depending on how it addressed the need to update its PSD program to apply to pollutants newly subject to regulation, Texas could have addressed the timing of that action. The timing would most likely relate to the time necessary to adopt and submit a SIP revision. This timing issue is important because the sources emitting pollutants are subject to PSD under the CAA as soon as the pollutants become subject to regulation, but if the SIP PSD program does not automatically apply to the sources, then the state does not have authority to issue permits to the sources as soon as the sources become required to obtain the permits.

However, there is no indication in the record of Texas's SIP submissions that Texas specifically addressed this issue of the treatment of pollutants that would newly become subject to PSD after Texas's PSD SIP was approved, or that Texas provided any such information as to method or timing. Nor is there any indication in the record that during this 1985–92 period, EPA identified this issue and sought such information from Texas. As noted elsewhere in this preamble, although both Texas and EPA were well aware that the Texas SIP did not automatically update to include pollutants newly subject to regulation, both failed to look down the road and anticipate that EPA would in all likelihood newly subject more pollutants to regulation. As noted elsewhere in this rulemaking, because the SIP did not address PSD applicability to pollutants newly subject to regulation, the SIP did not meet CAA requirements.

Texas did provide the 1987 Texas PSD Commitments Statement, in which Texas agreed to "implement and enforce the federal requirements for [PSD] as specified in [EPA regulations] by requiring all new major stationary sources and major modifications to obtain air quality permits as provided in TACB regulation VI, Control of Air Pollution by Permits for New Construction and Modification." However, this 1987 statement does not specifically address the application of PSD to pollutants newly subject to regulation. As just quoted, it commits TACB to require "all new major stationary sources and major modifications to obtain air quality permits as provided in TACB regulation VI* * *", but that regulation VI does not automatically update, and therefore does not apply to pollutants newly subject to regulation, and does not further address such pollutants.

Texas also provided the 1989 Texas PSD Commitments Letter, in which Texas generally committed "to implement EPA requirements relative to [PSD]." However, as quoted previously, this phrasing is general and therefore cannot be read to commit to apply PSD to pollutants newly subject to regulation, including non-NAAQS pollutants. Nor did the letter identify the method and timing for doing so. Accordingly, we do not read this letter as a commitment by Texas to apply PSD to each newly regulated pollutant, including non-NAAQS pollutants, whether through a SIP revision or some other method, or on any particular timetable. Moreover, although EPA approved the Texas PSD program in reliance on the letter, EPA indicated, in the final approval preamble, that the scope and binding impact of the letter were limited and that Texas retained discretion in implementing the PSD program.

In approving Texas's rule, EPA did not recognize that Texas's SIP did not address pollutants newly subject to regulation. In its 1992 approval rulemaking, EPA noted that "any fundamental changes in the administration of PSD would have to be accomplished through amendments to the regulations in 40 CFR §§ 52.21 and 51.166, and subsequent SIP revisions," and added:

> The EPA did not intend to suggest that Texas is required to follow EPA's interpretations and guidance issued under the Act in the sense that those pronouncements have independent status as enforceable provisions of the Texas PSD SIP, such that mere failure to follow such pronouncements, standing alone, would constitute a violation of the Act* * *.
>
> * * *PSD–SIP approved states remain free to follow their own course, provided that state action is consistent with the letter and spirit of the SIP, when read in conjunction with the applicable statutory and regulatory provisions.

57 FR 28,094–28,095 (June 24, 1992). EPA made these statements in response to comments that EPA should not require that (i) the Texas PSD program must automatically incorporate any revision to the PSD program that EPA might adopt, such as a revision to how the central technological requirement—best available control technology (BACT)—is determined; or (ii) that the Texas PSD program incorporate any new interpretation or guidance that EPA may issue with respect to PSD. Rather, according to these statements, EPA would revise the PSD program through regulatory changes and Texas would adopt them through SIP revisions, and Texas retained discretion as to whether to follow revisions to EPA interpretation or guidance. However, these statements do not concern EPA's newly subjecting pollutants to regulation, and thereby triggering PSD requirements for those pollutants, because that action does not constitute a "fundamental change[] in the administration of PSD * * * accomplished through amendments to the regulations in 40 CFR 52.21 and 51.166. * * *." Nor is that action any type of new interpretation or guidance for the PSD program itself. Rather, that action is a regulatory action outside the PSD program that has the effect of newly subjecting a pollutant to regulation; does not alter the underlying requirements of the PSD program; and instead, simply makes an incremental addition (however large the increment may be) to the types of pollutants subject to the existing PSD program.

In addition, the rulemaking record for Texas's PSD program does not indicate that Texas provided, as required under CAA section 110(a)(2)(E)(i), assurances that Texas had adequate legal authority to carry out the PSD program, including, insofar as relevant for this rulemaking, applying PSD to pollutants newly subject to regulation, among them non-NAAQS pollutants. Some 15 years previously, in Texas's 1972 submission of its original SIP, the state had provided assurances of legal authority to carry out the SIP, and EPA had approved those assurances. But the record for the PSD SIP submission does not indicate whether, or how, that legal authority applied to PSD applicability to such pollutants. In submitting the PSD SIP program, the TACB provided general references to legal authority, but the TACB did not indicate whether PSD applies to such pollutants either. Nor did the 1989 Texas PSD Commitments Letter specifically identify legal authority to apply PSD to such pollutants. Nor did the assurance of legal authority to apply the Texas PSD program to large municipal waste combustors, as required by the 1990 CAA Amendments, assurances which Texas apparently made in a 1992 conference call with EPA Region 6 officials, and which were referenced in a letter from the Region to TACB, address legal authority to apply PSD to pollutants that newly become subject to PSD as a result of EPA regulation.[70]

Therefore, the Texas PSD SIP submittal contained gaps: it did not address the application of PSD to pollutants newly subject to regulation,

[70] Letter to Steve Spaw, Executive Director, Texas Air Control Board, from A. Stanley Meiburg, Director, Air Pesticides, and Toxics Division, Region 6, USEPA, Request for Commitments for Prevention of Significant Deterioration (PSD) Program. March 30, 1992.

including non-NAAQS pollutants; and it did not include any information concerning Texas's methods or timing for doing so. Nor did the program provide assurances that the state had adequate legal authority to apply PSD to such pollutants.

b. Recent Statements by Texas That Confirm the Gaps in Texas's PSD Program

Texas has recently made several statements that confirm that at the time EPA approved the state's PSD program, that program had the gaps described previously.

(1). Gap Concerning Application of PSD to All Pollutants Newly Subject to Regulation, Including Non-NAAQS Pollutants

First, Texas has made clear its view that it is not required to apply PSD to non-NAAQS pollutants that are newly subject to regulation, including GHGs. Specifically, in its August 2, 2010, 60-day letter, Texas stated that it interprets the CAA PSD applicability provisions to apply only to NAAQS pollutants, and therefore to not include non-NAAQS pollutants, among them GHGs. Texas asserted that "the only sensible interpretation of the CAA" is that PSD applies to only NAAQS pollutants. Texas 60-day letter, p. 4. Indeed, in its court challenge to EPA's four GHG rules, Texas stated that its interpretation is mandated under *Chevron* step 1. There, Texas stated that EPA's "interpretation of the CAA [that PSD applies to non-NAAQS pollutants] is not entitled to deference because the text of the statute is unambiguous. *Chevron, U.S.A.* v. *NRDC,* 467 U.S. 837, 842 (1984) (the Agency must give effect to the unambiguously expressed intent of Congress)."[71] As noted previously, EPA responded at length to this argument in the Tailoring Rule and in EPA's response in the court challenge to EPA's GHG rules. EPA asserts that the CAA mandates that PSD apply to non-NAAQS pollutants, including GHGs, once they become subject to regulation; and EPA is not reopening this issue on the merits in this rulemaking.

For present purposes, however, what is important is that Texas takes the position that under a *Chevron* step 1 reading of the CAA, the PSD program does not apply to non-NAAQS pollutants. This position has important ramifications for how Texas must interpret EPA's PSD applicability regulations and for the meaning of Texas's SIP PSD applicability provisions. As noted previously, under EPA's current regulations, PSD applies to "any pollutant that otherwise is subject to regulation under the [CAA]." 40 CFR 52.166(b)(49)(iv). These regulations have read this way since they were revised in EPA's 2002 NSR Reform Rule, and the regulations that predated them were phrased in much the same way: They applied PSD to "any air pollutant regulated under the Clean Air Act."[72] These regulations are based on the CAA PSD applicability requirements, and as a result, cannot apply PSD to any pollutants that the CAA does not itself subject to PSD. Accordingly, although Texas did not specifically address the meaning of EPA's regulations in its 60-day letter or court filings, it must be that in Texas's view, these EPA regulations may lawfully apply PSD to only NAAQS pollutants.

Texas's EPA-approved SIP PSD applicability provisions apply PSD to "any air pollutant subject to regulation under the [Clean Air] Act." Although these Texas provisions mirror EPA's provisions—which, again, Texas appears to interpret as limited to applying PSD only to NAAQS pollutants—Texas is authorized to apply its provisions more expansively than the EPA regulations. This is because a state must comply with CAA requirements as a minimum, but retains authority to impose additional or more stringent requirements. CAA section 116. Therefore, it is in accordance with Texas's view that the CAA and EPA regulatory requirements for PSD applicability be limited to NAAQS pollutants, that Texas would nevertheless consider itself authorized—but not required—to apply its PSD program to particular non-NAAQS pollutants. This position would allow Texas, in effect, to choose which non-NAAQS pollutants to subject to PSD, and which not.

In fact, Texas has clearly stated that it does not consider itself required to apply its PSD program to one non-NAAQS pollutant in particular: GHGs. In its 60-day letter, Texas stated: "Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emissions." Texas 60-day letter, at 1. Texas's letter went on to provide numerous reasons for why it did not believe EPA lawfully subjected GHGs to PSD; why, in any event, EPA was required to allow states more time before PSD would apply to GHG-emitting sources; and, as noted previously, why, in any event, Texas's SIP does not automatically update to apply PSD to newly regulated pollutants. *Id.* at 5.

With this statement—that "Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emissions"– Texas has made clear that it does not view itself as obligated to apply PSD to GHGs under the CAA. Thus, this statement is fully consistent with, and highlights, Texas's view that it is not obligated to apply PSD to each newly regulated non-NAAQS, including, of course, GHGs.[73]

These statements from Texas are significant because they confirm that Texas's PSD program, as approved by EPA, had an important gap: Texas did not address the applicability of its PSD program to pollutants newly subject to regulation, including non-NAAQS pollutants, such as by providing assurances that Texas would take action to apply PSD to such pollutants or describing the methods (such as SIP revision) and timing for doing so. Moreover, Texas's recent statements are consistent with the view that Texas's silence on the subject at the time of the PSD SIP action means that Texas did not, at that time, view itself as obligated to apply PSD to each pollutant.[74]

In particular, Texas's recent statement that the CAA PSD provisions are clear by their terms, as a matter of *Chevron* step 1, that they do not apply to non-NAAQS pollutants, suggests that Texas would have viewed the CAA PSD provisions the same way at the time Texas submitted its PSD program. As noted earlier, the Texas Attorney General and the Chairman of the Texas Commission on Environmental Quality, who are the joint signatories of Texas's

[71] *See* Texas "Motion to Stay Three GHG Actions" 27, *Coalition for Responsible Regulation* v. *EPA,* No. 09–1322 (and consolidated cases).

[72] *See* 43 FR 26,380, 26,403/3, 26,406 (June 19, 1978) (promulgating 40 CFR 51.21(b)(1)(i)) and 42 FR 57,479, 57,480, 57,483 (November 3, 1977) (proposing 40 CFR 51.21(b)(1)(i)) (applying PSD requirements to a "major stationary source" and defining that term to include sources that emit specified quantities of "any air pollutant regulated under the Clean Air Act").

[73] It should be noted that Texas has applied its PSD program to non-NAAQS pollutants because Texas has IBR'd EPA's PSD regulatory requirements and those requirements apply to non-NAAQS pollutants. However, as noted earlier, Texas has made clear that it has no intention of submitting a SIP revision to apply PSD to GHGs. All this is consistent with the view described previously that Texas interprets its PSD applicability provision to authorize it to apply PSD to non-NAAQS pollutants at Texas's discretion, but that Texas does not view itself as required to apply PSD to non-NAAQS pollutants.

[74] By the same token, we see nothing in these recent statements to indicate that Texas views itself as rescinding any pre-existing understanding that it would apply PSD to each such pollutant.

60-day letter, are of the view that "[t]he only sensible interpretation of the Clean Act" is that PSD applies only to NAAQS pollutants, and not non-NAAQS pollutants. Texas 60-day letter, p. 4. Texas has confirmed its reading—and clarified that it is based on a *Chevron* step 1 interpretation—in filings before the DC Circuit. The fact that these high state officials view this reading of the CAA as, again, "[t]he only sensible reading," indicates that in the past, Texas is less likely to have adopted the opposite reading, which would be that the CAA mandates that PSD applies to non-NAAQS pollutants. Statutory provisions whose meaning is clear on their face, at least to a particular reader, would not be expected to have had a different or uncertain meaning to that same reader at an earlier point in time. By the same token, Texas's insistence, noted previously, that it does not have the intention or authority to apply PSD to one non-NAAQS in particular, GHGs, suggests that Texas could well have expressed the same view, had the issue arisen, at the time EPA approved Texas's PSD program.

We further note that Texas itself appears to take the position that an agency's present interpretation of its regulations should be presumed to have been the agency's past interpretation of those regulations, so that Texas's current interpretation that its PSD program does not apply to at least one non-NAAQS, GHGs, should be presumed to be Texas's interpretation of its PSD program in the past, including at the time Texas submitted its program as a SIP revision to EPA and EPA approved it. Specifically, in its 60-day letter, Texas noted that in the Tailoring Rule, EPA asked states to consider whether their SIPs that include the term "subject to regulation" can be interpreted to incorporate the Tailoring Rule thresholds on grounds that the state interprets that term as being sufficiently open-ended. 75 FR 51,581/2. Texas stated,

> In the Tailoring Rule you have asked TCEQ to report to you by August 2, 2010, whether it would "interpret" the undefined phrase "subject to regulation" in TCEQ Rule 116.12 consistent with the newly promulgated definition in EPA Rule 51.166, in all its specifics and particulars. That is, you have effectively requested that Texas agree to regulate greenhouse gases in the exact manner and method proscribed by the EPA.
>
> In other words, you have asked Texas to agree that when it promulgated its air quality permitting program rules for pollutants "subject to regulation" in 1993, that Texas really meant to define the term "subject to regulation" as set forth in the dozens of paragraphs and subparagraphs of EPA Rule 51.166, first promulgated in 2010.

Texas 60-day letter, p. 3. In these statements, Texas appears to reveal Texas's own understanding of the circumstances under which Texas can be said to give the term "subject to regulation" a particular interpretation, and that is if Texas interpreted that term that same way at the time that Texas first promulgated the term in 1993. By that same logic, Texas's position, as stated in its 60-day letter, that it "has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emissions" would have applied to "its laws"—including the SIP PSD requirements—at the time that Texas adopted those rules. Therefore, it seems reasonable to conclude that just as Texas does not currently view its PSD program as applying to all newly regulated non-NAAQS pollutants, Texas did not, at the time it submitted and EPA approved its PSD program, view its PSD program as applying to all newly regulated non-NAAQS pollutants.

By the same token, Texas's recent statements also confirm that the assurances Texas provided in its 1989 Texas PSD Commitments Letter cannot be interpreted as having committed Texas to apply PSD to all pollutants newly subject to regulation, including non-NAAQS pollutants. The assurances, by their terms, were phrased generally and did not address the application of PSD to such pollutants; and EPA, in the preamble for the final approval of Texas's PSD SIP, indicated that the scope and binding impact of the assurances were limited.[75] Texas's recent direct statements that PSD does not cover non-NAAQS pollutants indicates that the generally phrased assurances in the letter, whatever they meant, did not mean that Texas would apply PSD to each newly regulated pollutant, including non-NAAQS pollutants.

As a result, it stands to reason that at the time Texas submitted its PSD program, Texas did not view the CAA as mandating the application of PSD to at least certain pollutants newly subject to regulation, non-NAAQS pollutants. But at a minimum, it can be said that Texas's PSD program contained a gap: EPA required that PSD apply to each pollutant newly subject to regulation, including non-NAAQS pollutants; Texas's program applied only to pollutants already subject to regulation at the time Texas adopted its program, not to subsequently regulated pollutants, including non-NAAQS; and Texas did not address its program's applicability to such pollutants, including how or when its program would so apply. This gap is significant because it facilitates Texas's current position, with which EPA disagrees, that PSD does not apply to non-NAAQS pollutants.

(2). Gap Concerning Assurances of Adequate Legal Authority

Texas's statement in its 60-day letter that it "has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to" apply PSD to GHG-emitting sources also highlights that Texas's PSD program had a gap in its failure to provide "necessary assurances" of adequate legal authority to carry out the PSD program.

It is possible that at the time that Texas submitted its PSD program, Texas considered itself under the same limits in its legal authority. At a minimum, in light of these recent statements that it does not have authority to apply PSD to at least one newly regulated, non-NAAQS, GHGs, it is apparent that at the time that Texas submitted its PSD program, Texas did not provide the "necessary assurances" that it "will have adequate * * * authority under State * * * law to carry out such implementation plan (*and is not prohibited by any provision of * * * State law from carrying out such implementation plan or portion thereof*)." CAA section 110(a)(2)(E)(i) (emphasis added). "[C]arrying out such implementation plan" includes, in the case of the Texas PSD SIP program, fully implementing the SIP in a manner consistent with the CAA, and that includes the applicability of PSD to each pollutant newly subject to regulation, including non-NAAQS pollutants.

2. Flaws in PSD Program

The Texas PSD program's gaps—which are, again, that Texas did not address the applicability of PSD to all pollutants newly subject to regulation, including non-NAAQS pollutants; and Texas did not provide assurances of adequate legal authority to do so—mean that the state's PSD program has flaws. These flaws were present at the time that EPA approved Texas's PSD program. Moreover, these flaws are significant. They have figured prominently into the present situation in which EPA takes the position that Texas is obligated under the CAA and EPA regulations to apply its PSD program to a newly regulated pollutant—GHGs—but Texas takes the opposite position.

[75] 57 FR at 28,095/2, 28,096/1.

a. Comments on the Flaws in PSD Program

Several commenters, including both the Texas Commission on Environmental Quality (TCEQ) and the Texas Attorney General, object to EPA's determination that the Texas SIP is flawed. TCEQ comments that nothing in " * * * the CAA or federal PSD rules require that state PSD programs apply to pollutants *newly* subject to regulation." The Texas Attorney General states that 40 CFR 51.166 does not require automatic updating of SIPs to incorporate pollutants that subsequently become subject to regulation.

b. Response to Comments

EPA disagrees with these comments. Contrary to the TCEQ's comments, as discussed elsewhere in this rulemaking preamble, the PSD requirements in the CAA and regulations do require that PSD SIPs address the applicability of PSD to pollutants newly subject to regulation. As discussed previously, the CAA PSD provisions and EPA's PSD regulations are clear that PSD applies to each newly regulated pollutant, whether a NAAQS pollutant or a non-NAAQS pollutant. Moreover, the CAA is clear that SIPs must include provisions to assure that CAA requirements are met. *See* CAA section 110(a)(2)(J) (each SIP must "meet the applicable requirements of * * * part C * * * (relating to prevention of significant deterioration of air quality * * *)"; CAA section 161 ("each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region [to which PSD applies]"). Accordingly, each PSD SIP must include provisions that address how PSD will apply to pollutants newly subject to regulation. As noted earlier in this preamble, there are several different ways for SIP to address PSD applicability to such pollutants, but SIPs must adopt one of those ways.

With respect to the Texas Attorney General, the comment that EPA's regulations do not require automatic updating of SIPs to incorporate such pollutants misses the point. In the Interim Final Rule and the proposal, EPA did not identify the gap in Texas's SIP PSD provisions as based on the lack of automatic updating to apply PSD to each pollutant newly subject to regulation. Rather, EPA identified the gap as the failure of the State, at the time it submitted and EPA approved the PSD program, to address such pollutants. The State could have specifically acknowledged the issue of the applicability of PSD to newly regulated pollutants and addressed that issue in several different ways. Providing an automatic updating mechanism is one way, which is what most of the other states do. Second, the State could have committed, in either the SIP itself or in a letter accompanying the SIP submittal, that the State would adopt and submit for approval SIP revisions to apply PSD to newly regulated pollutants, and the State could have indicated a schedule for it to do so. Third, it is possible that more general assurances by the State to address the issue could have passed muster. In addition, there may be other ways to address this issue. The record does not indicate that Texas specifically identified the issue or identified any ways that Texas would address the issue. Moreover, as discussed earlier in this preamble, Texas failed to demonstrate that it had adequate legal authority to regulate these pollutants.

3. EPA's Error in Approving Texas's PSD Program

In this rulemaking, EPA is "determin[ing]" that EPA's action fully approving Texas's PSD program was "in error" within the meaning of CAA section 110(k)(6). This section contains EPA's basis for that determination.

a. CAA Section 110(k)(6) Error Correction

Under the familiar *Chevron* two-step framework for interpreting administrative statutes, an agency must, under *Chevron* step 1, determine whether "Congress has directly spoken to the precise question at issue." If so, "the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." However, under *Chevron* step 2, if "the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron U.S.A. Inc.* v. *NRDC,* 467 U.S. 837, 842–43 (1984).

As noted previously, the term "error" in CAA section 110(k)(6) is not defined and, as a result, should be given its ordinary, everyday meaning. The dictionary definition of "error" is "a mistake" or "the state or condition of being wrong in conduct or judgment," *Oxford American College Dictionary* 467 (2d ed. 2007); or "1) an act, assertion, or belief that unintentionally deviates from what is correct, right or true 2) the state of having false knowledge * * * 4) a mistake * * * ." *Webster's II New Riverside University Dictionary* 442 (Houghton Mifflin Co. 1988). These definitions are broad, and include all unintentional, incorrect or wrong actions or mistakes.

Moreover, CAA section 110(k)(6) authorizes EPA to "determine[]" that its action was in error, and does not direct or constrain that determination in any manner. That is, the provision does not identify any factors that EPA must, or may not, consider in making the determination. This further indicates that this provision confers broad discretion upon EPA.

b. Gaps in Texas PSD Program

As previously discussed, the Texas SIP PSD program was flawed because it contained gaps: Texas did not address the applicability of PSD to all pollutants newly subject to regulation, including non-NAAQS pollutants; and Texas did not provide assurances of adequate legal authority to do so. EPA did not address these gaps in its action on Texas SIP PSD program and instead, EPA fully approved the PSD program.

Therefore, EPA's action in fully approving Texas's SIP PSD program in the face of these flaws was "in error" under CAA section 110(k)(6), in accordance with *Chevron* step 1. "[E]rror" should be defined broadly to include any mistake, and approval of a flawed SIP is a mistake. Moreover, this flaw is significant because it affects the applicability of the PSD program to a pollutant and, as a result, to an entire set of sources.

Even if the term "error" is not considered unambiguously to encompass, under *Chevron* step 1, the mistake that EPA made in approving the Texas PSD SIP, and instead is considered ambiguous on this question, then under *Chevron* step 2 EPA has sufficient discretion to determine that its approval action meets the definition of "error." That is, under CAA section 110(k)(6), the breadth of the term "error" and of the authorization for EPA to "determine[]" when it made an error, mean that EPA has sufficient discretion to identify the gaps in Texas's PSD program as flawed and to identify EPA's action in approving Texas's PSD SIP in the face of those flaws as an error.

c. Comments and Responses on the Use of CAA § 110(k)(6)

Comment: One commenter supported EPA's use of CAA section § 110(k)(6) to correct its previous approval of the Texas PSD program. This commenter asserted that the use of this mechanism is appropriate in this case, where serious flaws in Texas's SIP have become glaringly apparent, and, if left uncorrected, would cause immediate harm. EPA agrees with this commenter's assessment that this action is necessary

to correct this error in the Texas program.

Several other commenters, however, challenged the use of section 110(k)(6) in this instance. Commenters stated that section 110(k)(6) of the Act has been understood and was intended by Congress to be used as authority to make corrections of a "technical" or ministerial nature, such as "typographical errors." This section was not, according to commenters intended as a means to make unilateral, substantive changes in SIPs or major policy changes. These commenters view EPA's action here as directly contrary to the Act's cooperative federalism scheme.

Response: For the reasons noted earlier in this preamble, the natural meaning of the term "error" in the error correction provision is broad and as a result, the provision applies by its terms to any mistake. The explicit legislative history of the provision—what Congress said in the various reports and statements accompanying its passages—is sparse and does not illuminate its meaning. Because there is nothing in the statute or legislative history that suggests that Congress intended a meaning narrower than the natural meaning of the term, the natural meaning of the term controls. Commenters' assertions that this provision is limited to "technical" errors or "typographical errors" are conclusory and wholly unsupported.

For the reasons discussed elsewhere in this preamble, Texas's SIP was flawed and as a result, EPA's action in approving that flawed SIP was in error.

As a result, this rulemaking action is simply the correction of an error, as authorized under CAA § 110(k)(6). Contrary to some comments, this action is not based on a policy shift in EPA's administration of the PSD program. Nor does this action upset federalism concerns or constitute a claim of authority to unilaterally revise any action on any SIP submittal. EPA does not read section 110(k)(6) to provide unlimited discretion to act on SIP submissions, only to provide authority to make error corrections.

Comment: Commenters went on to assert that other historical uses of CAA section 110(k)(6) were uncontroversial edits to remove Federal enforceability of regulatory requirements that had been included or retained inadvertently and were made at the state's request. In contrast, according to these commenters, this rule imposes new requirements contrary to the state's wishes.

Response: EPA's previous use of the error correction provision makes clear that EPA has corrected errors many years after they occurred, and that EPA has corrected errors that are broader than merely technical or typographical errors. In addition, EPA's most recent use of the error correction provision was in the PSD Narrowing Rule, in which EPA again corrected errors in SIP approvals that occurred many years ago, and which relied on as broad an application of section 110(k)(6) as in the present rulemaking. Moreover, in the GHG PSD Narrowing Rule, EPA relied on the error correction mechanism without having first been asked to do so by some of the affected states, and, in fact, in the face of negative comments by some of the affected states. Even so, the PSD Narrowing Rule was not challenged in Court by any party.

In any event, for the reasons noted earlier in this preamble, EPA's action in this rulemaking qualifies as an error correction within the meaning of CAA section 110(k)(6). Whether the affected state—or any other party—agrees or disagrees that the SIP that is the subject of the error correction is flawed is not a criteria under CAA section 110(k)(6).

Comment: A commenter raised several concerns about EPA's interpretation of other provisions of CAA section 110(k)(6). For convenience, the relevant provisions state: "Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State."

A commenter focused on the requirement that EPA's action must *be* "*in the same manner*" as the action that EPA is correcting, and argued that this requirement limits EPA to, as a substantive matter, applying the same standard to Texas's SIP today as it did to the SIP when it was approved in 1992 and using the same record; and as a procedural matter, taking the same action, which, in this case, prevents EPA from converting an approval to a disapproval.

Response: EPA disagrees with this reading of the phrase "in the same manner." This phrase is not defined in section 110(k)(6). As a matter of *Chevron* step 1, or, in the alternative, *Chevron* step 2, the phrase refers to Administrative Procedure Act or, if applicable, CAA section 307(d) procedures. Thus, if the original action were a notice-and-comment rulemaking under the Administrative Procedure Act, then the error correction must follow the same procedure.[76] We see no basis for reading the phrase "in the same manner" more narrowly to limit an error correction of an approval to be only another approval, and not a disapproval. That strained reading is inconsistent with the purpose of the section, which is to allow for the correction of errors, a process that may well require reversing the initial action if found to be in error. Although EPA sees no basis for the substantive requirements that the commenter reads into the phrase, the record for the present action—which includes the relevant documents in the record for the 1992 approval—makes clear that EPA's 1992 action was in error, and nothing in CAA section 110(k)(6) limits the record for an error correction more narrowly.

Comment: A commenter argued that *EPA ignored the phrase "revise such action*." The commenter believes that section 110(k)(6) affords EPA no discretion to "revise" an approval action into a disapproval but instead limits the Agency to revising the contents of "such action" that it previously undertook. The commenter asserted that EPA does not "revise" an action by substituting another action for it; rather, EPA must take the same type of action, a reading reinforced by the requirement that the Agency act "in the same manner as the [original action]." The EPA may not "reconsider" or "replace" a SIP-related action. The commenter indicated that in this way, section 110(k)(6) is not a mechanism for revisiting a decision but for correcting mistakes in an action—using this section to reverse an approval offends both the participation requirements and the principles of the Act's SIP provisions.

Response: Section 110(k)(6) authorizes EPA to "revise" the action it determines to be in error "as appropriate." The term "revise" is not defined in section 110(k)(6). Its natural meaning is to "change" or "modify." *Webster's II New Riverside University Dictionary* (1988) at 1005. As a matter of *Chevron* step 1, or, in the alternative, *Chevron* step 2, the term is broad enough to encompass changing or modifying an approval to a disapproval. This is particularly so in light of the authorization under section 110(k)(6) to revise the action in error "as appropriate." Used in this context, the term "appropriate" indicates EPA is under a constraint of reasonableness in

[76] By comparison, if the original action were not a notice-and-comment action (such as a classification under CAA section 172(a)(1)(B)), then the correction must follow whatever process applied to the original action.

revising the action, but is not under the other constraints that commenter suggests. Thus, if EPA has a basis for revising an approval to a disapproval, then EPA may do so on grounds that this type of revision is "appropriate."

Comment: A commenter stated that *EPA ignored the phrase "as appropriate*." The commenter stated that this language serves to "keep EPA within bounds" and explained that EPA may revise an earlier action only "as appropriate" to correct its error in undertaking the earlier action, and not to effect a change in policy. The commenter added the following reasons (which are discussed further in other sections of this document) that EPA's actions are not appropriate: (i) It is not "appropriate" to single out Texas's SIP submission for disapproval based on a purported deficiency that is present in other states' SIPs. (ii) It is not "appropriate" to exercise section 110(k)(6)'s error correction provisions where EPA is simultaneously exercising its powers under section 110(k)(5), which affords states procedural protections EPA has refused to afford under section 110(k)(6).

Response: The term "as appropriate" should be viewed as highlighting the significant discretion that EPA has under the error correction provision to "revise" the action it found to be in error, as discussed earlier in this preamble. EPA responds elsewhere in this rulemaking preamble to the specific reasons the commenter gives as to why the commenter believes EPA's action was not appropriate.[77] It should be noted here that the various considerations the commenter cites would suggest the commenter's agreement that the term "appropriate" allows EPA to consider a wide range of factors, that is, to exercise broad discretion.

Comment: One commenter questioned whether EPA had made a mistake because the action taken to approve the SIP was what EPA intended to do and was not done unintentionally.

Response: EPA acted purposefully in fully approving the Texas SIP, but that does not mean that the full approval did not carry any element of an inadvertent error. As noted elsewhere in this rulemaking preamble, EPA and Texas both failed to look down the road and recognize that in all likelihood, EPA would newly subject additional pollutants to regulation, and thereby trigger the application of PSD to those additional pollutants, so that Texas's SIP needed to—but did not—address that situation.

c. Alternative Basis for Error Correction

As explained previously, we view Texas's recent statements that the CAA does not apply to non-NAAQS pollutants and that Texas has neither the authority nor the intention to apply PSD to GHGs as an indication that at the time Texas submitted its PSD program, Texas did not address the applicability of its program to pollutants newly subject to regulation or provide assurances that it had legal authority to apply its program to such pollutants. Absent specific evidence to the contrary, we are not inclined to conclude that at the time EPA approved the Texas PSD program in 1992, Texas in fact had filled those gaps—by, for example, providing assurances that it would apply PSD to each newly regulated non-NAAQS pollutants and had the legal authority to do so—but that more recently, Texas has failed to comply with those assurances. The CAA is based on a partnership between the states and the Federal government, and we think it more consonant with the principles of that partnership to interpret the evidence as indicating that Texas never addressed the gap or provided the requisite assurances.

However, in the alternative, if one were to conclude that during the course of Texas's submittal of, and EPA's action on, the State's PSD program, Texas did in fact, address the applicability of its program to newly regulated pollutants and did in fact provide the requisite assurances, so that no gaps in Texas's PSD program existed at that time, then Texas's recent statements would amount to failing to comply with, or even rescinding, those assurances. Under these circumstances, EPA would still consider its previous approval of Texas's PSD SIP to have been in error. This is because if Texas should be considered to have addressed the issue and to have provided the appropriate assurances, then EPA should be considered to have based its approval on those assurances. For example, EPA stated in approving the Texas PSD program that EPA was relying on the 1989 Texas PSD Commitments Letter. Rescinding or failing to comply with those assurances—if that is what Texas is considered to have done—would eliminate the basis for EPA's approval. *Compare* CAA section 110(k)(4) (authorizing EPA to approve a SIP revision based on a commitment by the state to adopt certain measures by a date certain, but if the state does not do so, then the conditional approval is treated as a disapproval).

C. Error Correction: Conversion of Previous Approval to Partial Approval and Partial Disapproval

Under CAA section 110(k)(6), once EPA determines that its previous action approving a SIP revision was in error, EPA "may ... revise such action as appropriate without requiring any further submission from the State. * * *" Under this provision, EPA may revise its previous full approval of Texas's PSD program as appropriate, without requiring any submission from Texas.

This provision offers EPA a great deal of discretion in revising its previous action. For one thing, the use of the term "may" means that this provision simply authorizes, and does not require, EPA to revise its previous action even after EPA has determined the error, and that, in turn, implies that EPA has discretion in determining how to revise its previous action. Moreover, if EPA does decide to revise its previous action, EPA may do so in any way that is "appropriate." The term "appropriate" offers EPA significant latitude in deciding what type of revision to do.

Here, EPA is revising its previous full approval of Texas's PSD program to be a partial approval and partial disapproval. Specifically, EPA is retaining the approval of Texas's PSD program to the extent of the pollutants that the PSD program already does cover. This amounts to a partial approval. In addition, EPA is disapproving the Texas PSD program to the extent it has not addressed the applicability of its PSD program to each pollutant newly subject to regulation, including non-NAAQS pollutants, and because it has not provided assurances of adequate legal authority to apply its PSD program to such sources.

D. Reconsideration Under CAA Section 301, Other CAA Provisions, and Case Law

As an alternative to the error correction provision of CAA section 110(k)(6), EPA is using its inherent administrative authority to reconsider its prior approval actions as a basis for revising its previous full approval of the Texas PSD program to a partial approval and partial disapproval. This authority

[77] The commenter added that it is not "appropriate" to exercise section 110(k)(6)'s error correction provisions to change a SIP approval into a disapproval where the Agency has made no finding that the purported SIP submission deficiency will directly harm public health or welfare. Commenter appears to suggest that section 110(k)(6) should be read to include the constraint that the provision is available only if EPA finds that error it seeks to correct. EPA sees no basis in the terms, legislative history, or logic of section 110(k)(6), or in EPA's previous error-correction actions, for reading this constraint into section 110(k)(6).

lies in CAA section 301(a), read in conjunction with CAA section 110 and case law holding that an agency has inherent authority to reconsider its prior actions.

As noted earlier, EPA approved the Texas PSD program by notice dated June 24, 1992, 57 FR 28,093, under the authority of CAA section 110(k)(3)–(4). These provisions authorize EPA to approve a SIP submittal "as a whole," "approve [the SIP submittal] in part and disapprove [it] in part," or issue a "conditional approval" of a SIP submittal. EPA issued a full approval under CAA section 110(k)(3).

In its approval action under that provision, EPA retained inherent authority to revise that action. The courts have found that an administrative agency has the inherent authority to reconsider its decisions, unless Congress specifically proscribes the agency's discretion to do so. *See, e.g., Gun South, Inc.* v. *Brady,* 877 F.2d 858, 862 (11th Cir. 1989) (holding that agencies have implied authority to reconsider and rectify errors even though the applicable statute and regulations do not provide expressly for such reconsideration); *Trujillo* v. *General Electric Co.,* 621 F.2d 1084, 1086 (10th Cir. 1980) ("Administrative agencies have an inherent authority to reconsider their own decisions, since the power to decide in the first instance carries with it the power to reconsider").

Section 301(a) of the CAA, read in conjunction with CAA section 110(k)(3) and the case law just described, provides statutory authority for EPA's reconsideration action in this rulemaking. Section 301(a) authorizes EPA "to prescribe such regulations as are necessary to carry out [EPA's] functions" under the CAA. Reconsidering prior rulemakings, when necessary, is part of "[EPA's] functions" under the CAA—in light of EPA's inherent authority as recognized under the case law to do so—and as a result, CAA section 301(a) confers authority upon EPA to undertake this rulemaking.

EPA finds further support for its authority to narrow its approval in APA section 553(e), which requires EPA to give interested persons "the right to petition for the issuance, amendment, or repeal of a rule;" and CAA section 307(b)(1), which expressly contemplates that persons may file a petition for reconsideration under certain circumstances (at the same time that a rule is under judicial review). These authorizations for other persons to petition EPA to amend or repeal a rule suggest that EPA has inherent authority, on its own, to issue such amendment or repeal. This is because EPA may grant a petition from another person for an amendment to or repeal of a rule only if justified under the CAA, and if such an amendment or repeal is justified under the CAA, then EPA should be considered as having inherent authority to initiate the process on its own, even without a petition from another person.

EPA recently used its authority to reconsider prior actions and limit its prior approval of a SIP in connection with California conformity SIPs. *See, e.g.,* 68 FR 15,720, 15723 (discussing prior action taken to limit approvals); 67 FR 69,139 (taking final action to amend prior approvals to limit their duration); 67 FR 46,618 (proposing to amend prior approvals to limit their duration, based on CAA sections 110(k) and 301(a)). EPA had previously approved SIPs with emissions budgets based on a mobile source model that was current at the time of EPA's approval. Later, EPA updated the mobile source model. But, even though the model had been updated, emissions budgets would continue to be based on the older, previously approved model in the SIPs, rather than the updated model. To rectify this problem, EPA conducted a rulemaking that revised the previous SIP approvals so that the approvals of the emissions budgets would expire early, when the new ones were submitted by states and found adequate, rather than when a SIP revision was approved. This helped California more quickly adjust its regulations to incorporate the newer model. In this rule, EPA is using its authority to reconsider and limit its prior approval of SIPs generally in the same manner as it did in connection with California conformity SIPs.

EPA is relying, in the alternative, on this inherent authority to convert its previous approval of Texas's PSD program to a partial approval and partial disapproval for the same reasons discussed previously in connection with the "error" correction provision of CAA section 110(k)(6). That is, EPA approved Texas's PSD program even though that program had significant flaws because Texas did not address the applicability of its PSD program to all pollutants newly subject to regulation, including non-NAAQS, and that Texas had adequate legal authority to do so.

EPA's inherent authority to reconsider its previous action also supports revising its previous action in the same manner, and for the same reasons, as under CAA section 110(k)(6), as described earlier. That is, in light of the flaws in the Texas PSD program, EPA is revising EPA's previous full approval to be a partial approval (to the extent of the pollutants regulated under the CAA that are subject to Texas's PSD program) and a partial disapproval (to the extent Texas's program does not address pollutants newly subject to regulation, including non-NAAQS pollutants).

1. Comments Received on Reconsideration Under Section 301(a)

Several commenters questioned EPA's ability to use section 301(a) given that EPA already has the authority to take this action through the SIP revision process. There is no gap for the Agency to fill with its general rulemaking authority, so, according to these commenters, EPA cannot use this section of the CAA to authorize this SIP revision without going through the notice and comment process required for a SIP revision. One commenter goes on to question whether the enactment of section 110(k)(6) would have been necessary if EPA had authority under section 301(a).

2. Response to Comments

EPA's inherent authority to reconsider its actions in conjunction with CAA section 301(a) is not limited by the availability of the SIP revision process. That process entails the state submitting a revised SIP submission and EPA acting on it, which is fundamentally different than EPA reconsidering its action on the initial SIP submission without the state needing to submit a SIP revision. In addition, the reconsideration authority is broader than the section 110(k)(6) authority because the former is not necessarily limited to the correction of errors. And if, as commenters argue, the section 110(k)(6) authority is limited to only technical or typographical errors, then the reconsideration authority is substantially broader. For these reasons, the reconsideration authority should not be considered to have been pre-empted or otherwise eliminated by the availability of either the SIP revision process or the error correction process.

As for reasons why Congress would have added section 110(k)(6) if the reconsideration authority already existed, several reasons present themselves. Congress may have intended to codify into the CAA the reconsideration authority, which otherwise would have remained in the case law. In doing so, Congress established the criteria and process for error corrections. In addition, three years prior to the enactment of the 1990 CAA Amendments, the U.S. Court of Appeals for the Third Circuit (3rd Circuit) handed down a decision in *Concerned Citizens of Bridesburg* v. *U.S. EPA,* 836 F.2d 777 (1987), which imposed severe limits on EPA's

authority to reconsider its actions. As discussed elsewhere in this preamble, although the legislative history is not explicit, section 110(k)(6) suggests by its terms that Congress intended the provision to in effect overturn that decision.

E. Relationship of This Action to GHG PSD SIP Call

As noted previously, EPA has recently taken another action concerning Texas's PSD program as that program relates to GHGs: the GHG PSD SIP call, which we published by notice dated December 13, 2010, 75 FR 77,698. This section describes the relationship of this error-correction/partial-disapproval/FIP action to the SIP call. For convenience, the background for the SIP call, although described in detail earlier in this preamble, is reiterated here.

EPA promulgated the SIP call under CAA section 110(k)(5), which provides:

> Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to * * * comply with any requirement of [the CAA], the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator * * * may establish reasonable deadlines (not to exceed 18 months) after [notifying the state of the inadequacies] for the submission of such plan revisions.

In the SIP call, EPA made a finding that the PSD SIPs of each of 13 states, including Texas, do not apply to GHG-emitting sources and therefore are "substantially inadequate to * * * comply with [the PSD applicability] requirement[s]" of the CAA.

Accordingly, EPA required each state, including Texas, to submit a corrective SIP revision. EPA established a deadline for the SIP submittal for each state as 12 months from the date of the SIP call, or December 1, 2011, unless the state indicated in its 30-day letter that it did not object to an earlier deadline. Each state for which EPA would finalize the SIP call submitted a 30-day letter, and each, except for Texas, indicated a date sooner than December 1, 2011. Texas did not indicate any particular date and, as a result, EPA established December 1, 2011 as Texas's deadline. In addition, EPA stated that if Texas or any of the other states failed to submit its corrective SIP revision by its deadline, EPA intended to promulgate a FIP immediately thereafter.

The timing of the SIP call—both the time that EPA promulgated the SIP call and the deadlines it established for SIP submittals—was driven by the fact that the affected states did not have authority to issue PSD permits to GHG-emitting sources and as a result, those sources could face delays in construction and modification when they became subject to PSD as early as January 2, 2011. EPA designed the SIP call to maximize the opportunity of each affected state to assure that its sources would have a permitting authority available as of that date or a later date, if the state concluded that a later date would not leave its sources facing delays. EPA did so by allowing each state flexibility for its SIP submittal deadline.

Each of the affected states except Texas responded with a plan that would assure that its sources would not confront permitting delays. Most states—7 of the 13 states—indicated they would not object to EPA's establishing a SIP submittal date of December 22, 2010, recognizing that as a practical matter, that meant that EPA would promulgate a FIP on December 23, 2010. An eighth state (Kentucky) took the same approach for one of its counties (Jefferson County), except that it selected the slightly later date of January 1, 2011.[78] Five states (including Kentucky for the rest of its state) indicated a later date, and again, one indicated a date as late as July 1, 2011. This means that purely as a legal matter, there would be no permitting authority in place in those five states to issue GHG permits on January 2, 2011, when GHG-emitting sources became subject to PSD. Even so, the later dates were acceptable to each of the five states because (i) they intended to submit a SIP revision by their date, and (ii) they did not expect the lack of a permitting authority during the period before their deadline to place their sources at risk for delays in construction or expansion.

Texas responded differently than the other states. In its 30-day letter, Texas did not indicate a particular date for its SIP submittal, and as a result, EPA, as we had proposed, established Texas's deadline at December 1, 2011. But shortly before submitting its 30-day letter, Texas stated, in its 60-day letter, that "Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emission."[79] Texas has never qualified this statement, and as a result, EPA reads this statement to indicate that Texas does not intend to submit a SIP revision as required under the SIP call.

This means that a permitting authority for GHG-emitting sources would not be in place until EPA promulgated a FIP, no earlier than December 2, 2011. Importantly, Texas has indicated that this one-year delay in the availability of a permitting authority would, in fact, mean that under EPA's interpretation of the CAA, Texas's sources would face delays in constructing and modifying.[80] Moreover, Texas indicated that during 2011, some 167 construction or modification projects would be affected,[81] which are significantly more sources than any other state.

Moreover, Texas's indication that it does not intend to submit a SIP revision, and that it does not consider its PSD program as being required to apply to non-NAAQS pollutants, including GHGs, has cast a spotlight on underlying flaws in Texas's fully approved PSD SIP, and that, in turn, has brought into play the error-correction provision in CAA section 110(k)(6). All this is discussed in detail earlier in this preamble, but to reiterate for convenience: CAA section 110(k)(6) provides, "Whenever the Administrator determines that the Administrator's action approving * * * any [SIP] * * * was in error, the Administrator may * * * revise such action as appropriate.* * *" Here, the Texas SIP was flawed at the time EPA approved it because it did not address, or assure adequate legal authority for, application of the PSD program to pollutants newly subject to regulation, including non-NAAQS pollutants. As a result, EPA has the authority to determine that its full approval of the SIP was "in error" and to convert that action to a partial approval and partial disapproval; and as a result of that, EPA is authorized to promulgate a FIP immediately.

This is an important reason why EPA is proceeding with this error-correction/partial approval and partial disapproval rulemaking at this time. This approach allowed EPA to implement a FIP immediately as an interim rule, instead of waiting until December, 2011, and as a result, EPA has been able to act as the permitting authority in Texas and in that capacity, allow Texas sources to avoid delays in construction or modification. This same approach allows EPA to continue to keep the FIP in place and continues to act as the permitting authority so that there are no gaps in coverage for sources to obtain permits.

[78] Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call 75 FR 77,698 (December 13, 2010).

[79] Texas's 60-day letter, p. 1.

[80] Texas 30-day letter, at 5, 6; Texas "Motion to Stay Three GHG Actions" 40–41, *Coalition for Responsible Regulation* v. *EPA,* No. 09–1322 (and consolidated cases).

[81] *See* Texas "Motion to Stay Three GHG Actions" 41, *Coalition for Responsible Regulation* v. *EPA,* No. 09–1322 (and consolidated cases).

With the interim final rule and the present rulemaking, EPA has both (i) promulgated a SIP call and established a SIP deadline of December 1, 2011 for Texas, under CAA section 110(k)(5); and (ii) corrected its error in previous fully approving Texas's PSD program by converting that action to a partial approval and partial disapproval, under CAA section 110(k)(6), and then promulgating a FIP immediately, under CAA section 110(c)(1)(B). For the reasons just discussed, each of these actions is fully justified under the applicable CAA provisions.

Moreover, there is no preclusion against taking both of these actions with respect to Texas at this time, for the following reasons: First, the two actions are based on CAA provisions—CAA section 110(k)(5) (SIP call), and section 110(k)(6) (error correction)—that overlap, so that it is to be expected that circumstances may arise in which both apply. If EPA approves a flawed SIP, then circumstances could well arise under which EPA has a basis for concluding both that (i) the SIP is "substantially inadequate" to meet a CAA requirement, under CAA section 110(k)(5); and (ii) EPA's action in approving the SIP was "in error," under CAA section 110(k)(6). The same flaw in the SIP would be the basis for each of those actions.[82]

This is the case with EPA's two actions concerning Texas. As EPA stated in the SIP call, the basis for the finding of "substantial inadequacy" was the failure of Texas's approved SIP PSD program to apply to GHGs, which was rooted in the program's failure to apply pollutants newly subject to regulation. As EPA stated earlier in this preamble, the basis for the determination that EPA's previous full approval of Texas's SIP was "in error" was the gap in the SIP due to the SIP's failure to address, or assure that it has adequate legal authority for, the application to pollutants newly subject to regulation.[83]

Second, each provision, by its terms, is discretionary to EPA, and neither provision precludes the application of the other. CAA section 110(k)(5) applies "[w]henever the Administrator finds" that the SIP is substantially inadequate. CAA section 110(k)(6) applies "[w]henever the Administrator determines" that her previous action was in error. Neither provision references the other. Neither provision includes any requirement or limitation that constrains the application of the other at any time.

Third, each provision serves a different purpose and when applied to this case—including in conjunction with the FIP provision in CAA section 110(c)(1)—leads to a different outcome, but each outcome is neither dependent on, or compromised by, the other outcome. CAA section 110(k)(5), as applied in the current case, is focused on a present problem with the SIP, that is, a "substantial[] inadequacy" that currently exists. This provision mandates that EPA require a corrective SIP revision to address that inadequacy, but further provides that EPA must allow a reasonable deadline for the state to submit the SIP revision. In the GHG PSD SIP call, EPA allowed states to, in effect, choose within a range of deadlines. But if the state fails to submit the required SIP revision by its deadline, then EPA is required to promulgate a FIP under CAA section 110(c)(1)(A). CAA section 110(k)(6), as it applies in the current case, is focused on a past problem with SIP, that is, a flaw that existed at the time EPA approved the SIP, so that EPA's approval was "in error." This provision authorizes EPA to convert the approval to a disapproval, but does not mandate that the state submit a new SIP revision. This is because the state has already submitted a SIP revision, the one that is flawed, and EPA has acted on it. Instead, EPA is required to promulgate a FIP under CAA section 110(c)(1)(B), and EPA may do so immediately. The FIP will remain in place until the state submits, and EPA approves, a SIP revision.

Viewing the two provisions as applied here together: (i) CAA section 110(k)(5) allows EPA to exercise its discretion to make a finding that Texas's SIP is "substantially inadequate," and then to establish a SIP submittal schedule for Texas, one that is consistent with whatever choice as to deadline Texas had available to it; and (ii) CAA section 110(k)(6) allows EPA to exercise its discretion to convert its previous approval of Texas's SIP, which EPA made "in error," to a disapproval, and then to promulgate a FIP immediately. The requirement that Texas submit a corrective SIP revision and do so by a date certain—a date that Texas exercised some control over—serves the useful function of establishing a mechanism and a timeframe for Texas to address the substantial inadequacy in its PSD SIP.[84] The immediate promulgation of a FIP serves the useful purpose of assuring the availability of a permitting authority as of January 2, 2011, so that Texas sources will not face delays in their plans to construct or modify. Importantly, the immediate promulgation of a FIP through this rulemaking does not compromise in any manner the SIP submittal deadline established for Texas through the SIP call. After EPA's promulgation of the FIP, Texas remains obligated to submit the corrective SIP revision by December 1, 2011. As soon as Texas does submit that SIP revision and EPA approves it, EPA will rescind the part of the FIP that concerns GHGs. It is always the case that when EPA has promulgated a FIP of any type in a particular state, the state remains obligated to adopt a SIP revision. Nothing about a FIP impedes the state from doing so; and when the state does so and EPA approves the SIP revision, then EPA rescinds the FIP.

It is true that one of the purposes of the SIP call, as applied here, was to allow states to in effect select an early FIP—by selecting an early SIP submittal date and then not submitting a SIP by that date—so as to assure the availability of a permitting authority for their sources by that early date. And it is further true that Texas, in its 30-day letter, chose not to select such an early date and, on the contrary, stated its opposition to a FIP; yet, in this present rulemaking, EPA is promulgating an immediate FIP for Texas. But this does not mean that the present rulemaking has compromised the SIP call or any choices made available to Texas in the SIP call. The focus of the SIP call, as it related to Texas, was the finding of a substantial inadequacy in Texas's PSD program, the imposition of a requirement for Texas to submit a corrective SIP revision, and—based on Texas's choice—the establishment of a deadline of December 1, 2011 for Texas to do so. The promulgation of an immediate FIP through the present rulemaking does not disturb that. Texas remains subject to the December 1, 2011, SIP submittal schedule that EPA established for it, based on Texas's decision not to respond directly to

[82] In contrast, situations could also arise in which EPA has a basis for imposing a SIP call but not issuing an error correction because the SIP currently has a substantial inadequacy but was not flawed at the time of its submittal and approval.

[83] In this case, the substantial inadequacy for which EPA issued the SIP call, which was the PSD program's failure to apply to GHGs, is narrower than the flaw in the SIP for which EPA is issuing the error correction, which is the PSD program's failure to address, or assure legal authority for, application of PSD to all pollutants newly subject to regulation. In another case, it is conceivable that the opposite would be true, that the substantial inadequacy would be broader than the flaw in the SIP for which EPA issues the error correction. In that case, if EPA imposed a FIP after the deadline for SIP submittal related to the SIP call, the FIP would be broader than the FIP imposed after the disapproval related to the error correction.

[84] We recognize that Texas has indicated that it does not intend to submit a SIP revision, but this does not eliminate the utility of establishing a SIP submittal schedule.

EPA's request that Texas itself identify a deadline.[85] Texas's expressed opposition to a FIP does not preclude EPA from imposing one as justified through the present rulemaking.

It is also true that, as EPA stated in the SIP call, "federalism principles * * * underlie the SIP call process and the SIP system as a whole," and that means that "in the first instance, it is to the state to whom falls the responsibility of developing pollution controls through an implementation plan." 75 FR 77,710/2. And it is further true that the immediate promulgation of a FIP through the present error-correction action means that a FIP will be in place in Texas before the December 1, 2011 deadline established under the SIP call for Texas to adopt its SIP. However, imposition of the FIP is fully justified under this error-correction action, as discussed previously, and is essential to assure that Texas sources will not face delays in construction or modification, a risk that Texas acknowledges will occur under EPA's interpretation of the applicable CAA requirements. In any event, Texas's statement that "Texas has neither the authority nor the intention of interpreting, ignoring, or amending its laws in order to compel the permitting of greenhouse gas emission," [86] as we read it, is tantamount to a direct statement that it does not intend to submit a GHG PSD SIP revision, and is a direct statement that it does not intend to require its sources to obtain permits for their GHG emissions. Accordingly, it is difficult to see how it could meaningfully be claimed that an early FIP, promulgated through this rulemaking, could displace any prerogatives Texas may have under the SIP call to develop its own SIP revision before the imposition of a FIP or to exercise control over the permitting of GHG emissions of its sources. Similarly, Texas has stated that it does not believe that EPA's FIP will be effective because, according to Texas, EPA will be unable to issue permits for a lengthy period due to uncertainty over how to apply PSD requirements to GHG-emitting sources.[87] Accordingly, it is difficult to see how it could meaningfully be claimed that a FIP, which Texas considers ineffective, could adversely affect Texas's interests.

It is also true that under the principles of federalism that underlie the SIP system, states exercise some discretion over controls for their industry, so that a state may impose more stringent controls than minimum CAA requirements. CAA section 116. But this discretion does not mean that Texas is authorized to create the circumstances under which its sources face delays in constructing or modifying and EPA is precluded from promulgating a FIP—when justified under this rulemaking—for the purpose of protecting those sources against such delays. Absent this action, Texas sources would face delays in construction and modification resulting from Texas's decision during the course of the SIP call to neither adopt a SIP promptly nor facilitate an early FIP. Those delays do not result from Texas's decision to impose more stringent controls than the CAA requires. On the contrary, Texas's action is inconsistent with one of the purposes of the PSD provisions, which is "to insure that economic growth will occur in a manner consistent with the preservation of clean air resources." CAA section 160(3). EPA is justified in interpreting and applying CAA section 110(k)(6) to correct errors related to Texas's SIP PSD program in order to effectuate this purpose of PSD. The DC Circuit has held that the terms of the PSD provisions should be interpreted with the PSD purposes in mind, *New York* v. *EPA,* 413 F.3d 3, 23 (DC Cir.), *rehearing en banc den.,* 431 F.3d 801 (2005), and the same should be true of CAA section 110(k)(5) as applied to PSD requirements.

F. Relationship of This Rulemaking to Other States

EPA is not, at this time, undertaking a similar error-correction rulemaking for any of the other states that are subject to the SIP call. EPA has discretion as to whether and when to undertake such a rulemaking, and each of the other states has chosen a course of action that at present appears to assure that its large GHG-emitting sources will have a permitting authority available when the sources need one, and therefore will not face delays in constructing or modifying. As a result, EPA has not inquired into whether any of these other states have flaws in their SIP PSD programs as Texas does.

1. Comments on the Relationship of This Rulemaking to Other States

Industry commenters, in addition to the State of Texas, raised concerns about this rule treating Texas differently than other states. Other states, such as Arizona, Arkansas, Connecticut, Florida, Idaho, and Kansas, do not have SIPs that automatically update to incorporate new requirements, and so regulate new pollutants in a "stepwise" fashion, according to these commenters. Moreover, these commenters argue that EPA's approval of Texas's SIP cannot be considered to have been in error because, they say, EPA approved other SIPs that, like Texas's, did not automatically apply PSD to each pollutant newly subject to regulation.

Several industry commenters also stated that they believe that EPA's rationale for this rule, read in conjunction with EPA's PSD Narrowing Rule 75 FR 8253682,536 (December 30, 2010) makes it impossible for a state to ever have an approvable SIP. This is because, according to these commenters, states can only have an approvable SIP if they automatically incorporate Federal requirements when EPA adopts them. However, the PSD Narrowing Rule was required because those states that do "impose PSD applicability on new pollutants in an unconstrained manner" in their SIPs do not ensure that states have adequate funding and personnel to implement the new SIP requirements, according to commenters.

2. Response to Comments

EPA disagrees with the comments that we are singling out Texas for unfair treatment for its failure to automatically update its SIP to incorporate new requirements. Texas is, in fact, unlike each of these other states. Texas, uniquely among all the states, has stated that it will not implement PSD requirements for GHGs either by revising or committing to revise its SIP. It is this refusal that has shined a spotlight on EPA's error in previously approving Texas's SIP, for the reasons discussed earlier in this preamble. Moreover, each of the other states identified by commenters has taken measures to ensure that permitting for GHG-sources in its state will be available. Arizona, Arkansas, Florida, and Idaho each have a FIP in place to allow EPA to issue permits to GHG-emitting sources. Connecticut has submitted a SIP revision to enable the state to assume responsibility for PSD permitting of these sources. Kansas already has an approved SIP that applies PSD to GHGs. Accordingly, it has never been necessary for EPA to inquire, and EPA has not inquired, into whether these states have flaws in their PSD SIPs. In addition, the error correction provision is discretionary: it provides that EPA "may" undertake an

[85] In any event, to conclude that the promulgation of a FIP under this error-correction rulemaking compromised the SIP call rulemaking would be tantamount to concluding that the SIP call should somehow take priority over this error correction. There would be no basis for taking that position. Each action is fully justifiable in its own right. The process of completing one before the other does not give the first one a priority simply because it is first any more than that process would give the second a priority because the latter is more recent.

[86] Texas 60-day letter, p. 1.

[87] Texas 30-day letter.

error correction when it finds that its previous action was in error. Accordingly, even if EPA did inquire into the SIP PSD program approvals in these other states, EPA would not be required to issue an error correction for them. In light of the fact that these states are addressing their GHG-emitting sources as described previously, EPA sees no need at present to consider an error-correction action with respect to those states. Finally, EPA disagrees with the commenters' argument that EPA's approval of these several other PSD SIPs—despite their lack of an automatic updating mechanism—means that EPA's approval of Texas's PSD SIP was not in error. As discussed elsewhere in this rulemaking preamble, the Texas SIP was flawed because it did not address the applicability of PSD to pollutants newly subject to regulation, not because it did not automatically apply PSD to such pollutants. Commenters have not shown that the several other SIPs they discuss did not address the applicability of PSD to pollutants newly subject to PSD in some way other than automatic updating. And if any other of the SIPs, or even all of them, did not do so, then it is possible that those SIPs were flawed in the same manner as Texas's, and that in approving them, EPA repeated the same error that it made in approving Texas's SIP. But to reiterate, section 110(k)(6) is discretionary with EPA and EPA has no reason to review those SIPs.

EPA also disagrees with the commenters that contend that no SIP could possibly be approvable given the rationales presented for this rule and the SIP Narrowing Rule. In this action, EPA identifies as the flaw in the SIPs the failure to address the applicability of PSD to newly regulated pollutants (along with the failure to provide adequate assurances of legal authority to apply PSD to such pollutants). As noted earlier in this preamble, there are several ways that states could address this flaw, and although providing for automatic updating is one way—and the one that most states have adopted—it is not the only way. A state could, for example, commit to adopt a SIP revision to apply PSD to a newly regulated pollutant. In the course of addressing the applicability of PSD to a newly regulated pollutant, the state could address any associated resource issues. Moreover, as EPA explained in the SIP Narrowing rule, the flaw that needed correcting by that rule was the "combination of that unconstrained applicability and the failure of the SIP to plan for adequate resources for that applicability, *and to do so on the appropriate time-table.*" (emphasis added) 75 FR 82,542 (December 30, 2010). There are, in fact, some states that were able to revise their SIPs before January 2, 2011. Six other states and four districts within states were able to interpret their SIPs to regulate GHG emissions only above the Tailoring Rule thresholds, and needed no further action by EPA. There is, then, no "conundrum" for a state that does not adopt EPA regulations by reference.

G. Federal Implementation Plan

1. Authority To Promulgate a FIP

In this rulemaking, EPA is promulgating a FIP to apply EPA's PSD regulatory program to GHG-emitting sources in Texas and to commit to take action as appropriate with respect to pollutants that become newly subject to regulation.

The CAA authority for EPA to promulgate a FIP is found in CAA section 110(c)(1), which provides—

> The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator * * * (B) disapproves a State implementation plan submission in whole or in part, unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such [FIP].

As indicated earlier in this notice, EPA is partially disapproving Texas's PSD program by correcting EPA's previous full approval to be a partial approval and partial disapproval. Accordingly, under CAA section 110(c)(1)(B), EPA is required to promulgate a PSD FIP for Texas.

The FIP must be designed to address the flaws in Texas's PSD program. As discussed earlier in this preamble, the Texas PSD program contains significant gaps: It does not address, or provide assurances of adequate legal authority for, application to pollutants newly subject to regulation, including non-NAAQS pollutants. As a practical matter, at present, the only pollutant the program does not address is GHGs. Accordingly, the FIP applies the EPA regulatory PSD program to GHGs. In addition, the FIP commits to address pollutants that become newly subject to regulation, as appropriate.

2. Timing of FIP

EPA is promulgating the FIP in this rulemaking, so that it takes effect immediately upon the partial disapproval. This timing for FIP promulgation is authorized under CAA section 110(c)(1), which authorizes us to promulgate a FIP "at any time within 2 years after" EPA disapproves a SIP submission in whole or in part. The quoted phrase, by its terms, establishes a two-year period within which EPA must promulgate the FIP, and provides no further constraints on timing. Accordingly, this provision gives EPA discretion to promulgate the FIP at any point in time within that two-year period, and in this rulemaking, EPA is promulgating the FIP immediately.

The reason why we are exercising our discretion to promulgate the FIP immediately is to minimize any period of time during which larger-emitting sources in Texas may be under an obligation to obtain PSD permits for their GHGs when they construct or modify, but no permitting authority is authorized to issue those permits. We believe that acting immediately is in the best interests of the regulated community. Note that for similar reasons, in EPA's recently promulgated SIP call, EPA stated that if a state failed to submit its required SIP revision by its deadline, EPA would immediately make a finding of failure to submit and immediately thereafter promulgate a FIP. 75 FR 53,889/2.

The lack of constraints in CAA section 110(c)(1)(B) stands in contrast to other CAA provisions that do impose requirements for the timing of proposals. *See* CAA sections 109(a)(1)(A), 111(b)(1)(B). In light of the lack of constraints, EPA was free to promulgate the FIP concurrently with the disapproval action.

3. Substance of GHG PSD FIP

a. Components of FIP

The FIP consists of two components. The first mirrors the GHG PSD FIP that EPA promulgated for seven states for which EPA issued the PSD GHG SIP call and, subsequently, issued a finding of failure to submit a required SIP submittal. Thus, this component of the FIP consists of the EPA regulations found in 40 CFR 52.21, including the PSD applicability provisions, with a limitation to assure that, strictly for purposes of this rulemaking, the FIP applies only to GHGs. Under the PSD applicability provisions in 40 CFR 52.21(b)(50), the PSD program applies to sources that emit the requisite amounts of any "regulated NSR pollutant[s]," including any air pollutant "subject to regulation." However, Texas's partially approved SIP already applies PSD to other air pollutants. To appropriately limit the scope of the FIP, EPA amends 40 CFR 52.21(b)(50), as incorporated into the Texas FIP, to limit the applicability provision to GHGs.

We adopt this FIP because, as we stated in the proposed GHG PSD FIP—

> it would, to the greatest extent possible, mirror EPA regulations (as well as those of most of the states). In addition, this FIP would readily incorporate the phase-in approach for PSD applicability to GHG sources that EPA has developed in the Tailoring Rule and expects to develop further through additional rulemaking. As explained in the Tailoring Rule, incorporating this phase-in approach—including Steps 1 and 2 of the phase-in as promulgated in the Tailoring Rule—can be most readily accomplished through interpretation of the terms in the definition "regulated NSR pollutant," including the term "subject to regulation."
>
> In accordance with the Tailoring Rule, * * * the FIP would apply in Step 1 of the phase-in approach only to "anyway sources" (that is, sources undertaking construction or modification projects that are required to apply for PSD permits anyway due to their non-GHG emissions and that emit GHGs in the amount of at least 75,000 tpy on a CO_2e basis) and would apply in Step 2 of the phase-in approach to both "anyway sources" and sources that meet the 100,000/75,000-tpy threshold (that is, (i) sources that newly construct and would not be subject to PSD on account of their non-GHG emissions, but that emit GHGs in the amount of at least 100,000 tpy CO_2e, and (ii) existing sources that emit GHGs in the amount of at least 100,000 tpy CO_2e, that undertake modifications that would not trigger PSD on the basis of their non-GHG emissions, but that increase GHGs by at least 75,000 tpy CO_2e).
>
> Under the FIP, with respect to permits for "anyway sources," EPA will be responsible for acting on permit applications for only the GHG portion of the permit, and the state will retain responsibility for the rest of the permit. Likewise, with respect to permits for sources that meet the 100,000/75,000-tpy threshold, our preferred approach—for reasons of consistency—is that EPA will be responsible for acting on permit applications for only the GHG portion of the permit, that the state permitting authorities will be responsible for the non-GHG portion of the permit, and EPA will coordinate with the state permitting authority as needed in order to fully cover any non-GHG emissions that, for example, are subject to BACT because they exceed the significance levels.

75 FR 53,889/3 to 53,890/1.

This formulation of the FIP is authorized because it is part of the "appropriate" action EPA is authorized to take as part of EPA's correction of its previous, erroneous full approval, under CAA section 110(k)(6).

The second component of the FIP consists of a commitment that EPA will take such action as is appropriate to ensure that pollutants that become newly subject to regulation are subject to the FIP. If a pollutant becomes newly subject to regulation in the future, and if Texas does not take steps to subject it to its PSD program, then EPA will take the appropriate action.

b. Dual Permitting Authorities

In the GHG PSD FIP proposal, commenters raised concerns about how having EPA issue the GHG portions of a permit while allowing states under a FIP to continue to be responsible for issuing the non-GHG portions of a PSD permit will work in practice. Commenters specifically identified the potential for a source to be faced with conflicting requirements and the need to mediate among permit engineers making BACT decisions.

We well recognize that dividing permitting responsibilities between two authorities—EPA for GHGs and the state, Texas, in this case, for all other pollutants—will require coordination between the two authorities to avoid duplication, conflicting determinations, and delays. We note that this situation is not without precedent. In many instances, EPA has been the PSD permitting authority but the state has accepted a delegation for parts of the PSD program, so that a source has had to go to both the state and EPA for its permit. In addition, all nonattainment areas in the nation are in attainment or are unclassifiable for at least one pollutant, so that every nonattainment area is also a PSD area. In some of these areas, the state is the permitting authority for nonattainment NSR and EPA is the permitting authority for PSD. As a result, there are instances in which a new or modifying source in such an area has needed a nonattainment NSR permit from the state and a PSD permit from EPA.

EPA is working expeditiously to develop recommended approaches for EPA regions and affected states to use in addressing the shared responsibility of issuing PSD permits for GHG-emitting sources. EPA delegated the authority to issue PSD permits to GHG-emitting sources to one state, and is working toward similar delegations in other states. In addition, EPA has provided training and guidance for permitting authorities in determining GHG BACT for these sources.

In addition, we note that the concern over dual permitting authorities would become moot if Texas were either to submit and EPA approve a SIP revision that applies PSD to GHGs or request a delegation of permitting responsibility. If it did request and receive a delegation, it would be responsible for issuing both the GHG part and the non-GHG part of the permit, and that would moot concerns about split-permitting.

4. Period for GHG PSD FIP To Remain in Place

In the FIP proposal, we stated our intention to leave any promulgated FIP in place for as short a period as possible, and to process any corrective SIP revision submitted by the state to fulfill the requirements of the SIP call as expeditiously as possible. Specifically, we stated:

> After we have promulgated a FIP, it must remain in place until the state submits a SIP revision and we approve that SIP revision. CAA section 110(c)(1). Under the present circumstances, we will act on a SIP revision to apply the PSD program to GHG sources as quickly as possible. Upon request of the state, we will parallel-process the SIP submittal. That is, if the state submits to us the draft SIP submittal for which the state intends to hold a hearing, we will propose the draft SIP submittal for approval and open a comment period during the same time as the state hearing. If the SIP submittal that the state ultimately submits to us is substantially similar to the draft SIP submittal, we will proceed to take final action without a further proposal or comment period. If we approve such a SIP revision, we will at the same time rescind the FIP.

75 FR 53,889/2–3.

We continue to have these same intentions. Thus, we reaffirm our intention to leave the GHG PSD FIP in place only as long as is necessary for the state to submit and for EPA to approve a SIP revision that includes PSD permitting for GHG-emitting sources. As discussed in more detail later in this preamble, EPA continues to believe that the states, including Texas, should remain the primary permitting authority.

Specifically, EPA will rescind the FIP, in full or in part, if (i) Texas submits, and EPA approves, a SIP revision to apply Texas's PSD program to GHG-emitting sources, (ii) Texas provides assurances that in the future, it will apply its PSD program to all pollutants newly subject to regulation, including non-NAAQS pollutants, and (iii) Texas provides "necessary assurances" under CAA section 110(a)(2)(E)(ii) that it "will have adequate * * * authority under State law" to apply its PSD program to such pollutants.

In addition, if Texas does not submit a SIP revision by December 1, 2011, in response to the SIP Call, EPA intends to promulgate, on or about December 2, 2011, the FIP associated with the SIP call. The GHG provisions of the FIP promulgated with this error correction rulemaking will be fully consistent with the provisions in the FIP associated with the SIP call. The remaining components of the FIP promulgated with this error correction rulemaking,

which concern other non-criteria pollutants other than GHGs, will also remain in place.

5. Primacy of Texas's SIP Process

This action to partially approve and partially disapprove Texas's SIP PSD program and to promulgate a FIP is secondary to our overarching goal, which is to assure that it will be Texas that will be the permitting authority. EPA continues to recognize that Texas is best suited to the task of permitting because the state and its sources have experience working together in the state PSD program to process permit applications. EPA seeks to remain solely in its primary role of providing guidance and acting as a resource for Texas as it makes the various required permitting decisions for GHG emissions.

Accordingly, we are prepared to work closely with Texas to help it promptly develop and submit to us a SIP revision that extends its PSD program to GHG-emitting sources and that assures that the program will apply to each pollutant newly subject to regulation in the future. If Texas submits such a SIP revision, we intend to promptly act on it, and if we approve it, then we intend to rescind the FIP immediately. Again, EPA's goal is to have in place in Texas the necessary permitting authority by the time businesses seeking construction permits need to have their applications processed and the permits issued—and to achieve that outcome by means of engaging with Texas directly through a concerted process of consultation and support.

EPA is taking up the additional task of partially disapproving Texas's PSD program and promulgating the FIP at this time only because the Agency believes it is compelled to do so by the need to assure businesses, to the maximum extent possible and as promptly as possible, that a permitting authority is available to process PSD permit applications for GHG-emitting sources once they become subject to PSD requirements. At the same time, we invite Texas to accept a delegation of authority to implement the FIP, so that it will still be the state that processes the permit applications, albeit operating under Federal law.

V. Statutory and Executive Order Reviews

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

Under Executive Orders (EO) 12866 (58 FR 51,735, October 4, 1993) and 13563 (76 FR 3,821, January 21, 2011), this action is a "significant regulatory action" because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EOs 12866 and 13563 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The OMB has previously approved the information collection requirements contained in the existing regulations for PSD (*see, e.g.,* 40 CFR 52.21) and title V (see 40 CFR parts 70 and 71) under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0003 and OMB control number 2060–0336 respectively. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

Although this rule would lead to Federal permitting requirements for certain sources, those sources are large emitters of GHGs. After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

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 section. The action imposes no enforceable duty on any state, local or Tribal governments or the private sector. With this action, EPA is only revising its previous approval of the Texas PSD SIP to be a partial approval and partial disapproval and promulgating a FIP to address the deficiencies as authorized by the CAA. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132—Federalism

This action does not have federalism implications. It will not have substantial direct effects on Texas, on the relationship between the national government and Texas, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA specifies conditions under which states may request, and EPA may approve state implementation of CAA requirements. The CAA also specifies the action EPA is to take, including issuing a FIP, when states have not met their requirements under the CAA. This rulemaking does not change that distribution of power between the states and EPA. With this action, EPA is only revising its previous approval of the Texas PSD SIP to be a partial approval and partial disapproval and promulgating a FIP to address the deficiencies identified in the Texas SIP as authorized by the CAA. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA solicited comment on the proposal for this action. Comments from state government organizations are addressed within this preamble and supporting materials available in the docket for this rulemaking.

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 67,249, November 9, 2000). In this action, EPA is not addressing any Tribal implementation plans. This action is limited to Texas's

PSD SIP. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets EO 13045 (62 FR 19,885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because EPA is only revising its previous approval of the Texas PSD SIP to be a partial approval and partial disapproval and promulgating a FIP to address the deficiencies as authorized by the CAA.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28,355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. With this action, EPA is only revising its previous approval of the Texas PSD SIP to be a partial approval and partial disapproval and promulgating a FIP to address the deficiencies as authorized by the CAA. This action will provide energy facilities in Texas that are large emitters of GHG a mechanism to get necessary PSD permits to construct or modify.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

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

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

Executive Order 12898 (59 FR 7,629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. With this action, EPA is only revising its previous approval of the Texas PSD SIP to be a partial approval and partial disapproval and promulgating a FIP to address the deficiencies as authorized by the CAA.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement, 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of May 1, 2011. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

VI. Judicial Review

Section 307(b)(1) of the CAA specifies which Federal Courts of Appeal have jurisdiction to hear petitions for review of which final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

This rule is based on a determination of nationwide scope or effect. Texas's response to the SIP call—including Texas's statements that it does not intend to submit a SIP revision and its decision not to identify a SIP submittal deadline, which have placed its sources at risk for delays in construction or modification—led us to determine that we should examine whether there may be a flaw in Texas's SIP that was present at the time of our approval. We then conducted a closer inquiry and on the basis of that, we are concluding that in fact a flaw was present. As a result, we are authorized to undertake an error correction, as we are doing in this rulemaking. For all other states subject to the SIP call, their response to the SIP call—which did not raise the concerns Texas's did and which assured that their sources would not be at risk for delays in construction or modification—led us to determine that it was not necessary to examine further whether their SIPs were flawed at the time we approved them. That determination—whether to examine the SIPs further—is a determination of nationwide scope or effect because it affected Texas and the 12 other states subject to the SIP call. Further indication that this is a determination is of nationwide scope or effect is that EPA is making it as part of the complex of rules EPA has promulgated to implement the GHG PSD program for each of the states in the nation. Those rules include (i) the Tailoring Rule and the Johnson Memo Reconsideration, which revise EPA regulations to incorporate the Tailoring Rule thresholds, and which apply in each state that does not have an approved SIP PSD program, and therefore operates under EPA's regulations; (ii) the SIP Call, which applies in each state that has an EPA-approved SIP PSD program but does not apply that program to GHG-emitting sources; and (iii) the PSD Narrowing rule, which applies in each state that has an EPA-approved SIP PSD program

that does apply to GHG-emitting sources.

Thus, under section 307(b)(1) of the Act, judicial review of this final action is available by filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 5, 2011.

Pursuant to CAA section 307(d)(1)(B), this action is subject to the requirements of CAA section 307(d) to the extent it promulgates a FIP under CAA section 110(c). In addition, pursuant to CAA section 307(d)(1)(V), which authorizes the Administrator to determines that actions other than those specifically listed in CAA section 307(d)(1) are subject to the provisions of CAA section 307(d), EPA is making that determination for this action to the extent it constitutes an error correction under CAA section 110(k)(6); a rescission of EPA's previous approval and a limited approval and disapproval of Texas's PSD SIP, under CAA section 110(k)(3); or any other action.

IX. Statutory Authority

The statutory authority for this action is provided by sections 101, 110, 114, 116, 301, and 307(d) of the CAA as amended (42 U.S.C. 7401, 7410, 7414, 7416, 7601, and 7607(d)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Carbon monoxide, Environmental protection, Greenhouse gases, Hydrofluorocarbons, Incorporation by reference; Intergovernmental relations, Lead, Methane, Nitrogen dioxide, Nitrous oxide, Ozone, Particulate matter, Perfluorocarbons, Reporting and recordkeeping requirements, Sulfur hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: April 22, 2011.

Lisa P. Jackson,

Administrator.

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

PART 52—[Amended]

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

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

■ 2. Section 52.2305 is added to read as follows:

§ 52.2305 What are the requirements of the Federal Implementation Plan (FIP) to issue permits under the Prevention of Significant Deterioration requirements to sources that emit greenhouse gases?

(a) The requirements of sections 160 through 165 of the Clean Air Act are not met to the extent the plan, as approved, for Texas does not apply with respect to emissions of the pollutant GHGs from certain stationary sources. Therefore, the provisions of § 52.21 except paragraph (a)(1) are hereby made a part of the plan for Texas for:

(1) Beginning on May 1, 2011, the pollutant GHGs from stationary sources described in § 52.21(b)(49)(iv), and

(2) Beginning July 1, 2011, in addition to the pollutant GHGs from sources described under paragraph (a)(1) of this section, stationary sources described in § 52.21(b)(49)(v).

(b) For purposes of this section, the "pollutant GHGs" refers to the pollutant GHGs, as described in § 52.21(b)(49)(i).

(c) In addition, the United States Environmental Protection Agency shall take such action as is appropriate to assure the application of PSD requirements to sources in Texas for any other pollutants that become subject to regulation under the Federal Clean Air Act for the first time after January 2, 2011.

[FR Doc. 2011–10285 Filed 4–29–11; 8:45 am]

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S. 307/P.L. 112–11
To designate the Federal building and United States courthouse located at 217 West King Street, Martinsburg, West Virginia, as the ''W. Craig Broadwater Federal Building and United States Courthouse''. (Apr. 25, 2011; 125 Stat. 213)

S.J. Res. 8/P.L. 112–12
Providing for the appointment of Stephen M. Case as a citizen regent of the Board of Regents of the Smithsonian Institution. (Apr. 25, 2011; 125 Stat. 214)

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