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WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF ENERGY

10 CFR Part 440

[Docket No. EEWAP0130]

RIN 1904–AC16

Weatherization Assistance for Low-Income Persons: Maintaining the Privacy of Applicants for and Recipients of Services

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: The U.S. Department of Energy (DOE) published an interim final rule on March 11, 2010, requiring that all States and other service providers that participate in the Weatherization Assistance Program (WAP) treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the Freedom of Information Act (FOIA). DOE published a final rule on June 7, 2010, adopting the interim final rule as final without change. This adoption inadvertently caused the sunset date of December 6, 2010, stated in the interim final rule to also be adopted as final. DOE is today adopting the amendments to 10 CFR part 440 of chapter II of title 10, Code of Federal Regulations set forth in the interim final rule without adopting the sunset date.

DATES: This rule is effective February 28, 2012.

FOR FURTHER INFORMATION CONTACT: Robert Adams, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE–2K, 950 L'Enfant Plaza, SW., Room P201D, Washington, DC 20585–0121, (202) 287–1591, email: *robert.adams@ee.doe.gov.* For legal issues contact Kavita Vaidyanathan, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–71, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0669, email: *kavita.vaidyanathan@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title IV, Energy Conservation and Production Act, as amended, authorizes DOE to administer the WAP. All grant awards made under this program must comply with applicable authorities, including regulations contained in Title 10 of the Code of Federal Regulations (10 CFR part 440).

II. Discussion

On March 11, 2010, (75 FR 11419), DOE published an interim final rule requiring all States and other service providers that participate in the WAP treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the FOIA. The background and explanation of that interim final rule was set out in the March 11 publication. DOE received one comment letter and published a final rule on June 7, 2010, (75 FR 32089), adopting the interim final rule as final without change because some of the suggestions in the comments were already incorporated in the interim final rule and DOE declined to adopt the other suggestions.

The final rule was effective on July 7, 2010. However, the adoption of the interim final rule as final without change inadvertently caused the sunset date of December 6, 2010, stated in the interim final rule to also be adopted as final. To correct the inclusion of the interim final rule's sunset date in the final rule, DOE is today adopting the amendments to 10 CFR part 440 of chapter II of title 10, Code of Federal Regulations set forth in the interim final rule without adopting the sunset date.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

Today's regulatory action is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735 (Oct. 4, 1993)). Accordingly, today's action was not reviewed by the Office of Information and Regulatory Affairs in the Office of Management and Budget.

B. Administrative Procedure Act

DOE finds that providing prior notice and comment on today's final rule would be unnecessary. See, 5 U.S.C. 553(b)(3)(B). As noted above, today's final rule corrects an inadvertent application of a sunset date to a final rule that was previously subject to notice and comment. DOE received and responded to the one comment received as a result of that public notice and comment opportunity. Today's final rule adopts the regulatory language as finalized in the prior final rule.

C. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 10 CFR Part 440

Administrative practice and procedure, Aged, Energy conservation, Grant programs—energy, Grant programs—housing and community development, Housing standards—indians, individuals with disabilities, Reporting and recordkeeping requirements, Weatherization.

Issued in Washington, DC, on February 17, 2012.

Henry C. Kelly,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

For the reasons stated in the preamble, DOE is amending 10 CFR part 440 as set forth below:

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

■ 1. The authority citation for part 440 continues to read as follows:

Authority: 42 U.S.C. 6861 *et seq.;* 42 U.S.C. 7101 *et seq.*

■ 2. Section 440.2 is amended by adding a new paragraph (e) to read as follows:

§ 440.2 Administration of grants.

* * * * *

(e)(1) States, Tribes and their subawardees, including, but not limited to subrecipients, subgrantees, contractors and subcontractors that

participate in the program established under this Part are required to treat all requests for information concerning applicants and recipients of WAP funds in a manner consistent with the Federal Government's treatment of information requested under the Freedom of Information Act (FOIA), 5 U.S.C. 552, including the privacy protections contained in Exemption (b)(6) of the FOIA, 5 U.S.C. 552(b)(6). Under 5 U.S.C. 552(b)(6), information relating to an individual's eligibility application or the individual's participation in the program, such as name, address, or income information, are generally exempt from disclosure.

(2) A balancing test must be used in applying Exemption (b)(6) in order to determine:

(i) Whether a significant privacy interest would be invaded;

(ii) Whether the release of the information would further the public interest by shedding light on the operations or activities of the Government; and

(iii) Whether in balancing the privacy interests against the public interest, disclosure would constitute a clearly unwarranted invasion of privacy.

(3) A request for personal information including but not limited to the names, addresses, or income information of WAP applicants or recipients would require the State or other service provider to balance a clearly defined public interest in obtaining this information against the individuals' legitimate expectation of privacy.

(4) Given a legitimate, articulated public interest in the disclosure, States and other service providers may release information regarding recipients in the aggregate that does not identify specific individuals. However, a State or service provider must apply an FOIA Exemption (b)(6) balancing test to any request for information that can not be satisfied by such less-intrusive methods.

[FR Doc. 2012–4643 Filed 2–27–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No.: FAA–2012–0007; Amdt. No. 135–126]

RIN 2120–AK02

Authorization To Use Lower Than Standard Takeoff, Approach and Landing Minimums at Military and Foreign Airports; Confirmation of Effective Date

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of the direct final rule published on January 11, 2012. The rule allows qualified operators to conduct lower than standard instrument flight rules (IFR) airport operations at military airports or outside the United States when authorized to do so by their operations specifications.

DATES: The effective date for the direct final rule published on January 11, 2012, at 77 FR 1629, is confirmed as February 27, 2012.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this action, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Gregory French, Air Transportation Division, 135 Air Carrier Operations Branch, AFS–250, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–4112; email *gregory.french@faa.gov*.

For legal questions concerning this action, contact Robert Frenzel, Office of the Chief Counsel, Operations Law Branch, (AGC–220), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *robert.frenzel@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Before publication of this direct final rule on January 11, 2012 (77 FR 1629), Title 14, Code of Federal Regulations (14 CFR) limited certain operators to a takeoff minimum visibility of 1 mile, and a landing minimum visibility of ½ mile when conducting IFR operations at foreign and military airports, even when the operator has demonstrated the ability to safely conduct operations in lower visibility. The FAA has determined since many part 135 operators have met the requirement necessary to conduct lower than standard IFR operations authorized by OpSpec C079, it would amend the requirement to allow for lower than standard IFR operations at military and foreign airports only for those part 135 operators authorized through that OpSpec.

Discussion of Comments

The FAA received comments from two individual commenters. Both commenters supported the rule change. The commenters generally stated that the rule change permitted those operators that obtain authority to conduct lower than standard visibility operations at U.S. airports to exercise the same authority at foreign and military airports.

Conclusion

After consideration of the comments submitted in response to the direct final rule, the FAA has determined that no further rulemaking action is necessary. The rule will take effect on February 27, 2012.

How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document my be obtained by using the Internet—

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

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at *http://www.fdsys.gov.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

Issued in Washington, DC, on February 23, 2012.

John W. McGraw,

Acting Director, Flight Standards Service.

[FR Doc. 2012–4633 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0986; FRL–9634–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Determinations of Attainment of the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Washington, DC-MD-VA 8-Hour Ozone Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making two determinations regarding the Washington, DC-MD-VA moderate 8-hour ozone nonattainment area (the Washington Area). First, EPA is making a determination that the Washington Area has attained the 1997 8-hour ozone national ambient air quality standard (NAAQS) by its June 15, 2010 attainment date. This determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 monitoring period. Second, EPA is making a clean data determination, finding that the Washington Area has attained the 1997 8-hour ozone NAAQS, based on complete, quality assured, and certified ambient air monitoring data for the 2007–2009 and 2008–2010 monitoring periods. In accordance with EPA's applicable ozone implementation rule, this clean data determination suspends the requirement for the Washington Area to submit an attainment demonstration, reasonably available control measures (RACM), a reasonable further progress (RFP) plan and contingency measures related to attainment of the 1997 8-hours ozone NAAQS. These requirements shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. These actions are being taken under the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on March 29, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0986. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by email at *pino.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in locating information in this action.

I. Background
II. Summary of Actions
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

EPA published a notice of proposed rulemaking (NPR) for the District of Columbia, the State of Maryland, and the Commonwealth of Virginia (the States) on September 20, 2011 (76 FR 58206). Pursuant to section 181(b)(2)(A) [1] of the CAA, the September 20, 2011 NPR proposed to determine that the Washington Area attained the 1997 8-hour ozone NAAQS by its attainment date, June 15, 2010. This proposed determination was based upon complete, quality assured, and certified ambient air monitoring data for the 2007–2009 monitoring period that show the area has monitored attainment of the 1997 8-hour ozone NAAQS during this monitoring period. Complete, quality assured, and certified ambient air monitoring data for the 2008–2010 monitoring period shows continued attainment.

The September 20, 2011 NPR also proposed to make a clean data determination that the Washington Area has attained the 1997 8-hour ozone NAAQS. This proposed clean data determination was based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. As a result of this determination, the requirement for this area to submit an attainment demonstration, a RACM analysis, an RFP plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hours ozone NAAQS shall be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS.

II. Summary of Actions

A. Determination of Attainment by the Attainment Date

EPA is making a determination that the Washington Area has attained the 1997 ozone NAAQS by its applicable attainment date of June 15, 2010. As a result of this action, EPA has met its requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date. The effect of a final determination of attainment by the area's attainment date is to discharge EPA's obligation under CAA section 181(b)(2)(A),[2] and to establish that, in accordance with CAA section 181(b)(2)(A), the area will not be reclassified for failure to attain by its applicable attainment date. This determination of attainment is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

[1] The NPR cited CAA sections 181(b)(2)(A) and 179(c) as the statutory authority for determining whether the Washington Area attained the 1997 8-hour ozone NAAQS by its attainment date. In this final notice, EPA is correcting that statement to clarify that here the appropriate statutory authority derives from section 181(b)(2)(A).

[2] In the NPR, EPA stated that its obligations to determine if an area attained the 1997 8-hour NAAQS by its attainment was found under CAA sections 181(b)(2)(A) and 179. EPA notes that for an area such as the Washington Area, which is designated moderate nonattainment for the 1997 8-hour ozone standard, the proper citation is CAA section 181(b)(2)(A).

B. Clean Data Determination

EPA is making a clean data determination, finding that the Washington Area is attaining the 1997 8-hour ozone NAAQS. Under the provisions of EPA's ozone implementation rule (40 CFR 51.918), this clean data determination suspends the CAA requirement for the Washington Area to submit certain planning SIPs related to attainment of the 1997 8-hour ozone NAAQS for so long as the area continues to attain the 1997 8-hour ozone NAAQS. This clean data determination is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

The clean data determination suspends the requirements to submit an attainment demonstration, RACM, RFP, contingency measures, and any other planning SIPs related to attainment of the 1997 8-hour ozone NAAQS; continues until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS; is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised ozone NAAQS; and remains in effect regardless of whether EPA designates this area as a nonattainment area for purposes of any new or revised ozone NAAQS.

Although these requirements are suspended, EPA is not precluded from acting upon these elements. The States submitted these SIP elements for the Washington Area to EPA for review and approval in June 2007. EPA approved the States' submittal pertaining to RFP, RFP contingency measures, and RACM, along with the Washington Area's 2002 base year inventory and 2008 transportation conformity motor vehicle emissions budgets (MVEBs) on September 20, 2011 (76 FR 58116).

C. Ambient Air Quality Monitoring Data

Complete, quality assured, certified 8-hour ozone air quality monitoring data for 2007 through 2009 show that the Washington Area has attained the 1997 8-hour ozone NAAQS. The Washington Area continues to attain the 1997 8-hour ozone NAAQS considering complete, quality assured, certified 8-hour ozone air quality monitoring data for 2008 through 2010. Additional information on air quality data for the Washington Area can be found in the Technical Support Document (TSD) prepared for this action. The TSD can be viewed at *http://www.regulations.gov*.

III. Final Action

EPA is making two determinations regarding the Washington Area. First, EPA is making a clean data determination, finding that the Washington Area has attained the 1997 8-hour ozone NAAQS. This clean data determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 and 2008–2010 monitoring periods. This clean data determination suspends the requirements for the Washington Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hours ozone NAAQS for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Second, pursuant to section 181(b)(2)(A) of the CAA, EPA is making a determination that the Washington Area has attained the 1997 8-hour ozone NAAQS by its moderate area attainment date, June 15, 2010.

The rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

IV. Statutory and Executive Order Reviews

A. General Requirements

This action makes determinations of attainment based on air quality, and result in the suspension of certain federal requirements. This action does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this determination that the Washington Area has attained the1997 annual $PM_{2.5}$ NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness

of such rule or action. This determination that the Washington Area has attained the 1997 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: February 6, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR Part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart J—District of Columbia

■ 2. In § 52.475, the existing paragraph is designated as (a), and paragraph (b) is added to read as follows:

§ 52.475 Determinations of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2010. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Washington, DC-MD-VA moderate nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

■ 3. Section 52.476 is amended by adding new paragraph (g) to read as follows:

§ 52.476 Control strategy: ozone.

* * * * *

(g) *Determination of attainment.* EPA has determined, as of February 28, 2012, that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

Subpart V—Maryland

■ 4. Section 52.1076 is amended by adding new paragraph (w) to read as follows:

§ 52.1076 Control strategy plans for attainment and rate-of-progress: ozone.

* * * * *

(w) *Determination of attainment.* EPA has determined, as of February 28, 2012, that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

■ 5. Section 52.1082 is amended by adding new paragraph (c) to read as follows:

§ 52.1082 Determinations of attainment.

* * * * *

(c) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2010. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Washington, DC-MD-VA moderate nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

Subpart VV—Virginia

■ 6. Section 52.2428 is amended by adding paragraph (h) to read as follows:

§ 52.2428 Control strategy: Carbon monoxide and ozone.

* * * * *

(h) *Determination of attainment.* EPA has determined, as of February 28, 2012, that based on 2007 to 2009 and 2008 to 2010 ambient air quality data, the Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). This determination, in accordance with 40 CFR 51.918, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 1997 8-hour ozone NAAQS.

■ 7. In § 52.2430, the existing paragraph is designated as (a), and paragraph (b) is added to read as follows:

§ 52.2430 Determinations of attainment.

* * * * *

(b) Based upon EPA's review of the air quality data for the 3-year period 2007 to 2009, Washington, DC-MD-VA moderate nonattainment area has attained the 1997 8-hour ozone NAAQS by the applicable attainment date of June 15, 2010. Therefore, EPA has met the requirement pursuant to CAA section 181(b)(2)(A) to determine, based on the area's air quality as of the attainment date, whether the area attained the standard. EPA also determined that the Washington, DC-MD-VA moderate nonattainment area will not be reclassified for failure to attain by its applicable attainment date pursuant to section 181(b)(2)(A).

[FR Doc. 2012–4473 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2004–OH–0004; FRL–9635–2]

Approval and Promulgation of Air Quality Implementation Plans; Ohio; New Source Review Rules—Notice of Action Denying Petition for Reconsideration and Request for Administrative Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; action denying petition for reconsideration and request for administrative stay.

SUMMARY: EPA is providing notice that it has responded to a petition for reconsideration and a request for an administrative stay of certain provisions of the final rule titled, ''Approval and Promulgation of Air Quality Implementation Plans; Ohio; New Source Review Rules'' published February 25, 2010. The Ohio EPA

sought approval to implement the New Source Review (NSR) Reform provisions that were not vacated by the United States Court of Appeals for the District of Columbia (DC Circuit) in *New York* v. *EPA*. The final rule approved certain revisions to Ohio's NSR program, which Ohio submitted to EPA for review on September 14, 2004, under the Clean Air Act (CAA). Subsequently EPA received a petition dated April 26, 2010, for reconsideration from the Natural Resources Defense Council (NRDC). The petition also requested that EPA stay implementation of certain provisions of the final rule pending its reconsideration. EPA considered the petition for reconsideration and request for an administrative stay, along with information contained in the rulemaking docket, in reaching a decision on both the petition and request for a stay. EPA Administrator, Lisa P. Jackson, denied both the petition for reconsideration and request for stay in a letter to the petitioner dated January 24, 2012. The letter explains the basis for the denial and is available as set forth below.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6058, *morgan.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. How can I get copies of this document and other related information?

This action, the petition for reconsideration, and the letter denying the petition for reconsideration and request for an administrative stay during the reconsideration are available in the docket that has been established for this action under Docket ID No. EPA–R05–OAR–2004–OH–0004. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Publicly available docket materials are available in hard copy at: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you contact Andrea Morgan, Environmental Engineer, at (312) 353–6058 before visiting the Region 5 office. In addition to being available in the docket, an electronic copy of each of these documents will be available on the World Wide Web. Following publication, a copy of this action will be posted on EPA's NSR Web site, under Regulations & Standards, at *http://www.epa.gov/nsr.*

II. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before April 30, 2012.

Dated: February 13, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–4474 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. EPA–R02–OAR–2011–0687, FRL–9635–4]

Approval and Promulgation of Implementation Plans; New York; Motor Vehicle Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a proposed State Implementation Plan revision submitted by the New York State Department of Environmental Conservation. This revision consists of changes to New York's motor vehicle enhanced inspection and maintenance program that would eliminate the transient emission short test program as it relates to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT 8-hour ozone moderate nonattainment area. EPA is approving this State Implementation Plan revision because it meets all applicable requirements of the Clean Air Act and EPA's regulations and because the revision will not interfere with attainment or maintenance of the national ambient air quality standards in the affected area. The intended effect of this action is to maintain consistency between the State-adopted rules and the federally approved SIP.

DATES: *Effective Date:* This rule will be effective March 29, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2011–0687. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

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I. What action is EPA taking?
II. What was included in New York's proposed SIP submittal?
III. What comments Did EPA receive in response to its proposal?
IV. Summary of Conclusions
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I. What action is EPA taking?

The EPA is approving a revision to the New York State Implementation Plan (SIP) pertaining to New York's motor vehicle enhanced inspection and maintenance (I/M) program that proposes to end tailpipe testing on December 31, 2010. This proposed SIP revision also outlines several changes to New York's enhanced I/M programs currently operating within the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT nonattainment area (referred to as NYMA). New York proposes to reduce the percentage of emissions waivers allowed within that area to 2% (from 3%). New York indicates that the decentralized program, which features on-board diagnostics inspections, is as effective as a centralized test-only program for modeling purposes.

II. What was included in New York's proposed SIP submittal?

After completing the appropriate public notice and comment procedures, on July 10, 2009, the New York State Department of Environmental Conservation (NYSDEC) submitted to EPA a proposed SIP revision that includes changes to the New York State enhanced I/M program. The changes include a proposal to end tailpipe testing through the New York Transient Emissions Short Test (NYTEST) I/M program on December 31, 2010. The

proposed revision also includes a reduction in the percentage of emissions test waivers allowed within NYMA to 2% (from 3%) beginning in calendar year 2008. The SIP revision includes MOBILE6 vehicle emission modeling software (MOBILE6) demonstration for the high enhanced I/M performance standard.

On February 15, 2011, NYSDEC made a supplemental SIP submittal to EPA which included recent revisions to Title 6 of the New York Codes, Rules and Regulations (NYCRR), Part 217, ''Motor Vehicle Emissions,'' and the New York State Department of Motor Vehicles (NYSDMV) regulation found at Title 15 NYCRR Part 79, ''Motor Vehicle Inspection.'' New York adopted these rule revisions to end the NYTEST I/M program. This submittal was also subject to public notice and comment. On September 16, 2011 (76 FR 57696), EPA proposed to approve New York's revised I/M program. For a detailed discussion on the content and requirements of the revisions to New York's regulations, the reader is referred to EPA's proposed rulemaking action.

III. What comments did EPA receive in response to its proposal?

In response to EPA's September 16, 2011 proposed rulemaking action, EPA received no comments.

IV. Summary of Conclusions

EPA's review of the materials submitted indicates that New York has revised its I/M program in accordance with the requirements of the Clean Air Act, 40 CFR Part 51 and all of EPA's technical requirements for an approvable enhanced I/M program. EPA is approving the revisions to the Title 6, New York Codes, Rules and Regulations (NYCRR), Part 217, ''Motor Vehicle Emissions,'' Subparts 217–1, 217–4 and the adoption of new Subpart 217–6, as effective on December 5, 2010, and the New York State Department of Motor Vehicles (NYSDMV) regulation Title 15 NYCRR Part 79 ''Motor Vehicle Inspection,'' Sections 79.1–79.15, 79.17, 79.20, 79.21, 79.24, 79.25, as effective on December 29, 2010, which incorporate the State's motor vehicle I/M program requirements. The Clean Air Act gives states the discretion in program planning to implement programs of the state's choosing as long as necessary emission reductions are met. EPA is also approving New York's performance standard modeling demonstration, which reflects the State's I/M program as it is currently implemented in the NYMA as well as throughout New York State.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 1, 2012.

Judith A. Enck,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart HH—New York

■ 2. In § 52.1670, the table in paragraph (c) is amended by revising the entry under Title 6 for Part 217 and the entry under Title 15 for Part 79 to read as follows:

§ 52.1670 Identification of plan.

(c) * * *

* * * * *

EPA-APPROVED NEW YORK STATE REGULATIONS

New York State regulation	State effective date	Latest EPA approval date	Comments
Title 6:			
* * * *	*	*	*
Part 217, Motor Vehicle Emissions:			
Subpart 217–1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements Until December 31, 2010.	12/5/10	2/28/12 [Insert page number where the document begins]	
Subpart 217–4, Inspection and Maintenance Program Audits Until December 31, 2010.	12/5/10	2/28/12 [Insert page number where the document begins]	
Subpart 217–6, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements Beginning January 1, 2011.	12/5/10	2/28/12 [Insert page number where the document begins]	
* * * *	*	*	*
Title 15: Part 79, ''Motor Vehicle Inspection Regulations''			
Sections 79.1–79.15, 79.17, 79.20, 79.21, 79.24, 79.25	12/29/10	2/28/12 [Insert page number where the document begins]	

[FR Doc. 2012–4470 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0696–201202; FRL–9635–6]

Approval and Promulgation of Implementation Plans; Tennessee: Prevention of Significant Deterioration; Greenhouse Gas Tailoring Rule Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the State Implementation Plan (SIP), submitted by the State of Tennessee, through the Tennessee Department of Environmental Conservation (TDEC), Air Pollution Control Division, to EPA on August 30, 2010, for parallel processing. TDEC submitted the final version of this SIP revision on January 11, 2012. The SIP revision approved by today's action adopts into Tennessee's SIP rules impacting the regulation of greenhouse gases (GHGs) under Tennessee's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program. Specifically, the SIP revision establishes appropriate emission thresholds for determining which new stationary sources and modification projects become subject to Tennessee's PSD permitting requirements for GHG emissions. This rule incorporates state law changes into the federally approved SIP, and specifically clarifies the applicable thresholds in the Tennessee SIP for GHG PSD requirements. EPA is approving Tennessee's January 11, 2012, SIP revision because the Agency has made the determination that this SIP revision is in accordance with the Clean Air Act (CAA or Act) and EPA regulations, including regulations pertaining to PSD permitting for GHGs. Additionally, EPA is responding to adverse comments received on EPA's November 5, 2010, proposed approval of Tennessee's August 30, 2010, draft SIP revision.

DATES: *Effective Date:* This rule will be effective March 29, 2012.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2010–0696. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for further information. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Tennessee SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bradley's telephone number is (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding the Tailoring Rule, contact Ms. Heather Abrams, Air Permits Section, at the same address above. Ms. Abrams' telephone number is (404) 562–9185; email address: *abrams.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is the background for this final action?
II. What is EPA's response to comments received on this action?
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I. What is the background for this final action?

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part are distinct from one another, establish the overall framework for today's final action on the Tennessee SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[1] the ''Johnson Memo Reconsideration,'' [2] the ''Light-Duty Vehicle Rule,'' [3] and the ''Tailoring Rule.'' [4] Taken together, and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis.

On August 30, 2010, in response to the Tailoring Rule and earlier GHG-related EPA rules, TDEC submitted a draft revision to EPA for approval into the Tennessee SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to Tennessee's PSD permitting requirements for GHG emissions. Subsequently, on November 5, 2010, EPA published a proposed rulemaking to approve Tennessee's August 30, 2010, SIP revision under parallel processing. *See* 75 FR 68265. Specifically, Tennessee's August 30, 2010, draft SIP revision includes changes to TDEC's Air Quality Regulations, Chapter 1200–03–09–.01(4)—*Construction and Operating Permits, Prevention of Significant Deterioration.* The changes to Chapter 1200–03–09–.01(4)—*Construction and Operating Permits, Prevention of Significant Deterioration* address the thresholds for GHG permitting applicability. Detailed background information and EPA's rationale for the proposed approval are provided in EPA's November 5, 2010, **Federal Register** notice.

On December 30, 2010, EPA published a final rule which narrowed its previous approval of PSD programs as applicable to GHG-emitting sources in SIPs for 24 states, including Tennessee.[5] *See* 75 FR 82536 (PSD Narrowing Rule). Specifically, in the PSD Narrowing Rule, EPA withdrew its previous approval of Tennessee's SIP to the extent it applied PSD to GHG-emitting sources below the thresholds in the final Tailoring Rule.

The effect of the PSD Narrowing Rule on the approved Tennessee SIP was to establish that new and modified sources are subject to PSD permitting requirements for their GHG emissions only if they emit GHGs at or above the Tailoring Rule's emission thresholds. As a result of today's action approving Tennessee's adoption of the appropriate GHG permitting thresholds into its SIP, paragraph (d) in 40 CFR 52.2222, as included in EPA's Narrowing Rule, is no longer necessary. Thus, today's action also amends 40 CFR 52.2222 to remove this unnecessary regulatory language.

EPA's November 5, 2010, proposed approval was contingent upon Tennessee providing EPA with a final SIP revision that was not changed significantly from the revision proposed for approval by EPA in the November 5, 2010, proposed rulemaking. *See* 75 FR 68265. Tennessee provided its final SIP revision on January 11, 2012. There are minor differences between Tennessee's draft and final SIP submittals due to changes made by TDEC in response to comments made by EPA during the public comment period.[6] A summary of the changes is provided below.

First, TDEC chose not to adopt a proposed revision to the definition of ''significant'' at rule 1200–03–09–.01(4)(b)24(ii), which would have added a cross-reference to the definition of ''subject to regulation.'' The proposed change was not necessary to incorporate the Tailoring Rule thresholds into Tennessee's SIP, and Tennessee's existing regulatory language at rule 1200–03–09–.01(4)(b)24(ii) (which remains unchanged) is consistent with EPA's regulations. The second difference between the draft and final SIP revision was the correction of a typographical error in draft rule 1200–03–09–.01(4)(b)46(v) (changing the citation to ''subpart (iv)(b)47(iv)'' to ''subpart (iv)''). There are no other differences between Tennessee's August 30, 2010, draft SIP revision, and the final SIP revision submitted on January 11, 2012.

II. What is EPA's response to comments received on this action?

EPA received two sets of comments on the November 5, 2010, proposed rulemaking to approve revisions to Tennessee's SIP. One set of comments, provided by the Sierra Club, was in favor of EPA's November 5, 2010, proposed action. The other set of comments, provided by the Air Permitting Forum, raised concerns with final action on EPA's November 5, 2010, proposed action. A full set of the comments provided by both the Sierra Club and Air Permitting Forum (hereinafter referred to as ''the Commenter'') is provided in the docket for today's final action. The comments can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–0696. A summary of the adverse comments and EPA's responses are provided below.

Generally, the adverse comments fall into four categories. First, the Commenter asserts that PSD requirements cannot be triggered by GHGs. Second, the Commenter expresses concerns regarding a footnote in the November 5, 2010, proposal describing EPA's previously announced intention to narrow its prior approval of some SIPs to ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds will not be obligated under federal law to obtain PSD permits prior to a SIP revision incorporating those thresholds. The Commenter explains that the planned SIP approval narrowing action—which has now resulted in the PSD Narrowing Rule—''is illegal.'' Third, the Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Lastly, the Commenter states: ''EPA should explicitly state in any final rule that the continued enforceability of these provisions in the Tennessee SIP is limited to the extent to which the federal requirements remain enforceable.'' EPA's response to these four categories of comments is provided below.

Comment 1: The Commenter asserts that PSD requirements cannot be triggered by GHGs. In its letter, the Commenter reiterates EPA's statement that without the Tailoring Rule thresholds, PSD will apply as of January 2, 2011, to all stationary sources that emit or have the potential to emit,

[1] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (December 15, 2009).

[2] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (April 2, 2010).

[3] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[4] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

[5] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas-Emitting Sources in State Implementation Plans.'' 75 FR 82536 (December 30, 2010).

[6] *See* Tennessee's August 30, 2010, GHG draft SIP submittal cover letter Docket ID: EPA–R04–OAR–2010–0696–0002.

depending on the source category, either 100 or 250 tons of GHG per year. The Commenter also reiterates EPA's statement that beginning January 2, 2011, a source owner proposing to construct any new major source that emits at or above the GHG applicability levels, or modifies any existing major source that emits at or higher than the GHG applicability levels, or modify any existing major source in a way that would increase GHG emissions, would need to obtain a PSD permit that addresses these emissions before construction could begin. In raising concerns with the two aforementioned statements, the Commenter states: ''[n]o area in the State of Tennessee has been designated attainment or unclassifiable for greenhouse gases (GHGs), as there is no national ambient air quality standard (NAAQS) for GHGs. Therefore, GHGs cannot trigger PSD permitting.'' The Commenter notes that it made this argument in detail in comments submitted to EPA on the Tailoring Rule and other related GHG rulemakings. The Commenter attached those previously submitted comments to its comments on the proposed rulemaking related to this action. Finally, the Commenter states that ''EPA should immediately provide notice that it is now interpreting the Act not to require that GHGs trigger PSD and allow Tennessee to rescind that portion of its rules that would allow GHGs to trigger PSD.''

Response 1: EPA established the requirement that PSD applies to all pollutants newly subject to regulation, including non-NAAQS pollutants such as GHGs, in earlier national rulemakings concerning the PSD program, and EPA has not re-opened that issue in this rulemaking. In an August 7, 1980, rulemaking at 45 FR 52676, 45 FR 52710–52712, and 45 FR 52735, EPA stated that a ''major stationary source'' was one which emitted ''any air pollutant subject to regulation under the Act'' at or above the specified numerical thresholds; and defined a ''major modification,'' in general, as a physical or operational change that increased emissions of ''any pollutant subject to regulation under the Act'' by more than an amount that EPA variously termed as de minimis or significant. In addition, in EPA's 2002 NSR Reform rule at 67 FR 80186 and 67 FR 80240 (December 31, 2002), EPA added to the PSD regulations the new definition of ''regulated NSR pollutant'' (currently codified at 40 CFR 52.21(b)(50) and 40 CFR 51.166(a)(49)); noted that EPA added this term based on a request from a commenter to ''clarify which pollutants are covered under the PSD program;'' and explained that in addition to criteria pollutants for which a NAAQS has been established, ''[t]he PSD program applies automatically to newly regulated NSR pollutants, which would include final promulgation of an NSPS [new source performance standard] applicable to a previously unregulated pollutant. *See* 67 FR 80240 and 67 FR 80264. Among other things, the definition of ''regulated NSR pollutant'' includes ''[a]ny pollutant that otherwise is subject to regulation under the Act.'' *See* 40 CFR 52.21(b)(50)(d)(iv); 40 CFR 51.166(a)(49)(iv).

EPA disagrees with the Commenter's underlying premise that PSD requirements were not triggered for GHGs when GHGs became subject to regulation as of January 2, 2011. This has been well established and discussed in connection with prior EPA actions, including the Johnson Memo Reconsideration and the Tailoring Rule. In addition, EPA's November 5, 2010, proposed rulemaking action provides the general basis for the Agency's rationale that GHGs, while not a NAAQS pollutant, can trigger PSD permitting requirements. The November 5, 2010, action also refers the reader to the preamble of the Tailoring Rule for further information on this rationale. In that rulemaking, EPA addressed at length the comment that PSD can be triggered only by pollutants subject to the NAAQS, and concluded such an interpretation of the Act would contravene Congress' unambiguous intent. *See* 75 FR 31560–31562. Further discussion of EPA's rationale for concluding that PSD requirements are triggered by non-NAAQS pollutants such as GHGs appears in the Tailoring Rule Response-to-Comments document (''Prevention of Significant Deterioration and Title V GHG Tailoring Rule: EPA's Response to Public Comments''), pp. 34–41; and in EPA's response to motions for a stay filed in the litigation concerning those rules (''EPA's Response to Motions for Stay,'' *Coalition for Responsible Regulation* v. *EPA,* D.C. Cir. No. 09–1322 (and consolidated cases)), at pp. 47–59, and are incorporated by reference here. These documents have been placed in the docket for today's action and can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2010–0696.

Comment 2: The Commenter expresses concerns regarding a footnote in which EPA describes its previously announced intention to narrow its prior approval of some SIPs. In the footnote, EPA explained that such narrowing would ensure that sources with GHG emissions that are less than the Tailoring Rule's thresholds are not obligated under federal law to obtain PSD permits during any gap between the effective date of GHG-permitting requirements (January 2, 2011) and the date that a SIP is revised to incorporate the Tailoring Rule thresholds. The Commenter asserts that EPA's narrowing of its prior SIP approvals ''is illegal.'' Further, the Commenter states that ''EPA has not proposed to narrow Tennessee's SIP approval here and any such proposal must be explicit and address the action specifically made with respect to Tennessee. EPA cannot sidestep these important procedural requirements.''

Response 2: While EPA disagrees with the Commenter's assertion that the narrowing approach discussed in EPA's Tailoring Rule is illegal, the narrowing approach was not the subject of EPA's November 5, 2010, proposed rulemaking to approve Tennessee's August 11, 2010, SIP revision. Rather, the narrowing approach was the subject of a separate rulemaking, which was considered and finalized in the PSD Narrowing Rule, an action separate from today's rulemaking. *See* 75 FR 82536 (December 30, 2010). In today's final action, EPA is acting to approve a SIP revision submitted by Tennessee, and is not otherwise narrowing its approval of prior submitted and approved provisions in the Tennessee SIP. Accordingly, the legality of the narrowing approach is not at issue in this rulemaking.

Comment 3: The Commenter states that EPA has failed to meet applicable statutory and executive order review requirements. Specifically, the Commenter refers to the statutory and executive orders for the Paperwork Reduction Act, the Regulatory Flexibility Act (RFA), Unfunded Mandates Reform Act, and Executive Order 13132 (Federalism). Additionally, the Commenter mentions that EPA has never analyzed the costs and benefits associated with triggering PSD for stationary sources in Tennessee, much less nationwide.

Response 3: EPA disagrees with the Commenter's statement that EPA has failed to meet applicable statutory and executive order review requirements. As stated in EPA's proposed approval of Tennessee's August 30, 2010, draft SIP revision, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. Accordingly, EPA approval, in-and-of-itself, does not impose any new information collection burden, as defined in 5 CFR 1320.3(b) and (c), that would require additional

review under the Paperwork Reduction Act. In addition, this SIP approval will not have a significant economic impact on a substantial number of small entities, beyond that which would be required by the state law requirements, so a regulatory flexibility analysis is not required under the RFA. Accordingly, this rule is appropriately certified under section 605(b) of the RFA. Moreover, as this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandates or significantly or uniquely affect small governments, such that it would be subject to the Unfunded Mandates Reform Act. Finally, this action does not have federalism implications that would make Executive Order 13132 applicable because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

In summary, today's rule is a routine approval of a SIP revision, approving state law, and does not impose any requirements beyond those imposed by state law. To the extent these comments are directed more generally to the application of the statutory and executive order reviews to the required regulation of GHGs under PSD programs, these comments are irrelevant to the approval of state law in today's action. However, EPA provided an extensive response to similar comments in promulgating the Tailoring Rule. EPA refers the Commenter to the sections in the Tailoring Rule entitled *''VII. Comments on Statutory and Executive Order Reviews,''* 75 FR 31601–31603, and *''VI. What are the economic impacts of the final rule?,''* 75 FR 31595–31601. EPA also notes that today's action is not itself the trigger for regulation of GHGs. To the contrary, by helping to clarify that higher PSD applicability thresholds for GHGs apply than would otherwise be in effect under the Act, this rulemaking, as well as EPA's Tailoring Rule, is part of the effort to provide relief to smaller GHG-emitting sources that would otherwise be subject to PSD permitting requirements for their GHG emissions.

Comment 4: The Commenter states that ''[i]f EPA proceeds with this action, it must condition approval on the continued validity of its determination that PSD can be triggered by or is applicable to GHGs.'' Further, the Commenter remarks on the ongoing litigation in the U.S. Court of Appeals for the D.C. Circuit. Specifically, regarding EPA's determination that PSD can be triggered by GHGs or is applicable to GHGs, the Commenter mentions that ''EPA should explicitly state in any final rule that continued enforceability of these provisions in the Tennessee SIP is limited to the extent to which the federal requirements remain enforceable.'' The Commenter notes that if a stay is issued, these requirements should also be stayed.

Response 4: EPA believes that it is most appropriate to take actions that are consistent with the federal regulations that are in place at the time the action is being taken. To the extent that any changes to federal regulations related to today's action result from pending legal challenges or other actions, EPA will process appropriate SIP revisions in accordance with the procedures provided in the Act and EPA's regulations. EPA notes that in an order dated December 10, 2010, the United States Court of Appeals for the D.C. Circuit denied motions to stay EPA's regulatory actions related to GHGs. *Coalition for Responsible Regulation, Inc.* v. *EPA,* Nos. 09–1322, 10–1073, 10–1092 (and consolidated cases), Slip Op. at 3 (D.C. Cir. December 10, 2010) (order denying stay motions).

III. What is the effect of this final action?

Final approval of Tennessee's January 11, 2012, SIP revision will incorporate the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule (75 FR 31514, June 3, 2010) and adopted as state law, confirming that smaller GHG sources emitting less than these thresholds will not be subject to PSD permitting requirements for GHGs under the approved Tennessee SIP. Pursuant to section 110 of the CAA, EPA is approving the changes made in Tennessee's January 11, 2012, final SIP revision into Tennessee's SIP.

The changes to Tennessee's SIP-approved PSD program that EPA is approving today are to Tennessee's rules which have been formatted to conform to Tennessee's SIP-approved PSD regulation 1200–03–09–.01(4)—*Construction and Operating Permits, Prevention of Significant Deterioration,* but in substantive content the rules that address the Tailoring Rule provisions are the same as the federal rules. EPA performed a line-by-line review of the proposed change to Tennessee's SIP-approved PSD regulations 1200–03–09–.01(4)—*Construction and Operating Permits, Prevention of Significant Deterioration* and has determined that the change is consistent with (and substantively the same as) the change to the federal provisions made by EPA's Tailoring Rule. Furthermore, EPA has determined that the January 11, 2012, revision to Tennessee's SIP is consistent with section 110 of the CAA. *See, e.g.,* Tailoring Rule, 75 FR 31561.

IV. Final Action

EPA is taking final action to approve Tennessee's January 11, 2012, SIP revision which includes updates to Tennessee's air quality regulation 1200–03–09–.01(4)—*Construction and Operating Permits, Prevention of Significant Deterioration.* Specifically, Tennessee's January 11, 2012, SIP revision clarifies appropriate emissions thresholds for determining PSD applicability with respect to new or modified GHG-emitting sources in accordance with EPA's Tailoring Rule, and incorporates those thresholds in the form in which they are stated in state law. EPA has made the determination that the January 11, 2012, SIP revision is approvable because it is in accordance with the CAA and EPA regulations including regulations pertaining to PSD permitting for GHGs.

As a result of EPA's approval of Tennessee's changes to its air quality regulations to adopt the appropriate thresholds for GHG permitting applicability into Tennessee's SIP, paragraph (d) in Section 52.2222 of 40 CFR part 52, as included in EPA's Narrowing Rule, is no longer necessary. Therefore, this final action amends Section 52.2222 of 40 CFR part 52 by removing this unnecessary regulatory language.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* CAA section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: January 27, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart RR—Tennessee

■ 2. Section 52.2220(c) is amended under Chapter 1200–3–9 by revising the entry for ''Section 1200–3–9–.01'' to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED TENNESSEE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 1200–3–9 Construction and Operating Permits				
Section 1200–3–9–.01 ...	Construction Permits	2/8/2011	2/28/2012 [Insert citation of publication].	EPA is approving Tennessee's May 28, 2009 SIP revisions to Chapter 1200–3–9–.01 with the exception of the ''baseline actual emissions'' calculation revision found at 1200–3–9–.01(4)(b)45(i)(III), (4)(b)45(ii)(IV), (5)(b)1(xlvii)(I)(III) and (5)(b)1(xlvii)(II)(IV) of the submittal.
*	*	*	*	*

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§ 52.2222 [Amended]

■ 3. Section 52.2222 is amended by removing paragraph (d).

[FR Doc. 2012–4471 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA–R07–OAR–2011–0995; FRL–9634–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; notice of administrative change and correction.

SUMMARY: EPA is taking final action on administrative changes to the State Implementation Plan (SIP) and the Operating Permits Program. The first revision is an administrative change that codifies EPA's prior approval of a SIP submission which re-numbers references to the St. Louis City Code local ordinance. The second revision is a correction which reinserts text that

was inadvertently removed and re-letters a paragraph which codifies a recent approval of revisions to Missouri's Title V operating permits program related to the Submission of Emission Data, Emission Fees and Process Information.

DATES: This action is effective February 28, 2012.

FOR FURTHER INFORMATION CONTACT: Amy Bhesania at (913) 551–7147, or by email at *bhesania.amy@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' or ''our'' refer to EPA.

Outline

I. What is being addressed in this document?
II. What action is EPA taking?

I. What is being addressed in this document?

EPA is taking final action on administrative changes to the State Implementation Plan (SIP) and the Operating Permits Program. On April 5, 2011, Missouri submitted a SIP revision requesting to local ordinance numbers in the St. Louis City Code. EPA determined that the revision was a minor SIP revision without any substantive changes and complied with all applicable requirements of the CAA and EPA regulations concerning such SIP revisions. EPA approved this revision through letter notice to Missouri dated November 23, 2011 consistent with the procedures outlined in EPA's Notice of Procedural Changes on SIP processing published on January 19th, 1989 at 54 FR 2214 and consistent with the procedures outlined in an April 6, 2011 memo from Janet McCabe, Deputy Assistant Administrator for the Office of Air and Radiation, regarding Regional Consistency for the Administrative Requirements of State Implementation. Today's action merely codifies the November 23, 2011 administrative amendment to the SIP.

The second revision is a correction which reinserts text that was inadvertently removed and re-letters a paragraph which codifies a recent approval of revisions to Missouri's Title V operating permits program related to the Submission of Emission Data, Emission Fees and Process Information that was finalized in 76 FR 77701, December 14, 2011. In that rule, EPA inadvertently removed the text in 40 CFR part 70, app. A, from paragraph (v) for Missouri, and replaced it with new text which was the subject of that rule. EPA's intent was to add the new text in a new paragraph rather than to replace existing text. This action reinstates the removed text in paragraph (v) and moves the current text in paragraph (v) to new paragraph (z).

II. What action is EPA taking?

EPA is taking final action on administrative changes to the Missouri SIP and Operating Permits Program. EPA has determined that today's action falls under the ''good cause'' exemption in the section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding ''good cause,'' authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make an action effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). With respect to the SIP revision described above, today's administrative action simply codifies provisions which are already in effect as a matter of law in Federal and approved state programs. With respect to the revision to the Missouri Title V operating permit program, this action merely corrects an error in the designation of paragraphs reflecting previously approved revisions to the Missouri program. Under section 553 of the APA, an agency may find good cause where procedures are ''impractical, unnecessary, or contrary to the public interest.'' Public comment for this administrative action is ''unnecessary'' because the revisions are administrative and non-substantive in nature. Immediate notice of this action in the **Federal Register** benefits the public by providing the public notice of the updated Missouri SIP and Title V program.

Approval of these revisions will ensure consistency between state and Federally-approved rules. EPA has determined that these changes will not relax the SIP or adversely impact air emissions.

Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this

action must be filed in the United States Court of Appeals for the appropriate circuit by April 30, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference.

40 CFR Part 70

Environmental protection, Air pollution control, Operating permits.

Dated: February 9, 2012.

Karl Brooks,

Regional Administrator, Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart AA—Missouri

■ 2. In § 52.1320 the table in paragraph (c) is amended by revising the title, ''St. Louis City Ordinance 65645'' to read as follows.

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
* * * * *			*	*
St. Louis City Ordinance 68657				
* * * * *			*	*

* * * * *

PART 70—[AMENDED]

■ 3. The authority citation for Part 70 continues to read as follows:

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

Appendix A—[Amended]

■ 4. Appendix A to Part 70, Missouri, is amended by redesignating existing paragraph (v) as new paragraph (z) and by adding a new paragraph (v) to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Missouri

* * * * *

(v) The Missouri Department of Natural Resources submitted revisions to Missouri rule 10 CSR 10–6.110, ''Submission of Emission Data, Emission Fees, and Process Information'' on December 21, 2007; approval of section (3)(D) effective November 14, 2008.

* * * * *

[FR Doc. 2012–4476 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[EPA–R10–UST–2011–0896; FRL 9640–1]

Idaho: Final Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final determination.

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

DATES: *Effective Date:* Final approval for the State of Idaho shall be effective on February 28, 2012.

FOR FURTHER INFORMATION CONTACT: Erik Sirs, U.S. Environmental Protection Agency, Region 10, 1435 North Orchard, Boise, ID 83706, phone number: (208) 378–5762, email: *sirs.erik@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6991c, authorizes EPA to approve underground storage tank programs to operate in the State in lieu of the federal underground storage tank (UST) program. To qualify for final approval, a state's program must be ''no less stringent'' than the federal program in all eight elements set forth at section 9004(a)(1) through (7) and (9) of RCRA, 42 U.S.C. 6991c(a)(1) through (7) and (9); include the notification requirements of RCRA section 9004(a)(8) and provide for adequate enforcement of compliance with UST standards (section 9004(a) of RCRA, 42 U.S.C. 6991c(a)). Note that the Energy Policy Act of 2005 added state-specific operator training requirements as a state program approval element in section 9004(a)(9). Although, EPA has not yet established performance criteria in 40 CFR part 281 for making a no-less-stringent determination for the operator training element, EPA finds Idaho's operator training requirements to be consistent with Operator Training Grant

Guidelines issued by EPA in 2007 and approves Idaho's operator training requirements in today's approval. Also, note that RCRA sections 9005 (on information-gathering) and 9006 (on Federal enforcement) by their terms apply even in states with programs approved by EPA under RCRA section 9004. Thus, the Agency retains its authority under RCRA sections 9005 and 9006, 42 U.S.C. 6991d and 6991e, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions in approved states. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than the State authorized analogues to these provisions.

On July 21, 2010, the State of Idaho submitted an official application to obtain final program approval to administer the underground storage tank program for petroleum and hazardous substances. On December 8, 2011, EPA published a tentative determination announcing its intent to approve the State of Idaho's program. Further background on the tentative decision to grant approval appears in the **Federal Register** at 76 FR 76684 (December 8, 2011).

Along with the tentative determination, EPA announced the availability of the application for public review and comment and the date of a public hearing on the application. EPA advertised and held a public hearing on December 19, 2011. No comments were received at the public hearing. No public comments were received regarding EPA's tentative approval of Idaho's underground storage tank program.

II. Final Decision

I conclude that the State of Idaho's application for program approval meets all of the statutory and regulatory requirements established by subtitle I of RCRA and 40 CFR part 281. Accordingly, Idaho is granted final approval to operate its underground storage tank program for petroleum and hazardous substances in lieu of the federal underground storage tank program. Idaho has primary enforcement responsibility for petroleum and hazardous underground storage tanks, although EPA retains the right to conduct enforcement actions for all regulated underground storage tanks under section 9006 of RCRA. This approval is subject to the terms and conditions set forth in the State's application for approval (including, but not limited to, the Memorandum of Agreement) and in the December 8, 2011 **Federal Register** Idaho: Tentative Approval of State Underground Storage Tank Program. This final determination to approve the Idaho program applies to all areas within the State except for land in Indian Country. This includes all lands within the exterior boundaries of the Shoshone-Bannock Tribes (Fort Hall Reservation), Shoshone-Paiute Tribe (Duck Valley Reservation), Nez Perce Reservation, Coeur d'Alene Reservation, Kootenai Reservation; any land held in trust by the United States for an Indian tribe, and any other lands that are Indian Country within the meaning of 18 U.S.C. 1151.

III. Statutory and Executive Order (EO) Review

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

A. Executive Order 12866

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

B. Paperwork Reduction Act

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

C. Regulatory Flexibility Act

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

D. Unfunded Mandates Reform Act

This rule does not have any impacts as described in the Unfunded Mandates Reform Act because this rule codifies pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law. It does not contain any unfunded mandates or significantly or uniquely effects small governments.

E. Executive Order 13132: Federalism

This rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule authorizes pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175 because EPA retains its authority over Indian Country. Thus, Executive Order 13175 does not apply to this rule.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it approves a state program.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a ''significant regulatory action'' as defined under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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

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

K. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 281

Environmental protection, administrative practice and procedure, hazardous materials, state program approval, and underground storage tanks.

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

Dated: February 14, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2012–4657 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 401

[USCG–2011–0328]

RIN 1625–AB70

2012 Rates for Pilotage on the Great Lakes

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adjusting the rates for pilotage services on the Great Lakes, which were last amended in February 2011. The adjustments establish new base rates and are made in accordance with a required full ratemaking procedure. They result in an average decrease of approximately 2.62 percent from the rates established in February 2011. This final rule promotes the Coast Guard's strategic goal of maritime safety.

DATES: This final rule is effective August 1, 2012.

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–2011–0328 and are 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. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2011–0328 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Todd Haviland, Management & Program Analyst, Office of Great Lakes Pilotage, Commandant (CG–5522), Coast Guard; telephone 202–372–2037, email *Todd.A.Haviland@uscg.mil,* or fax 202–372–1909. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

AMOU American Maritime Officers Union
CFR Code of Federal Regulations
COBRA Consolidated Omnibus Budget Reconciliation Act
CPA Certified public accountant
CPI Consumer Price Index
FR **Federal Register**
GLPAC Great Lakes Pilotage Advisory Committee
NAICS North American Industry Classification System
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
ROI Return on Investment
§ Section symbol
U.S.C. United States Code

II. Regulatory History

On August 4, 2011, we published a notice of proposed rulemaking (NPRM) entitled ''2012 Rates for Pilotage on the Great Lakes'' in the **Federal Register** (76 FR 47095). We received 10 comments on the proposed rule. No public meeting was requested and none was held.

III. Basis and Purpose

The basis of this rule is the Great Lakes Pilotage Act of 1960 (''the Act'') (46 U.S.C. chapter 93), which requires U.S. vessels operating ''on register'' [1] and foreign vessels to use U.S. registered pilots while transiting the U.S. waters of the St. Lawrence Seaway and the Great Lakes system. 46 U.S.C. 9302(a)(1). The Act requires the Secretary of Homeland Security to ''prescribe by regulation rates and charges for pilotage services, giving consideration to the public interest and the costs of providing the services.'' 46 U.S.C. 9303(f). Rates must be established or reviewed and adjusted each year, not later than March 1. Base rates must be established by a full ratemaking at least once every 5 years, and in years when base rates are not established they must be reviewed and adjusted if necessary. 46 U.S.C. 9303(f). The Secretary's duties and authority under the Act have been delegated to the Coast Guard. Department of Homeland Security Delegation No. 0170.1, paragraph (92)(f). Coast Guard regulations implementing the Act appear in parts 401 through 404 of Title 46, Code of Federal Regulations (CFR). Procedures for use in establishing base rates appear in 46 CFR part 404, Appendix A (''Appendix A''), and procedures for annual review and adjustment of existing base rates appear in 46 CFR part 404, Appendix C (''Appendix C'').

The purpose of this rule is to establish new base pilotage rates using the Appendix A methodology.

IV. Background

The vessels affected by this rule traverse the U.S. waters of the Great Lakes and are engaged in foreign trade. United States and Canadian lake freighters, or ''lakers,'' [2] which account for most commercial shipping on the Great Lakes, are not affected. 46 U.S.C. 9302.

The U.S. waters of the Great Lakes and the St. Lawrence Seaway are divided into three pilotage districts. Pilotage in each district is provided by an association certified by the Coast Guard Director of Great Lakes Pilotage. It is important to note that, while we set rates, we do not control the actual number of pilots an association maintains, as long as the association is able to provide safe, efficient, and reliable pilotage service. We also do not control the actual compensation that pilots receive. The actual compensation is determined by each of the three district associations, which use different compensation practices.

District One, consisting of Areas 1 and 2, includes all U.S. waters of the St. Lawrence River and Lake Ontario. District Two, consisting of Areas 4 and 5, includes all U.S. waters of Lake Erie, the Detroit River, Lake St. Clair, and the St. Clair River. District Three, consisting of Areas 6, 7, and 8, includes all U.S. waters of the St. Mary's River, Sault Ste. Marie Locks, and Lakes Michigan, Huron, and Superior. Area 3 is the Welland Canal, which is serviced exclusively by the Canadian Great Lakes Pilotage Authority and, accordingly, is not included in the U.S. rate structure. Areas 1, 5, and 7 have been designated by Presidential Proclamation, pursuant to the Act, to be waters in which pilots must at all times be fully engaged in the navigation of vessels in their charge. Areas 2, 4, 6, and 8 have not been so designated because they are open bodies of water. While working in those undesignated areas, pilots must only ''be on board and available to direct the navigation of the vessel at the discretion of and subject to the customary authority of the master.'' 46 U.S.C. 9302(a)(1)(B).

This rule is a full ratemaking to establish new base pilotage rates using the Appendix A methodology. Among other things, the Appendix A methodology requires us to review detailed pilot association financial information, and we contract with independent accountants to assist in that review. The last full ratemaking established the current base rates in 2006 (final rule, 71 FR 16501, April 3, 2006). Following the 2006 full ratemaking, and for the first time since 1996 when the Appendix A and Appendix C methodologies were established, we began a series of five annual Appendix C rate reviews and adjustments, each of which produced overall rate increases. The most recent Appendix C annual review was concluded on February 4, 2011 (76 FR 6351), and adjusted pilotage rates effective August 1, 2011.

We intended to establish new base rates within 5 years of the 2006 full ratemaking, or by March 1, 2011. In order to meet that deadline, we started our ratemaking process early and were using 2007 financial data reported by the pilot associations as audited by our independent accountant. However, the independent accountant's report on pilot association financial information proved to be incomplete and inadequate for ratemaking purposes due to inconsistent financial data collection. We went to great lengths and expended significant time and resources to resolve these inadequacies with the independent accountant, to no avail. We finally concluded, as we previously announced last year (2011 NPRM, 75 FR 51191 at 51192, col. 3), that we would need to contract with a new independent accountant, which delayed this Appendix A ratemaking. The second independent accountant used the most recent available data, which was for 2009. This year's NPRM and this final rule both are based on our review of the second independent accountant's financial report of 2009 data. We discuss the comments by the pilot associations on that report and the independent accountant's final findings in our ''Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses,'' which

[1] ''On register'' means that the vessel's Certificate of Documentation has been endorsed with a registry endorsement, and therefore, may be employed in foreign trade or trade with Guam, American Samoa, Wake, Midway, or Kingman Reef. 46 U.S.C. 12105, 46 CFR 67.17.

[2] A ''laker'' is a commercial cargo vessel especially designed for and generally limited to use on the Great Lakes, engaged in trade across the Great Lakes region, including trade between the U.S. and Canada.

appears in the docket for this rulemaking.

V. Discussion of Comments and Changes

We received public comments on our NPRM from 10 commenters. Some commenters submitted multiple comments. Nine commenters were groups or individuals representing pilots; the remaining commenter was an association representing the agents, owners, and operators of ocean ships trading to or from the U.S. Great Lakes. As a result of these comments and as summarized in part VII.A of this preamble, when the rate adjustments shown in Tables 35 through 37 of this preamble are averaged, the average decrease in rates for 2012 will be 2.62 percent and not 4 percent as we proposed in the NPRM.

The 2009 audit base year. Nine commenters questioned the Coast Guard's use of 2009 as the auditing base year for this ratemaking. They pointed out that the Coast Guard originally stated (see, for example, the 2007 final rule, 72 FR 53158 at 53159 col. 3, Sep. 18, 2007) that we would base the next Appendix A ratemaking on audited data ''at the completion of the 2007 navigation season.'' Some commenters felt we had not adequately explained why our original audit was unusable, or why we did not have the second auditor work with the same data that was available to the first auditor. All of the commenters noted that 2009 was historically their ''all time lowest season by traffic volume,'' and hence not representative. One commenter suggested that we ''apparently selected [2009] solely for the effect that it would have on the outcome of the rate calculation.'' Some commenters also felt that the use of a historically low-traffic season as the auditing base year ''flies in the face of reason'' and freezes the expense base at 2009 levels even though the NPRM projects that 2012 traffic levels will be 56 percent higher overall than they were in 2009.

As discussed in part IV of this preamble, the first independent accountant's report was based on improperly collected 2007 financial data, and proved unusable for ratemaking. We discussed the issue in greater detail at the Great Lakes Pilotage Advisory Committee (GLPAC) meeting held on October 18, 2011, which was attended by most of the nine commenters or their representatives. A transcript of that meeting appears in the docket. It is true that 2009 was a historically low base year, but we have traditionally and consistently used the most recent financial data available for ratemaking purposes and there was no legitimate basis to depart from this precedent. As we explained at the GLPAC meeting, we intend to use the Appendix A ratemaking methodology annually, beginning next year, so that year-to-year variations in financial conditions can be more quickly reflected in the rates. The impact of using the 2009 data is somewhat ameliorated by the adjustments we are making in this final rule, in response to comments on the NPRM. Also, the improved conditions pilots experienced in 2010 should be reflected in the next ratemaking cycle.

Demand projections. Four commenters cited the Coast Guard's ''consistent over-projection of traffic'' as the main reason pilots consistently fail to meet target compensation, have the lowest compensation of any pilots in America, and are leaving Great Lakes piloting for other work. These commenters also said traffic falls short of projection, so sufficient revenue is not generated. One commenter suggested that the Coast Guard deliberately overestimates projected traffic levels to harm the pilots. Other commenters suggested that we should be more transparent in revealing our sources for these projections.

We would like to be more transparent in publicizing these sources and the weight we assign to each source. However, we know of no single source that projects either demand for pilotage service or Great Lakes traffic that will require a U.S. pilot. Therefore, we must rely on historic data, input from pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services. We reduced our projections for pilotage service demand by nearly 27 percent between 2006 and 2011. For this 2012 ratemaking, we anticipate an additional 4.3 percent decrease in demand for pilotage services. At the May 20, 2011, GLPAC meeting, a transcript of which also appears in the docket, we presented an analysis of projected bridge hours to actual bridge hours. The analysis demonstrates that the projected and actual bridge hours values converge between 2006 and 2010. This convergence shows that our ability to project demand has improved, and we expect that improvement to continue.

We discussed the issue of pilotage demand and traffic projection again at the October 2011 GLPAC meeting. GLPAC recommended that we consider adding a review of using a 3-, 5-, or 7-year rolling average of actual bridge hours to project bridge hours for future rates to the proposed bridge hour study. We agreed to include this recommendation in the proposed study.

Work standards and bridge hours. Three commenters said that the current workload standard of 1,000 bridge hours in designated waters and 1,800 bridge hours in undesignated waters is unrealistically high and jeopardizes safe, efficient, and reliable pilotage service. This issue was discussed at GLPAC's October 2011 meeting and GLPAC approved our outline for a third-party study of bridge hours and the workload standard. We are currently preparing the necessary documentation to select a suitable third party to conduct the study. While there is general consensus that a more accurate bridge hour standard needs to be developed, there is no evidence that the current standard is ''unrealistically high and jeopardizes safe, efficient, and reliable pilotage service.'' We will continue to use the current established standard until a new study provides an alternate standard.

Another commenter said that we had departed from the ''previous Appendix A procedure'' in calculating revenue per bridge hour. However this commenter did not provide any further explanation. This commenter said we should ''revert to the prior more reasonable practice'' of using revenue and bridge hours from the audited year, adjusted for changes in the interim period between the audited year and the base year. We have never performed the procedure outlined by this commenter. We followed the same procedure we used for the last Appendix A review (71 FR 16501 at 16509, paragraph H), and the steps required by the methodology to calculate projected revenue by multiplying the projected demand for bridge hours by the rates currently in effect.

Coast Guard discretionary authority. Two commenters who represent pilots said without further explanation that we should use our broad Appendix A authority to revise the proposed 2012 rates and make them ''fairer, more reasonable, and indicative of actual expected traffic levels.'' We disagree with the underlying premise of this comment that the Appendix A methodology provides us with broad authority to revise rates. The Appendix A methodology requires strict adherence to a series of steps and equations that leads to consistent ratemaking results. As previously stated, we rely on historic data, input from pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services and traffic levels.

Other comments relating to methodology. An industry commenter said we consistently ignore the actual cost to the industry of pilotage services in the United States and that our ratemaking methodology only makes reference to projected or required revenues and never includes any mention of actual costs for previous years. We disagree. Operating expenses represent one of the primary drivers of the current ratemaking methodology. The operating expenses reported in the pilot association financial statements and the independent accountant's audits are actual expenses that are used in developing the ''projection of operating expenses'' for the coming year. This is the first step of an Appendix A ratemaking. In addition, the expenses of pilot compensation and benefits that must be recovered in the rate are also included in the calculation using past years' data to project the cost into the coming year. The Appendix A methodology similarly dictates how we project revenues for ratemaking purposes which also require an examination of historical data. The commenter states that no where does the methodology mention ''total costs for previous years.'' While true, as discussed, the methodology does take into consideration total prior costs and expenses in the ratemaking process. In addition, our shift to conducting Appendix A rulemakings on an annual basis will also recognize ''necessary and reasonable'' operating expenses in a more timely manner, allow us to use a more accurate operating expense base when we establish rates, and better reflect the operating expenses associated with providing pilotage on the Great Lakes.

A pilot association commenter said that our inflation/deflation and payroll tax adjustments should account for the 3 years between the 2009 base year and conditions that can be projected for the 2012 navigation season. We disagree. The Appendix A methodology clearly states that the inflation/deflation adjustment must be based on the single year between the base year and the succeeding navigation season, and payroll expense adjustments must be based on actual base year expenses.

The same commenter said that because most rate adjustment factors are unrelated to the benchmark union contract changes that take effect in August, those unrelated factors should be recognized in rate changes that take effect at the beginning of the 2012 shipping season, and not be delayed until August. We disagree. These benchmark changes, though perhaps few in number compared to the many factors our ratemaking methodology takes into account, continue to be the substantial portion of the rate adjustment. We will continue this practice for the 2012 Appendix A rulemaking, as in every year since 2009 when the rate became effective August 1, consistent with the date when the benchmark contract changes take effect.

One commenter, representing all three Great Lakes pilotage associations, said that membership dues for the American Pilots' Association (APA) should not be viewed as discretionary or personal to pilots, but as necessary and reasonable expenses of each association, and that except for the portion directly attributable to lobbying expenses, these dues should be included in the rate base. The issue of pilot association dues arose in our last Appendix A ratemaking. 71 FR 16501 at 16507, col. 3. Our regulations provide clear guidance concerning this issue and state, ''[each] expense item included in the rate base is evaluated to determine if it is necessary for the provision of pilotage service, and if so, what dollar amount is reasonable for the expense.'' 46 CFR 404.5(a)(1). Recognizable expenses must be both ''reasonable and necessary for the provision of pilotage.'' This topic is analogous to a licensure issue. Expenditures associated with obtaining and maintaining one's pilot's license represent ''necessary'' expenses that are recognized. Membership in a voluntary special interest association, like the APA, is not necessary for the provision of pilotage. Therefore, we found then, and continue to find, that American Pilots' Association membership dues are not necessary and thus are excluded from the rate's expense base. 71 FR at 16506, col. 3.

Another commenter representing pilots said it is very frustrating to address the same issues year after year in connection with the ratemaking process with no progress made on what are clearly identified problems. We understand the commenter's frustration, but the progress the commenter seeks cannot take place within the annual ratemakings that simply apply the existing ratemaking methodology. The upcoming third-party study of the bridge hour definition and the workload standard, and our decision to begin annual Appendix A reviews, are all efforts to address these issues and should alleviate stakeholder concerns. In addition, these issues have been the subject of discussion at the May and October 2011 GLPAC meetings, both of which were open to the public.

District One-specific comments. Commenters representing pilots in District One raised comments specific to that district. Some of the following comments were made by the local pilotage association and others were made by the association's controller.

First, the pilots said that to derive the full cost of their operating expenses and return on investment, we should include the operating expenses and assets of the service corporation affiliated with the pilots' association. Our ratemaking is based on the financial information provided by each association, Appendix A, Sub-step 1.A. The independent accountant's draft financial report included expenses of the service corporation and the association did not raise this issue when it reviewed the draft report. The draft report's findings, the association's comments on those findings, and the final findings are all discussed in the ''Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses,'' which appear in the docket for this rulemaking.

However, the independent accountant's financial reports did not include the investment base calculation. We coordinated with the independent accountant and used the financial information provided by District One to calculate the investment base for this rulemaking. The independent accountant's financial reports will include the investment base calculation for future rulemakings.

Second, the pilots raised a number of questions about the expenses they are now incurring for a new pilot boat that entered service after the close of the 2009 base year. Under the ratemaking methodology, we can recognize ''foreseeable circumstances'' that could affect operating expenses in the upcoming year, but we cannot recognize foreseeable circumstances that might affect the calculation of the association's 2012 investment base (Appendix A, Sub-steps 1.D, 4). We consider significant capital expenditures and the fixed costs associated with those capital expenditures as ''foreseeable circumstances.'' The rest of the expenses that fluctuate due to market forces and the variance in demand for pilot services will be reimbursed when they are recognized in the independent accountant's financial reports that we will use in future ratemaking. Thus, for 2012, and for the duration of the pilot boat mortgage contract, we will recognize the association's mortgage payments on the boat as a foreseeable circumstance affecting their operating expenses. Also, we will recognize the current insurance costs for the boat as a one-time expense for 2012. We will not recognize the boat's depreciation

because we are already recognizing the payment of the mortgage principle. Recognizing the payment of the mortgage principal and depreciation would be double counting for the same expense.

Third, the pilots raised questions about a new dock and boatlift they plan to acquire in 2012. Based on the agreement the association has entered into for the performance of this work, we will recognize the association's cost as a foreseeable circumstance affecting their operating expenses in 2012. We will adjust for any expense shortfalls or overages in the following year's ratemaking.

Fourth, the association's controller said we should adjust projected operating expenses for pilot subsistence and travel, in recognition of projected 2012 traffic levels for Areas 1 and 2 that are 62 percent and 50 percent higher, respectively, than 2009 levels. The controller also said we should raise the adjustment for license insurance because the association is adding a new pilot, and that 2012 projections should discount the layoffs that economic conditions forced in 2009 that consequently lowered the association's 2009 operating expenses. We believe that each of the proposed adjustments rests on assumptions that by themselves are too speculative to constitute ''foreseeable circumstances'' for 2012 within the meaning of Appendix A, Step 1.D. Our planned use of Appendix A for future annual ratemakings will allow demonstrated changes in each of these factors to be recognized beginning in 2013.

District Two-specific issues. Commenters representing pilots in District Two raised comments specific to that district. Some of the following comments were made by the local pilotage association and others were made by the association's certified public accountant (CPA).

The association said we should adjust the 2012 rates in recognition that several unusual factors of the 2009 base year are unlikely to reoccur in 2012. In 2009, the commenter claimed that there were significant layoffs, the association eliminated one pilot's position, health plan coverage was temporarily suspended for retirees, pilots' subsistence and travel expenses were decreased, the American Pilots' Association temporarily reduced the association's dues because of economic hardship, and the association moved out of temporary headquarters into a more costly new headquarters late in the year. We are recognizing the mortgage and tax payments the association is making on its new headquarters as ''foreseeable circumstances'' affecting 2012 operating expenses, but the other proposed adjustments rest on assumptions that, by themselves, are too speculative to constitute foreseeable circumstances for 2012 within the meaning of Appendix A, Step 1.D. Our use of the Appendix A methodology for annual ratemakings will account for demonstrated changes in each of these factors, which will be recognized beginning in 2013.

The association's CPA said the association's interest expenses increased in 2011 due to motor and interior upgrades on two pilot boats in this rulemaking. We are recognizing those expenses for one of the boats. For the other, we still lack sufficient documentation to treat any increase as a foreseeable circumstance affecting 2012 operating expenses because the association is still negotiating the contract related to the financing of the upgrades.

The same CPA also said that the association's investment base should be increased by the cost of constructing the association's new headquarters and to reflect the fair market value of the upgraded pilot boat. Changes to the investment base cannot be treated on the same ''foreseeable circumstances'' basis we use for operating expenses, but these impacts, once they are actually felt by the association and reported, should be captured in future annual Appendix A ratemakings, perhaps as early as next year.

Annual Appendix A reviews. One commenter, representing all three pilotage associations, encouraged us to follow through with annual Appendix A reviews beginning next year, noting that this would be fairer to all parties than our past practice of using the Appendix A methodology once every 5 years and relying on the Appendix C methodology in interim years. We agree and have already begun the audit of 2010 expenses in preparation for next year's Appendix A ratemaking. The associations will have an opportunity to review, question, and comment on the independent accountant's draft reports. The independent accountant will consider the questions and comments and draft the final financial reports, which we will then use as the basis for next year's NPRM and final rule.

VI. Discussion of the Final Rule

A. Summary

We are decreasing base pilotage rates in accordance with the Appendix A methodology. The new rates will be established by March 1, 2012, and effective August 1, 2012. Table 1 shows the percent change for the new rates for each area. Overall, rates will average approximately 2.62 percent less than the February 2011 rate adjustments, not 4 percent as we proposed in the NPRM.

TABLE 1—SUMMARY OF RATE ADJUSTMENTS

If pilotage service is required in:	Then the percent change over the current rate is:
Area 1 (Designated Waters)	3.59
Area 2 (Undesignated Waters)	−3.10
Area 4 (Undesignated Waters)	−3.90
Area 5 (Designated Waters)	−3.03
Area 6 (Undesignated Waters)	−3.73
Area 7 (Designated Waters)	−3.08
Area 8 (Undesignated Waters)	−5.08

B. Calculating the Rate Adjustment

Appendix A provides seven steps, with sub-steps, for calculating rate adjustments. The following discussion describes those steps and sub-steps and includes tables showing how we applied them to the 2009 detailed pilot financial information.

Step 1: Projection of Operating Expenses. In this step, we project the amount of vessel traffic annually. Based on that projection, we forecast the amount of fair and reasonable operating expenses that pilotage rates should recover.

Sub-step 1.A: Submission of Financial Information. This sub-step requires each pilot association to provide us with detailed financial information in accordance with 46 CFR part 403. The associations complied with this requirement, supplying 2009 financial information in 2010.

Sub-step 1.B: Determination of Recognizable Expenses. This sub-step requires us to determine which reported association expenses will be recognized for ratemaking purposes, using the guidelines shown in 46 CFR 404.5. We contracted with an independent accountant to review the reported expenses and submit findings with recommendations on which reported expenses should be recognized. The accountant also reviewed which reported expenses should be adjusted prior to recognition and which, if any, should be denied for ratemaking purposes. The independent accountant made preliminary findings; these findings were sent to the pilot associations, and the pilot associations reviewed and provided comments. Then, the independent accountant made final findings. The Coast Guard Director

of Great Lakes Pilotage reviewed and accepted those final findings, resulting in the determination of recognizable expenses. The preliminary findings, the associations' comments on those findings, and the final findings are all discussed in the ''Summary—Independent Accountant's Report on Pilot Association Expenses, with Pilot Association Comments and Accountant's Responses,'' which appear in the docket for this rulemaking. Tables 2 through 4 show each association's recognized expenses.

TABLE 2—RECOGNIZED EXPENSES FOR DISTRICT ONE

Reported expenses for 2009	Area 1	Area 2	Total
	St. Lawrence River	Lake Ontario	
Other Pilot Costs:			
Pilot subsistence/travel	$164,782	$131,436	$296,218
License insurance	28,428	18,952	47,380
Other	980	857	1,837
Pilot Boat and Dispatch Expenses:			
Pilot boat expense	101,612	82,506	184,118
Administrative Expenses:			
Legal	10,450	8,685	19,135
Depreciation/auto leasing/other	8,917	7,283	16,200
Dues and subscriptions	13,717	10,678	24,395
Bad debt expense	9,302	1,004	10,306
Utilities	478	346	824
Accounting/professional Fees	2,182	1,818	4,000
Bookkeeping and Administration	77,730	66,121	143,851
Other	762	582	1,344
Total Recognizable	419,340	330,268	749,608
Adjustments:			
Other Pilot Costs:			
Pilotage Subsistence/Travel	(4,624)	(3,641)	(8,265)
Payroll taxes	48,508	38,204	86,712
Other	(589)	(463)	(1,052)
Administrative Expenses:			
Legal	(270)	(212)	(482)
Dues and subscriptions	(13,647)	(10,748)	(24,395)
Bad debt expense	(5,765)	(4,540)	(10,305)
Other	(120)	(94)	(214)
Total CPA Adjustments	23,495	18,504	41,999
Total Expenses	442,835	348,772	791,607

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO

Reported expenses for 2009	Area 4	Area 5	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Other Pilot Costs			
Pilot subsistence/travel	$67,580	$101,371	$168,951
License insurance	6,254	9,380	15,634
Payroll taxes	19,453	43,770	63,223
Other	12,697	28,662	41,359
Pilot Boat and Dispatch Expenses:			
Pilot boat expense	28,026	179,577	207,603
Dispatch expense	12,975	0	12,975
Payroll taxes	0	7,154	7,154
Administrative Expenses:			
Legal	30,052	45,079	75,131
Office rent	30,275	45,413	75,688
Insurance	10,408	15,611	26,019
Employee benefits	26,483	39,725	66,208
Payroll taxes	3,821	5,731	9,552
Other taxes	9,815	14,723	24,538
Depreciation/auto leasing/other	27,383	41,075	68,458
Interest	16,314	24,471	40,785
Dues and subscriptions	4,450	6,675	11,125
Salaries	12,164	18,245	30,409
Accounting/professional Fees	43,071	64,607	107,678
Bookkeeping and Administration	9,400	14,100	23,500

TABLE 3—RECOGNIZED EXPENSES FOR DISTRICT TWO—Continued

Reported expenses for 2009	Area 4	Area 5	Total
	Lake Erie	Southeast Shoal to Port Huron, MI	
Other	9,427	14,140	23,567
Total Recognizable	380,048	719,509	1,099,557
Adjustments:			
Other Pilot Costs:			
Pilotage Subsistence/Travel	(1,338)	(2,533)	(3,871)
Pilot Boat and Dispatch Expenses:			
Pilot boat expense	2,907	5,504	8,411
Administrative Expenses:			
Legal	(4,915)	(9,305)	(14,220)
Employee benefits	1,177	2,228	3,405
Other taxes	(238)	(450)	(688)
Depreciation/auto leasing/other	2,398	4,540	6,938
Interest	(10,379)	(19,649)	(30,028)
Dues and subscriptions	(3,807)	(7,208)	(11,015)
Salaries	417	789	1,206
Other	(833)	(1,577)	(2,410)
Total CPA Adjustments	(14,611)	(27,661)	(42,272)
Total Expenses	365,437	691,848	1,057,285

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE

Reported expenses for 2009	Area 6	Area 7	Area 8	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Other Pilot Costs:				
Pilot subsistence/Travel	$144,081	$75,501	$95,005	$314,587
License insurance	10,577	5,543	6,975	23,095
Other	1,025	537	675	2,237
Pilot Boat and Dispatch Expenses:				
Pilot boat costs	156,031	81,763	102,885	340,679
Dispatch expense	46,365	24,296	30,572	101,233
Payroll taxes	5,846	3,064	3,855	12,765
Administrative Expenses:				
Legal	16,462	8,626	10,855	35,943
Office Rent	4,534	2,376	2,990	9,900
Insurance	6,730	3,527	4,438	14,695
Employee benefits	50,668	26,551	33,410	110,629
Payroll taxes	4,774	2,502	3,148	10,424
Other taxes	11,599	6,078	7,648	25,325
Depreciation/auto Leasing	17,396	9,116	11,471	37,983
Interest	2,417	1,267	1,594	5,278
Dues and Subscriptions	15,594	8,172	10,283	34,049
Utilities	15,182	7,956	10,011	33,149
Salaries	35,110	18,398	23,151	76,659
Accounting/professional fees	8,588	4,500	5,663	18,751
Other	6,852	3,591	4,518	14,961
Total Recognizable	559,831	293,364	369,147	1,222,342
Adjustments:				
Other Pilot Costs:.				
Pilotage Subsistence/Travel	(1,102)	(578)	(727)	(2,407)
Payroll taxes	28,842	15,114	19,018	62,973
Other	(196)	(103)	(129)	(428)
Pilot Boat and Dispatch Expenses:				
Dispatch costs	(3,367)	(1,764)	(2,220)	(7,352)
Administrative Expenses:				
Legal	(1,447)	(758)	(954)	(3,159)
Employee benefits	(1,380)	(723)	(910)	(3,013)
Depreciation/auto leasing/other	599	314	395	1,307
Dues and Subscriptions	(15,594)	(8,172)	(10,283)	(34,049)
Other	(528)	(277)	(348)	(1,153)

TABLE 4—RECOGNIZED EXPENSES FOR DISTRICT THREE—Continued

Reported expenses for 2009	Area 6	Area 7	Area 8	Total
	Lakes Huron and Michigan	St. Mary's River	Lake Superior	
Total CPA Adjustments	5,825	3,053	3,841	12,719
Total Expenses	565,656	296,417	372,988	1,235,061

Sub-step 1.C: Adjustment for Inflation or Deflation. In this sub-step we project rates of inflation or deflation for the succeeding navigation season. Because we used 2009 financial information, the ''succeeding navigation season'' for this ratemaking is 2010. We based our inflation adjustment of 2 percent on the 2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States, which can be found at: *http://www.bls.gov/xg_shells/ro5xg01.htm.* This adjustment appears in Tables 5 through 7.

TABLE 5—INFLATION ADJUSTMENT, DISTRICT ONE

Reported expenses for 2009		Area 1		Area 2		Total
		St. Lawrence River		Lake Ontario		
Total Expenses		$442,835		$348,772		$791,607
2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States	×	.02	×	.02	×	.02
Inflation Adjustment	=	$8,857	=	$6,975	=	$15,832

TABLE 6—INFLATION ADJUSTMENT, DISTRICT TWO

Reported expenses for 2009		Area 4		Area 5		Total
		Lake Erie		Southeast Shoal to Port Huron, MI		
Total Expenses		$365,437		$691,848		$1,057,285
2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States	×	.02	×	.02	×	.02
Inflation Adjustment	=	$7,309	=	$13,837	=	$21,146

TABLE 7—INFLATION ADJUSTMENT, DISTRICT THREE

Reported expenses for 2009		Area 6		Area 7		Area 8		Total
		Lakes Huron and Michigan		St. Mary's River		Lake Superior		
Total Expenses		$565,656		$296,417		$372,988		$1,235,061
2010 change in the Consumer Price Index (CPI) for the North Central Region of the United States	×	.02	×	.02	×	.02	×	.02
Inflation Adjustment	=	$11,313	=	$5,928	=	$7,460	=	$24,701

Step 1.D: Projection of Operating Expenses. The final sub-step of Step 1 is to project the operating expenses for each pilotage area on the basis of the preceding sub-steps and any other foreseeable circumstances that could affect the accuracy of the projection. We received comments and supporting material and determined that foreseeable circumstances exist in Districts One and Two that could affect the accuracy of the projection. As previously stated, we consider only significant capital expenses and the fixed costs associated with the expenses as foreseeable circumstances.

District One's pilot boat mortgage payments, pilot boat insurance, and dock renovation and boat lift project qualify as foreseeable circumstances. For District One, the projected operating expenses are based on the calculations from Sub-steps 1.A through 1.C and the aforementioned foreseeable circumstances. Table 8 shows these projections.

TABLE 8—PROJECTED OPERATING EXPENSES, DISTRICT ONE

Reported expenses for 2009		Area 1 St. Lawrence River		Area 2 Lake Ontario		Total
Total expenses before foreseeable circumstances		$442,835		$348,772		$791,607
Inflation adjustment 2%	+	$8,857	+	$6,975	+	$15,832
Foreseeable circumstances (Director's adjustment):						
Pilot boat mortgage payments	+	$39,643	+	$31,222	+	$70,865
Pilot boat insurance	+	$10,831	+	$8,531	+	$19,362
Dock renovation and boat lift project	+	$72,486	+	$57,089	+	$129,575
Total projected expenses for 2012 pilotage season	=	$574,652	=	$452,590	=	$1,027,242

District Two's pilot boat (HURON MAID) upgrade, annual mortgage expense, and property tax expense qualify as foreseeable circumstances. During the audit for next year's 2013 Appendix A rulemaking, the independent accountant informed us that District Two applied for and received a Consolidated Omnibus Budget Reconciliation Act (COBRA) subsidy for the third and fourth quarter of 2009. The American Recovery and Reinvestment Act of 2009 provided for a temporary premium subsidy for COBRA continuation coverage. The amount of the COBRA insurance subsidy for the period 2009 was $99,993.02. For District Two, the projected operating expenses are based on the calculations from Sub-steps 1.A through 1.C, the aforementioned foreseeable circumstances, and the COBRA subsidy. Table 9 shows these projections.

TABLE 9—PROJECTED OPERATING EXPENSES, DISTRICT TWO

Reported expenses for 2009		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI		Total
Total expenses		$365,437		$691,848		$1,057,285
Inflation adjustment 2%	+	$7,309	+	$13,837	+	$21,146
Foreseeable circumstances (Director's adjustment):						
Huron Maid upgrade	+	$27,104	+	$40,657	+	$67,761
Annual mortgage expense	+	$7,804	+	$11,706	+	$19,511
Property tax expense	+	$1,693	+	$2,540	+	$4,233
American Recovery and Reinvestment Act of 2009 COBRA subsidy	+	($39,997)	+	($59,996)	+	($99,993)
Total projected expenses for 2012 pilotage season	=	$369,351	=	$700,592	=	$1,069,943

Because we are not now aware of any such foreseeable circumstances for District 3, the projected operating expenses are based exclusively on the calculations from Sub-steps 1.A through 1.C. Table 10 shows these projections.

TABLE 10—PROJECTED OPERATING EXPENSES, DISTRICT THREE

Reported expenses for 2009		Area 6 Lakes Huron and Michigan		Area 7 St. Mary's River		Area 8 Lake Superior		Total
Total		$565,656		$296,417		$372,988		$1,235,061
Inflation Adjustment 2%	+	$11,313	+	$5,928	+	$7,460	+	$24,701
Total projected expenses for 2012 pilotage season	=	$576,969	=	$302,345	=	$380,448	=	$1,259,762

Step 2: Projection of Target Pilot Compensation. In Step 2, we project the annual amount of target pilot compensation that pilotage rates should provide in each area. These projections are based on our latest information on the conditions that will prevail in 2012.

Sub-step 2.A: Determination of Target Rate of Compensation. We first explained the methodology we consistently used for this sub-step in the interim rule for our last Appendix A ratemaking (68 FR 69564 at 69571 col. 3; December 12, 2003), and most recently restated this explanation in our 2011 Appendix C final rule (76 FR 6351 at 6354 col. 3; February 4, 2011). Target pilot compensation for pilots in undesignated waters approximates the average annual compensation for first mates on U.S. Great Lakes vessels. Compensation is determined based on the most current union contracts and includes wages and benefits received by first mates. We calculate target pilot compensation for pilots on designated waters by multiplying the average first mates' wages by 150 percent and then adding the average first mates' benefits.

The most current union contracts available to us are American Maritime Officers Union (AMOU) contracts with three U.S. companies engaged in Great Lakes shipping. There are two separate AMOU contracts available—we refer to them as Agreements A and B and apportion the compensation provided by each agreement according to the percentage of tonnage represented by

companies under each agreement. Agreement A applies to vessels operated by Key Lakes, Inc., and Agreement B applies to all vessels operated by American Steamship Co. and Mittal Steel USA, Inc.

Agreements A and B both expired on July 31, 2011, and AMOU did not reach an agreement on new contracts in time for us to incorporate them into this ratemaking. However, based on past contract increases and on the current contracts, we can project that any new contracts would provide for annual 3-percent wage increases. Under Agreement A, we project that the daily wage rate would increase from $278.73 to $287.09. Under Agreement B, we project that the daily wage rate would increase from $343.59 to $353.90.

Because we are interested in annual compensation, we must convert these daily rates. Agreements A and B both use monthly multipliers to convert daily rates into monthly figures that represent actual working days and vacation, holiday, weekend, or bonus days. The monthly multiplier for Agreement A is 54.5 days and the monthly multiplier for Agreement B is 49.5 days. We multiply the monthly figures by 9, which represents the average length (in months) of the Great Lakes shipping season. Table 11 shows our calculations.

TABLE 11—PROJECTED WAGE COMPONENTS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
$287.09 daily rate × 54.5 days	$15,646	$23,470
Monthly total × 9 months = total wages	140,818	211,226
Agreement B:		
$353.90 daily rate × 49.5 days	17,518	26,277
Monthly total × 9 months = total wages	157,662	236,494

Based on increases over the 5-year history of the current contracts, we project that both Agreements A and B will increase their health benefits contributions and leave 401K plan and pension contributions unchanged. On average, health benefits contribution rates have increased 10 percent annually. Thus, we project that both Agreements A and B will increase this benefit from $97.64 to $107.40 per day. The multiplier that both agreements use to calculate monthly benefits from daily rates is currently 45.5 days, and we project that this figure will remain unchanged. We use a 9-month multiplier to calculate the annual value of these benefits. Table 12 shows our calculations.

TABLE 12—PROJECTED BENEFITS COMPONENTS

Monthly component	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
Employer contribution, 401K plan (Monthly wages × 5%)	$782.32	$1,173.48
Pension = $33.35 × 45.5 days	1,517.43	1,517.43
Health = $107.40 × 45.5 days	4,886.70	4,886.70
Monthly total benefits	7,186.45	7,577.61
Monthly total benefits × 9 months	64,678	68,198
Agreement B:		
Employer contribution, 401K plan (Monthly wages × 5%)	875.90	1,313.85
Pension = $43.55 × 45.5 days	1,981.53	1,981.53
Health = $107.40 × 45.5 days	4,886.70	4,886.70
Monthly total benefits	7,744.13	8,182.08
Monthly total benefits × 9 months	69,697	73,639

Table 13 combines our projected wage and benefit components of annual target pilot compensation.

TABLE 13—PROJECTED WAGE AND BENEFITS COMPONENTS, COMBINED

	Pilots on undesignated waters	Pilots on designated waters
Agreement A:		
Wages	$140,818	$211,226
Benefits	64,678	68,198
Total	205,496	279,425
Agreement B:		
Wages	157,662	236,494

TABLE 13—PROJECTED WAGE AND BENEFITS COMPONENTS, COMBINED—Continued

	Pilots on undesignated waters	Pilots on designated waters
Benefits	69,697	73,639
Total	227,360	310,132

Agreements A and B affect three companies. Of the tonnage operating under those three companies, approximately 30 percent operates under Agreement A and approximately 70 percent operates under Agreement B. Table 14 provides detail.

TABLE 14—SHIPPING TONNAGE APPORTIONED BY CONTRACT

Company	Agreement A	Agreement B
American Steamship Company		815,600
Mittal Steel USA, Inc.		38,826
Key Lakes, Inc.	361,385	
Total tonnage, each agreement	361,385	854,426
Percent tonnage, each agreement	361,395 ÷ 1,215,811 = 29.7238%	854,426 ÷ 1,215,811 = 70.2962%

We use the percentages from Table 14 to apportion the projected wage and benefit components from Table 13. This gives us a single tonnage-weighted set of figures. Table 15 shows our calculations.

TABLE 15—TONNAGE-WEIGHTED WAGE AND BENEFIT COMPONENTS

		Undesignated waters		Designated waters
Agreement A:				
Total wages and benefits		$205,496		$279,425
Percent tonnage	×	29.7238%	×	29.7238%
Total	=	$61,081	=	$83,056
Agreement B:				
Total wages and benefits		$227,360		$310,132
Percent tonnage	×	70.2762%	×	70.2762%
Total	=	$159,780	=	$217,949
Projected Target Rate of Compensation:				
Agreement A total weighted average wages and benefits		$61,081		$83,056
Agreement B total weighted average wages and benefits	+	$159,780	+	$217,949
Total	=	$220,861	=	$301,005

Sub-step 2.B: Determination of Number of Pilots Needed. Subject to adjustment by the Coast Guard Director of Great Lakes Pilotage to ensure uninterrupted service or for other reasonable circumstances, we determine the number of pilots needed for ratemaking purposes in each area by dividing projected bridge-hours for each area by either 1,000 (designated waters) or 1,800 (undesignated waters). We round the mathematical results and express our determination as whole pilots.

Bridge hours are ''the number of hours a pilot is aboard a vessel providing pilotage service.'' 46 CFR part 404, Appendix A, Sub-step 2.B(1). For that reason, and as we explained most recently in the 2011 ratemaking's final rule, we do not include, and never have included, pilot delay or detention in calculating bridge hours. 76 FR 6351 at 6352 col. 3 (February 4, 2011). Projected bridge-hours are based on the vessel traffic that pilots are expected to serve. We use historical data, input from the pilots and industry, periodicals and trade magazines, and information from conferences to project demand for pilotage services for the coming year.

In our 2011 final rule, we determined that 38 pilots would be needed for ratemaking purposes. We have determined that 38 remains the proper number to use for ratemaking purposes in 2012. This includes 5 pilots in Area 2, where rounding up alone would result in only 4 pilots. For the same reasons we explained at length in the final rule for the 2008 ratemaking, 74 FR 220 at 221–22 (January 5, 2009), we have determined that this adjustment is essential for ensuring uninterrupted pilotage service in Area 2. Table 16 shows the bridge hours we project will be needed for each area and our calculations to determine the number of whole pilots needed for ratemaking purposes.

TABLE 16—NUMBER OF PILOTS NEEDED

Pilotage area	Projected 2012 bridge hours		Divided by 1,000 (designated aters) or 1,800 undesignated aters)		Calculated value of pilot demand	Pilots needed (total = 38)
AREA 1 (Designated Waters)	5,114	÷	1,000	=	5.114	6
AREA 2 (Undesignated Waters)	5,401	÷	1,800	=	3.001	5
AREA 4 (Undesignated Waters)	6,680	÷	1,800	=	3.711	4
AREA 5 (Designated Waters)	5,002	÷	1,000	=	5.002	6
AREA 6 (Undesignated Waters)	11,187	÷	1,800	=	6.215	7
AREA 7 (Designated Waters)	3,160	÷	1,000	=	3.160	4
AREA 8 (Undesignated Waters)	9,353	÷	1,800	=	5.196	6

Sub-step 2.C: Projection of Target Pilot Compensation. In Table 17 we project total target pilot compensation separately for each area by multiplying the number of pilots needed in each area, as shown in Table 16, by the target pilot compensation shown in Table 15.

TABLE 17—PROJECTION OF TARGET PILOT COMPENSATION BY AREA

Pilotage area	Pilots needed (total = 38)		Target rate of pilot compensation		Projected target pilot compensation
AREA 1 (Designated Waters)	6	×	$301,005	=	$1,806,030
AREA 2 (Undesignated Waters)	5	×	220,861	=	1,104,304
AREA 4 (Undesignated Waters)	4	×	220,861	=	883,443
AREA 5 (Designated Waters)	6	×	301,005	=	1,806,030
AREA 6 (Undesignated Waters)	7	×	220,861	=	1,546,026
AREA 7 (Designated Waters)	4	×	301,005	=	1,204,020
AREA 8 (Undesignated Waters)	6	×	220,861	=	1,325,165

Step 3 and Sub-step 3.A: Projection of Revenue. In these steps, we project the revenue that would be received in 2012 if demand for pilotage services matches the bridge hours we projected in Table 16 and 2011 pilotage rates are left unchanged. Table 18 shows this calculation.

TABLE 18—PROJECTION OF REVENUE BY AREA

Pilotage area	Projected 2012 bridge hours		2011 Pilotage rates		Revenue projection for 2012
AREA 1 (Designated Waters)	5,114	×	$451.38	=	$2,308,357
AREA 2 (Undesignated Waters)	5,401	×	298.98	=	1,614,791
AREA 4 (Undesignated Waters)	6,680	×	196.19	=	1,310,549
AREA 5 (Designated Waters)	5,002	×	519.89	=	2,600,490
AREA 6 (Undesignated Waters)	11,187	×	199.12	=	2,227,555
AREA 7 (Designated Waters)	3,160	×	495.54	=	1,565,906
AREA 8 (Undesignated Waters)	9,353	×	193.72	=	1,811,863
Total					13,439,512

Step 4: Calculation of Investment Base. This step calculates each association's investment base, which is the recognized capital investment in the assets employed by the association that is required to support pilotage operations. This step uses a formula set out in 46 CFR part 404, Appendix B. The first part of the formula identifies each association's total sources of funds. Tables 19 through 21 follow the formula up to that point.

TABLE 19—TOTAL SOURCES OF FUNDS, DISTRICT ONE

		Area 1		Area 2
Recognized Assets:				
Total Current Assets		$233,316		$174,705
Total Current Liabilities	–	20,091	–	15,044
Current Notes Payable	+	0	+	0
Total Property and Equipment (NET)	+	0	+	0
Land	–	0	–	0

TABLE 19—TOTAL SOURCES OF FUNDS, DISTRICT ONE—Continued

		Area 1		Area 2
Total Other Assets	+	0	+	0
Total Recognized Assets	=	213,225	=	159,661
Non-Recognized Assets:				
Total Investments and Special Funds	+	0	+	0
Total Non-Recognized Assets	=	0	=	0
Total Assets:				
Total Recognized Assets		213,225		159,661
Total Non-Recognized Assets	+	0	+	0
Total Assets	=	213,225	=	159,661
Recognized Sources of Funds:				
Total Stockholder Equity		213,225		159,661
Long-Term Debt	+	0	+	0
Current Notes Payable	+	0	+	0
Advances from Affiliated Companies	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0
Total Recognized Sources	=	213,225	=	159,661
Non-Recognized Sources of Funds:				
Pension Liability		0		0
Other Non-Current Liabilities	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0
Other Deferred Credits	+	0	+	0
Total Non-Recognized Sources	=	0	=	0
Total Sources of Funds:				
Total Recognized Sources		213,225		159,661
Total Non-Recognized Sources	+	0	+	0
Total Sources of Funds	=	213,225	=	159,661

TABLE 20—TOTAL SOURCES OF FUNDS, DISTRICT TWO

		Area 4		Area 5
Recognized Assets:				
Total Current Assets		$228,212		$515,150
Total Current Liabilities	–	214,412	–	484,000
Current Notes Payable	+	23,063	+	52,061
Total Property and Equipment (NET)	+	321,550	+	725,847
Land	–	269,122	–	607,500
Total Other Assets	+	0	+	0
Total Recognized Assets	=	89,290	=	201,559
Non-Recognized Assets:				
Total Investments and Special Funds	+	0	+	0
Total Non-Recognized Assets	=	0	=	0
Total Assets:				
Total Recognized Assets		89,290		201,559
Total Non-Recognized Assets	+	0	+	0
Total Assets	=	89,290	=	201,559
Recognized Sources of Funds:				
Total Stockholder Equity		53,061		119,778
Long-Term Debt	+	282,288	+	637,220
Current Notes Payable	+	23,063	+	52,061
Advances from Affiliated Companies	+	0	+	0
Long-Term Obligations—Capital Leases	+	0	+	0
Total Recognized Sources	=	358,413	=	809,058
Non-Recognized Sources of Funds:				
Pension Liability		0		0
Other Non-Current Liabilities	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0
Other Deferred Credits	+	0	+	0
Total Non-Recognized Sources	=	0	=	0
Total Sources of Funds:				
Total Recognized Sources		358,413		809,058

TABLE 20—TOTAL SOURCES OF FUNDS, DISTRICT TWO—Continued

		Area 4		Area 5
Total Non-Recognized Sources	+	0	+	0
Total Sources of Funds	=	358,413	=	809,058

TABLE 21—TOTAL SOURCES OF FUNDS, DISTRICT THREE

		Area 6		Area 7		Area 8
Recognized Assets:						
Total Current Assets		$439,799		$230,463		$289,999
Total Current Liabilities	−	61,507	−	32,231	−	40,557
Current Notes Payable	+	13,525	+	7,087	+	8,918
Total Property and Equipment (NET)	+	42,019	+	22,019	+	27,707
Land	−	0	−	0	−	0
Total Other Assets	+	343	+	180	+	227
Total Recognized Assets	=	434,180	=	227,518	=	286,293
Non-Recognized Assets:						
Total Investments and Special Funds	+	0	+	0	+	0
Total Non-Recognized Assets	=	0	=	0	=	0
Total Assets:						
Total Recognized Assets		434,180		227,518		286,293
Total Non-Recognized Assets	+	0	+	0	+	0
Total Assets	=	434,180	=	227,518	=	286,293
Recognized Sources of Funds:						
Total Stockholder Equity		417,721		218,893		275,441
Long-Term Debt	+	2,934	+	1,537	+	1,935
Current Notes Payable	+	13,525	+	7,087	+	8,918
Advances from Affiliated Companies	+	0	+	0	+	0
Long-Term Obligations–Capital Leases	+	0	+	0	+	0
Total Recognized Sources	=	434,180	=	227,518	=	286,293
Non-Recognized Sources of Funds:						
Pension Liability		0		0		0
Other Non-Current Liabilities	+	0	+	0	+	0
Deferred Federal Income Taxes	+	0	+	0	+	0
Other Deferred Credits	+	0	+	0	+	0
Total Non-Recognized Sources	=	0	=	0	=	0
Total Sources of Funds:						
Total Recognized Sources		434,180		227,518		286,293
Total Non-Recognized Sources	+	0	+	0	+	0
Total Sources of Funds	=	434,180	=	227,518	=	286,293

Tables 19 through 21 relate to the second part of the formula for calculating the investment base. The second part establishes a ratio between recognized sources of funds and total sources of funds. Since non-recognized sources of funds (sources we do not recognize as required to support pilotage operations) do not exist for any of the pilot associations for this year's rulemaking, the ratio between recognized sources of funds and total sources of funds is 1:1 (or a multiplier of 1) in all cases. Table 22 applies the multiplier of 1, and shows that the investment base for each association equals its total recognized assets. Table 22 also expresses these results by area, because area results are needed in subsequent steps.

TABLE 22—INVESTMENT BASE BY AREA AND DISTRICT

District	Area	Total recognized assets ($)	Recognized sources of funds ($)	Total sources of funds ($)	Multiplier (ratio of recognized to total sources)	Investment base ($) [1]
One	1	213,225	213,225	213,225	1	213,225
	2	159,661	159,661	159,661	1	159,661
Total	.....	.....	.....	.....	.....	372,886
Two [2]	4	89,290	358,413	358,413	1	89,290

TABLE 22—INVESTMENT BASE BY AREA AND DISTRICT—Continued

District	Area	Total recognized assets ($)	Recognized sources of funds ($)	Total sources of funds ($)	Multiplier (ratio of recognized to total sources)	Investment base ($) [1]
	5	201,559	809,058	809,058	1	201,559
Total	.....	.....	.....	.....	.....	290,849
Three	6	434,180	434,180	434,180	1	434,180
	7	227,518	227,518	227,518	1	227,518
	8	286,293	286,293	286,293	1	286,293
Total	.....	.....	.....	.....	.....	947,991

[1] **Note:** "Investment base" = "Total recognized assets" x "Multiplier (ratio of recognized to Total sources)"
[2] **Note:** The pilot associations that provide pilotage services in Districts One and Three operate as partnerships. The pilot association that provides pilotage service for District Two operates as a corporation. As shown in Table 20, Total Recognized Assets do not equal Total Sources of Funds due to the level of long-term debt in District Two.

Step 5: Determination of Target Rate of Return. We determine a market-equivalent return on investment (ROI) that will be allowed for the recognized net capital invested in each association by its members. We do not recognize capital that is unnecessary or unreasonable for providing pilotage services. There are no non-recognized investments in this year's calculations. The allowed ROI is based on the preceding year's average annual rate of return for new issues of high-grade corporate securities. For 2010, the allowed ROI was a little more than 4.94 percent, based on the average rate of return that year on Moody's AAA corporate bonds which can be found at: *http://research.stlouisfed.org/fred2/series/AAA/downloaddata?cid=119.*

Step 6: Adjustment Determination. The first sub-step in the adjustment determination requires an initial calculation that applies a formula described in Appendix A. The formula uses the results from Steps 1, 2, 3, and 4 to project the ROI that can be expected in each area if no further adjustments are made. This calculation is shown in Tables 23 through 25.

TABLE 23—PROJECTED ROI, AREAS IN DISTRICT ONE

		Area 1		Area 2
Revenue (from Step 3)	+	$2,308,357	+	$1,614,791
Operating Expenses (from Step 1)	−	574,652	−	452,590
Pilot Compensation (from Step 2)	−	1,806,030	−	1,104,304
Operating Profit/(Loss)	=	(72,324)	=	57,897
Interest Expense (from audits)	−	0	−	0
Earnings Before Tax	=	(72,324)	=	57,897
Federal Tax Allowance	−	0	−	0
Net Income	=	(72,324)	=	57,897
Return Element (Net Income + Interest)		(72,324)		57,897
Investment Base (from Step 4)	÷	213,225	÷	159,661
Projected Return on Investment	=	(0.34)	=	0.36

TABLE 24—PROJECTED ROI, AREAS IN DISTRICT TWO

		Area 4		Area 5
Revenue (from Step 3)	+	$1,310,549	+	$2,600,490
Operating Expenses (from Step 1)	−	369,351	−	700,592
Pilot Compensation (from Step 2)	−	883,443	−	1,806,030
Operating Profit/(Loss)	=	57,755	=	93,868
Interest Expense (from audits)	−	3,302	−	7,455
Earnings Before Tax	=	54,453	=	86,414
Federal Tax Allowance	−	2,210	−	4,990
Net Income	=	52,243	=	81,424
Return Element (Net Income + Interest)		55,545		88,879
Investment Base (from Step 4)	÷	89,290	÷	201,559
Projected Return on Investment	=	0.62	=	0.44

TABLE 25—PROJECTED ROI, AREAS IN DISTRICT THREE

		Area 6		Area 7		Area 8
Revenue (from Step 3)	+	$2,227,555	+	$1,565,906	+	$1,811,863
Operating Expenses (from Step 1)	−	576,969	−	302,345	−	380,448
Pilot Compensation (from Step 2)	−	1,546,026	−	1,204,020	−	1,325,165
Operating Profit/(Loss)	=	104,560	=	59,542	=	106,250

TABLE 25—PROJECTED ROI, AREAS IN DISTRICT THREE—Continued

		Area 6		Area 7		Area 8
Interest Expense (from audits)	−	2,417	−	1,267	−	1,594
Earnings Before Tax	=	102,143	=	58,275	=	104,656
Federal Tax Allowance	−	0	−	0	−	0
Net Income	=	102,143	=	58,275	=	104,656
Return Element (Net Income + Interest)		104,560		59,542		106,250
Investment Base (from Step 4)	÷	434,180	÷	227,518	÷	286,293
Projected Return on Investment	=	0.24	=	0.26	=	0.37

The second sub-step required for Step 6 compares the results of Tables 23 through 25 with the target ROI (approximately 4.94 percent) we obtained in Step 5 to determine if an adjustment to the base pilotage rate is necessary. Table 26 shows this comparison for each area.

TABLE 26—COMPARISON OF PROJECTED ROI AND TARGET ROI, BY AREA [1]

	Area 1	Area 2	Area 4	Area 5	Area 6	Area 7	Area 8
	St. Lawrence River	Lake Ontario	Lake Erie	Southeast Shoal to Port Huron, MI	Lakes Huron and Michigan	St. Mary's River	Lake Superior
Projected return on investment	(0.339)	0.363	0.622	0.441	0.241	0.262	0.371
Target return on investment	0.049	0.049	0.049	0.049	0.049	0.049	0.049
Difference in return on investment	(0.389)	0.313	0.573	0.392	0.191	0.212	0.322

[1] **Note:** Decimalization and rounding of the target ROI affects the display in this table but does not affect our calculations, which are based on the actual figure.

Because Table 26 shows a significant difference between the projected and target ROIs, an adjustment to the base pilotage rates is necessary. Step 6 now requires us to determine the pilotage revenues that are needed to make the target return on investment equal to the projected return on investment. This calculation is shown in Table 27. It adjusts the investment base we used in Step 4, multiplying it by the target ROI from Step 5, and applies the result to the operating expenses and target pilot compensation determined in Steps 1 and 2.

TABLE 27—REVENUE NEEDED TO RECOVER TARGET ROI, BY AREA

Pilotage area	Operating expenses (Step 1)		Target pilot compensation (Step 2)		Investment base (Step 4) times; 4.94% (Target ROI) (Step 5)		Federal tax allowance		Revenue needed
AREA 1 (Designated Waters)	$574,652	+	$1,806,030	+	$10,540	+	.....	=	$2,391,222
AREA 2 (Undesignated Waters)	452,590	+	1,104,304	+	7,893	+	.....	=	1,564,786
AREA 4 (Undesignated Waters)	369,351	+	883,443	+	4,414	+	2,210	=	1,259,418
AREA 5 (Designated Waters)	700,592	+	1,806,030	+	9,964	+	4,990	=	2,521,575
AREA 6 (Undesignated Waters)	576,969	+	1,546,026	+	21,463	....	.....	=	2,144,458
AREA 7 (Designated Waters)	302,345	+	1,204,020	+	11,247	....	.....	=	1,517,612
AREA 8 (Undesignated Waters)	380,448	+	1,325,165	+	14,152	+	.....	=	1,719,765
Total	3,356,946	+	9,675,017	+	79,673	+	7,200	=	13,118,836

The ''Revenue Needed'' column of Table 27 is less than the revenue we projected in Table 18 with the exception of Area 1. For purposes of transparency, we verify the calculations in Table 27 by rerunning the first part of Step 6 using the ''revenue needed'' from Table 27 instead of the Table 18 revenue projections we used in Tables 23 through 25. Tables 28 through 30 show that attaining the Table 27 revenue needed is sufficient to recover target ROI.

TABLE 28—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT ONE

		Area 1		Area 2
Revenue Needed	+	$2,391,222	+	$1,564,786
Operating Expenses (from Step 1)	−	574,652	−	452,590

TABLE 28—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT ONE—Continued

		Area 1		Area 2
Pilot Compensation (from Step 2)	−	1,806,030	−	1,104,304
Operating Profit/(Loss)	=	10,540	=	7,893
Interest Expense (from audits)	−	0	−	0
Earnings Before Tax	=	$10,540	=	$7,893
Federal Tax Allowance	−	$0	−	$0
Net Income	=	$10,540	=	$7,893
Return Element (Net Income + Interest)		$10,540		$7,893
Investment Base (from Step 4)	÷	$213,225	÷	$159,661
Return on Investment	=	0.0494	=	0.0494

TABLE 29—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT TWO

		Area 4		Area 5
Revenue Needed	+	$1,259,418	+	$2,521,575
Operating Expenses (from Step 1)	−	$369,351	−	$700,592
Pilot Compensation (from Step 2)	−	$883,443	−	$1,806,030
Operating Profit/(Loss)	=	$6,624	=	$14,953
Interest Expense (from audits)	−	$3,302	−	$7,455
Earnings Before Tax	=	$3,322	=	$7,499
Federal Tax Allowance	−	$2,210	−	$4,990
Net Income	=	$1,112	=	$2,509
Return Element (Net Income + Interest)		$4,414		$9,964
Investment Base (from Step 4)	÷	$89,290	÷	$201,559
Return on Investment	=	0.0494	=	0.0494

TABLE 30—BALANCING REVENUE NEEDED AND TARGET ROI, DISTRICT THREE

		Area 6		Area 7		Area 8
Revenue Needed	+	$2,144,458	+	$1,517,612	+	$1,719,765
Operating Expenses (from Step 1)	−	$576,969	−	$302,345	−	$380,448
Pilot Compensation (from Step 2)	−	$1,546,026	−	$1,204,020	−	$1,325,165
Operating Profit/(Loss)	=	$21,463	=	$11,247	=	$14,152
Interest Expense (from audits)	−	$2,417	−	$1,267	−	$1,594
Earnings Before Tax	=	$19,046	=	$9,980	=	$12,558
Federal Tax Allowance	−	$0	−	$0	−	$0
Net Income	=	$19,046	=	$9,980	=	$12,558
Return Element (Net Income + Interest)		$21,463		$11,247		$14,152
Investment Base (from Step 4)	÷	$434,180	÷	$227,518	÷	$286,293
Return on Investment	=	0.0494	=	0.0494	=	0.0494

Step 7: Adjustment of Pilotage Rates. Finally, and subject to the requirements of the Memorandum of Arrangements with Canada or adjustment for other supportable circumstances, we calculate rate adjustments by dividing the Step 6 revenue needed (Table 27) by the Step 3 revenue projection (Table 18), to give us a rate multiplier for each area. Tables 31 through 33 show these calculations.

TABLE 31—RATE MULTIPLIER, AREAS IN DISTRICT ONE

Ratemaking projections		Area 1 St. Lawrence River		Area 2 Lake Ontario
Revenue Needed (from Step 6)		$2,391,222		$1,564,786
Revenue (from Step 3)	÷	$2,308,357	÷	$1,614,791
Rate Multiplier	=	1.036	=	0.969

TABLE 32—RATE MULTIPLIER, AREAS IN DISTRICT TWO

Ratemaking projections		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI
Revenue Needed (from Step 6)		$1,259,418		$2,521,575
Revenue (from Step 3)	÷	$1,310,549	÷	$2,600,490

TABLE 32—RATE MULTIPLIER, AREAS IN DISTRICT TWO—Continued

Ratemaking projections		Area 4 Lake Erie		Area 5 Southeast Shoal to Port Huron, MI
Rate Multiplier	=	0.961	=	0.970

TABLE 33—RATE MULTIPLIER, AREAS IN DISTRICT THREE

Ratemaking projections		Area 6 Lakes Huron and Michigan		Area 7 St. Mary's River		Area 8 Lake Superior
Revenue Needed (from Step 6)		$2,144,458		$1,517,612		$1,719,765
Revenue (from Step 3)	÷	$2,227,555	÷	$1,565,906	÷	$1,811,863
Rate Multiplier	=	0.963	=	0.969	=	0.949

We calculate a rate multiplier for adjusting the basic rates and charges described in 46 CFR 401.420 and 401.428 and applicable in all areas. We divide total revenue needed (Step 6, Table 27) by total projected revenue (Steps 3 & 3A, Table 18). Our rate changes for 46 CFR 401.420 and 401.428 reflect the multiplication of the rates we established for those sections in our 2011 final rule by the rate multiplier shown as the result of our calculation in Table 34.

TABLE 34—RATE MULTIPLIER FOR BASIC RATES AND CHARGES IN 46 CFR 401.420 AND 401.428

Ratemaking projections		
Total revenue Needed (from Step 6)		$13,118,836
Total revenue (from Step 3)	÷	$13,439,512
Rate Multiplier	=	0.976

Rates for cancellation, delay, or interruption in rendering services (46 CFR 401.420) and basic rates and charges for carrying a U.S. pilot beyond the normal change point, or for boarding at other than the normal boarding point (46 CFR 401.428), will decrease by 2.39 percent in all areas.

We multiply the existing rates we established in our 2011 final rule by the rate multipliers from Tables 31 through 33 to calculate the Area by Area rate changes we propose for 2012. Tables 35 through 37 show these calculations.

TABLE 35—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT ONE

	2011 rate		Rate multiplier		Adjusted rate for 2012
Area 1—St. Lawrence River					
Basic Pilotage	$18.36/km, $32.50/mi	×	1.036	=	$19.02/km, $33.67/mi
Each lock transited	407	×	1.036	=	422
Harbor movage	1,333	×	1.036	=	1,381
Minimum basic rate, St. Lawrence River	889	×	1.036	=	921
Maximum rate, through trip	3,901	×	1.036	=	4,041
Area 2—Lake Ontario					
6 hour period	$893	×	0.969	=	$865
Docking or Undocking	852	×	0.969	=	826

TABLE 36—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT TWO

	2011 Rate		Rate multiplier		Adjusted rate for 2012
Area 4—Lake Erie					
6 hour period	$791	×	0.961	=	$760
Docking or undocking	609	×	0.961	=	585
Any point on Niagara River below Black Rock Lock	1,554	×	0.961	=	1,493

TABLE 36—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT TWO—Continued

	2011 Rate		Rate multiplier		Adjusted rate for 2012
Area 5—Southeast Shoal to Port Huron, MI, between any point on or in					
Toledo or any point on Lake Erie west of Southeast Shoal	1,412	×	0.970	=	1,369
Toledo or any point on Lake Erie west of Southeast Shoal & Southeast Shoal	2,389	×	0.970	=	2,317
Toledo or any point on Lake Erie west of Southeast Shoal & Detroit River	3,102	×	0.970	=	3,008
Toledo or any point on Lake Erie west of Southeast Shoal & Detroit Pilot Boat	2,389	×	0.970	=	2,317
Port Huron Change Point & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,162	×	0.970	=	4,036
Port Huron Change Point & Toledo or any point on Lake Erie west of Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,821	×	0.970	=	4,675
Port Huron Change Point & Detroit River	3,126	×	0.970	=	3,031
Port Huron Change Point & Detroit Pilot Boat	2,432	×	0.970	=	2,358
Port Huron Change Point & St. Clair River	1,729	×	0.970	=	1,677
St. Clair River	1,412	×	0.970	=	1,369
St. Clair River & Southeast Shoal (when pilots are not changed at the Detroit Pilot Boat)	4,162	×	0.970	=	4,036
St. Clair River & Detroit River/Detroit Pilot Boat	3,126	×	0.970	=	3,031
Detroit, Windsor, or Detroit River	1,412	×	0.970	=	1,369
Detroit, Windsor, or Detroit River & Southeast Shoal	2,389	×	0.970	=	2,317
Detroit, Windsor, or Detroit River & Toledo or any point on Lake Erie west of Southeast Shoal	3,102	×	0.970	=	3,008
Detroit, Windsor, or Detroit River & St. Clair River	3,126	×	0.970	=	3,031
Detroit Pilot Boat & Southeast Shoal	1,729	×	0.970	=	1,677
Detroit Pilot Boat & Toledo or any point on Lake Erie west of Southeast Shoal	2,389	×	0.970	=	2,317
Detroit Pilot Boat & St. Clair River	3,126	×	0.970	=	3,031

TABLE 37—ADJUSTMENT OF PILOTAGE RATES, AREAS IN DISTRICT THREE

	2011 rate		Rate multiplier		Adjusted rate for 2012
Area 6—Lakes Huron and Michigan:					
6 hour period	$688	×	0.963	=	$662
Docking or undocking	653	×	0.963	=	629
Area 7—St. Mary's River between any point on or in:					
Gros Cap & De Tour	2,650	×	0.969	=	2,568
Algoma Steel Corp. Wharf, Sault Ste. Marie, Ont. & De Tour	2,650	×	0.969	=	2,568
Algoma Steel Corp. Wharf, Sault. Ste. Marie, Ont. & Gros Cap	998	×	0.969	=	967
Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & De Tour	2,221	×	0.969	=	2,153
Any point in Sault St. Marie, Ont., except the Algoma Steel Corp. Wharf & Gros Cap	998	×	0.969	=	967
Sault Ste. Marie, MI & De Tour	2,221	×	0.969	=	2,153
Sault Ste. Marie, MI & Gros Cap	998	×	0.969	=	967
Harbor movage	998	×	0.969	=	967
Area 8—Lake Superior:					
6 hour period	608	×	0.949	=	577
Docking or undocking	578	×	0.949	=	549

VII. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 14 of these statutes or executive orders.

A. Regulatory Planning and Review

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the 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 final rule has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the final rule has not been reviewed by the Office of Management and Budget.

Based on comments received, the Coast Guard is adjusting the analysis from the NPRM to account for increased expenses in District One, as well as a COBRA subsidy provided to District 2. These changes reduced the overall savings to shippers from an estimated $1 million in the NPRM to approximately $835,000 for this final rule. A final Regulatory Assessment follows:

The Coast Guard is required to review and adjust pilotage rates on the Great Lakes annually. See Parts III and IV of this preamble for detailed discussions of the Coast Guard's legal basis and purpose for this rule and for background information on Great Lakes pilotage ratemaking. Based on our annual review for this rule, we are adjusting the pilotage rates for the 2012 shipping season to generate sufficient revenue to cover allowable expenses, target pilot compensation, and returns on investment. The rate adjustments in this final rule will lead to a cost savings in six of the seven areas and all three districts with an estimated cost savings to shippers of approximately $835,000 across all three districts.

This rule applies the 46 CFR part 404, Appendix A, full ratemaking

methodology and decreases Great Lakes pilotage rates, on average, approximately 2.62 percent overall from the current rates set in the 2011 final rule. The Appendix A methodology is discussed and applied in detail in Part VI of this preamble. Part VI reflects audited 2009 financial data from the pilotage associations (the most recent year available for auditing), projected association expenses, and regional inflation or deflation. The last full Appendix A ratemaking was concluded in 2006 and used financial data from the 2002 base accounting year. The last annual rate review, conducted under 46 CFR part 404, Appendix C, was completed in early 2011.

In general, we expect an increase in pilotage rates for a certain area to result in additional costs for shippers using pilotage services in that area, while a decrease in a specific area would result in a cost reduction or savings for shippers in that area. The shippers affected by these rate adjustments are those owners and operators of domestic vessels operating on register (employed in foreign trade) and owners and operators of foreign vessels on a route within the Great Lakes system. These owners and operators must have pilots or pilotage service as required by 46 U.S.C. 9302. There is no minimum tonnage limit or exemption for these vessels. Our interpretation is that the statute applies only to commercial vessels and not to recreational vessels.

Owners and operators of other vessels that are not affected by this rule, such as recreational boats and vessels operating only within the Great Lakes system may elect to purchase pilotage services. However, this election is voluntary and does not affect our calculation of the rate and is not a part of our estimated national cost to shippers. Our sampling of pilot data suggests there are very few U.S. domestic vessels, without registry and operating only in the Great Lakes that voluntarily purchase pilotage services.

We used 2008–2010 vessel arrival data from the Coast Guard's MISLE system to estimate the average annual number of vessels affected by the rate adjustment to be 204 vessels that journey into the Great Lakes system. These vessels enter the Great Lakes by transiting through or in part of at least one of the three pilotage Districts before leaving the Great Lakes system. These vessels often make more than one distinct stop, docking, loading, and unloading at facilities in Great Lakes ports. Of the total trips for the 204 vessels, there were approximately 319 annual U.S. port arrivals before the vessels left the Great Lakes system, based on 2008–2010 vessel data from MISLE.

The impact of the rate adjustment to shippers is estimated from the District pilotage revenues. These revenues represent the direct and indirect costs (''economic costs'') that shippers must pay for pilotage services. The Coast Guard sets rates so that revenues equal the estimated cost of pilotage.

We estimate the additional impact (costs or savings) of the rate adjustment in this rule to be the difference between the total projected revenue needed to cover costs in 2012, based on the 2011 rate adjustment, and the total projected revenue needed to cover costs in 2012 as set forth in this rule. Table 38 details additional costs or savings by area and district.

TABLE 38—RATE ADJUSTMENT AND ADDITIONAL IMPACT OF THE RULE BY AREA AND DISTRICT

[$U.S.; Non-discounted]

	Projected revenue needed in 2011*	Projected revenue needed in 2012**	Additional costs or savings of this rule
Area 1	$2,348,516	$2,391,222	$42,706
Area 2	1,689,246	1,564,786	(124,460)
Total, District One	4,037,763	3,956,008	(81,755)
Area 4	1,436,140	1,259,418	(176,722)
Area 5	2,649,876	2,521,575	(128,301)
Total, District Two	4,086,016	3,780,993	(305,023)
Area 6	2,311,006	2,144,458	(166,548)
Area 7	1,614,974	1,517,612	(97,362)
Area 8	1,904,237	1,719,765	(184,472)
Total, District Three	5,830,218	5,381,835	(448,383)

* These 2011 estimates are detailed in Table 16 of the 2011 final rule (76 FR 6351).
** These 2012 estimates are detailed in Table 27 of this rulemaking.
Some values may not total due to rounding.
''Additional Revenue or Cost of this Rulemaking'' = ''Revenue needed in 2012'' minus ''Revenue needed in 2011.''

After applying the rate change in this rule, the resulting difference between the projected revenue in 2011 and the projected revenue in 2012 is the annual impact to shippers from this rule. This figure would be equivalent to the total additional payments or savings that shippers would incur for pilotage services from this rule. As discussed earlier, we consider a reduction in payments to be a cost savings.

The impact of the rate adjustment in this rule to shippers varies by area and district. The rate adjustments would lead to a cost savings in all seven areas and all three districts, with affected shippers operating in District One, District Two, and District Three experiencing savings of $82,000, $305,000, and $448,000, respectively (values rounded). To calculate an exact cost or savings per vessel is difficult because of the variation in vessel types, routes, port arrivals, commodity carriage, time of season, conditions during navigation, and preferences for the extent of pilotage services on designated and undesignated portions of the Great Lakes system. Some owners and operators would pay more and some would pay less depending on the distance and port arrivals of their vessels' trips. However, the additional savings reported above captures the adjustment the shippers would

experience as a result of the rate adjustment in this rule. As Table 38 indicates, shippers operating in all areas would experience an annual savings due to this rule. The overall impact of the rule would be a cost savings to shippers of approximately $835,000 across all three districts.

The effects of a rate adjustment on costs and savings vary by year and area. A decrease in projected expenses for individual areas or districts is common in past pilotage rate adjustments. Most recently, in the 2011 ratemaking, District Three experienced a decrease in projected expenses due to an adjustment in bridge hours from the 2010 final rule. That decrease led to a savings for that district and yielded a net savings for the system.

This rule will allow the Coast Guard to meet the statutory requirements to review the rates for pilotage services on the Great Lakes.

B. 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 people.

We expect that entities affected by this rule would be classified under the North American Industry Classification System (NAICS) code subsector 483–Water Transportation, which includes the following 6-digit NAICS codes for freight transportation: 483111-Deep Sea Freight Transportation, 483113-Coastal and Great Lakes Freight Transportation, and 483211-Inland Water Freight Transportation. According to the Small Business Administration's definition, a U.S. company with these NAICS codes and employing less than 500 employees is considered a small entity.

We reviewed recent company size and ownership data from 2008–2010 Coast Guard MISLE data and business revenue and size data provided by publicly available sources such as Manta and ReferenceUSA. We found that large, mostly foreign-owned shipping conglomerates or their subsidiaries owned or operated all vessels engaged in foreign trade on the Great Lakes. We assume that new industry entrants would be comparable in ownership and size to these shippers.

There are three U.S. entities affected by this rule that receive revenue from pilotage services. These are the three pilot associations that provide and manage pilotage services within the Great Lakes districts. Two of the associations operate as partnerships and one operates as a corporation. These associations are designated using the same NAICS industry classification and small entity size standards described above, but they have far fewer than 500 employees—approximately 65 combined. We expect no adverse impact to these entities from this rule because all associations receive enough revenue to balance the projected expenses associated with the projected number of bridge hours and pilots.

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

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could 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 consult Mr. Todd Haviland, Management & Program Analyst, Office of Great Lakes Pilotage, Commandant (CG–5522), Coast Guard; telephone 202–372–2037, email *Todd.A.Haviland@uscg.mil,* or fax 202–372–1909. 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.

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).

D. 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). This rule does not change the burden in the collection currently approved by the Office of Management and Budget under OMB Control Number 1625–0086, Great Lakes Pilotage Methodology.

E. 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. Congress directed the Coast Guard to establish ''rates and charges for pilotage services.'' 46 U.S.C. 9303(f). This regulation is issued pursuant to that statute and is preemptive of state law as outlined in 46 U.S.C. 9306. Under 46 U.S.C. 9306, a ''State or political subdivision of a State may not regulate or impose any requirement on pilotage on the Great Lakes.'' Because States may not promulgate rules within this category, preemption is not an issue under Executive Order 13132.

Additionally, President Barack Obama's memorandum of May 20, 2009, titled ''Preemption,'' states that ''preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the States and with a sufficient legal basis for preemption.'' To that end, when a department or agency intends to preempt State law, it should do so only if justified under legal principles governing preemption, including those outlined in Executive Order 13132, and it should also include preemption provisions in the codified regulation. As currently stated in 46 CFR § 401.120, states, municipalities, and other local authorities are prohibited from requiring ''the use of pilots or [regulating] any aspect of pilotage in any of the waters specified in the Act.'' Therefore, this regulation complies with the requirements of the memorandum.

F. Unfunded Mandates Reform Act

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

G. Taking of Private Property

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

H. 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.

I. 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.

J. 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.

K. 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.

L. 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.

M. Environment

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

List of Subjects in 46 CFR Part 401

Administrative practice and procedure, Great Lakes, Navigation (water), Penalties, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 401 as follows:

PART 401—GREAT LAKES PILOTAGE REGULATIONS

■ 1. The authority citation for part 401 continues to read as follows:

Authority: 46 U.S.C. 2104(a), 6101, 7701, 8105, 9303, 9304; Department of Homeland Security Delegation No. 0170.1; 46 CFR 401.105 also issued under the authority of 44 U.S.C. 3507.

■ 2. In § 401.405, revise paragraphs (a) and (b), including the footnote to Table (a), to read as follows:

§ 401.405 Basic rates and charges on the St. Lawrence River and Lake Ontario.

* * * * *

(a) Area 1 (Designated Waters):

Service	St. Lawrence River
Basic Pilotage	[1] $19.02 per kilometer or $33.67 per mile.
Each Lock Transited	[1] $422.
Harbor Movage	[1] $1,381.

[1] The minimum basic rate for assignment of a pilot in the St. Lawrence River is $921, and the maximum basic rate for a through trip is $4,041.

(b) Area 2 (Undesignated Waters):

Service	Lake Ontario
Six-hour Period	$865
Docking or Undocking	826

■ 3. In § 401.407, revise paragraphs (a) and (b), including the footnote to Table (b), to read as follows:

§ 401.407 Basic rates and charges on Lake Erie and the navigable waters from Southeast Shoal to Port Huron, MI.

* * * * *

(a) Area 4 (Undesignated Waters):

Service	Lake Erie (East of Southeast Shoal)	Buffalo
Six-hour Period	$760	$760
Docking or Undocking	585	585
Any Point on the Niagara River Below the Black Rock Lock	N/A	1,493

(b) Area 5 (Designated Waters):

Any point on or in	Southeast Shoal	Toledo or any point on Lake Erie west of Southeast Shoal	Detroit River	Detroit Pilot Boat	St. Clair River
Toledo or any port on Lake Erie west of Southeast Shoal	$2,317	$1,369	$3,008	$2,317	N/A
Port Huron Change Point	[1] 4,036	[1] 4,675	3,031	2,317	$1,677
St. Clair River	[1] 4,036	N/A	3,031	3,031	1,369
Detroit or Windsor or the Detroit River	2,317	3,008	1,369	N/A	3,031
Detroit Pilot Boat	1,677	2,317	N/A	N/A	3,031

[1] When pilots are not changed at the Detroit Pilot Boat.

■ 4. In § 401.410, revise paragraphs (a), (b), and (c) to read as follows:

§ 401.410 Basic rates and charges on Lakes Huron, Michigan and Superior, and the St Mary's River.

* * * * *

(a) Area 6 (Undesignated Waters):

Service	Lakes Huron and Michigan
Six-hour Period	$662
Docking or Undocking	629

(b) Area 7 (Designated Waters):

Area	De Tour	Gros Cap	Any Harbor
Gros Cap	$2,568	N/A	N/A
Algoma Steel Corporation Wharf at Sault Ste. Marie, Ontario	2,568	$967	N/A
Any point in Sault Ste. Marie, Ontario, except the Algoma Steel Corporation Wharf	2,153	967	N/A
Sault Ste. Marie, MI	2,153	967	N/A
Harbor Movage	N/A	N/A	$967

(c) Area 8 (Undesignated Waters):

Service	Lake Superior
Six-hour Period	$577
Docking or Undocking	549

§ 401.420 [Amended]

■ 5. Amend § 401.420 as follows:

■ a. In paragraphs (a) and (b), remove the text ''$127'' and add, in its place, the text ''$124''; and remove the text ''$1,989'' and add, in its place, the text ''$1,942''; and

■ b. In paragraph (c)(1), remove the text ''$751'' and add, in its place, the text ''$733''; and in paragraph (c)(3), remove the text ''$127'' and add, in its place, the text ''$124'', and remove the text ''$1,989'' and add, in its place, the text ''$1,942.''

§ 401.428 [Amended]

■ 6. In § 401.428, remove the text ''$766'' and add, in its place, the text ''$748.''

Dated: February 9, 2012.

Dana A. Goward,

Director, Marine Transportation Systems Management, U.S. Coast Guard.

[FR Doc. 2012–4453 Filed 2–27–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Technical Amendment

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

ACTION: Final rule.

SUMMARY: DoD is making a technical amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) to provide needed editorial changes.

DATES: *Effective Date:* February 28, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Ynette Shelkin, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060. Telephone 703–602–8384; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION: This final rule amends the DFARS as follows:

○ *252.215–7002* Adds the words ''compliance with'' at paragraph (d)(4)(xii) for clarity.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR Part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.215–7002 [Amended]

■ 2. Section 252.215–7002 is amended by removing ''including verification of the company's estimating and budgeting policies'' and adding ''including verification of compliance with the company's estimating and budgeting policies'' in its place.

[FR Doc. 2012–4625 Filed 2–27–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 040205043–4043–01]

RIN 0648–XA990

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery of the South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the commercial sector for vermilion snapper in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the vermilion snapper resource.

DATES: This rule is effective 12:01 a.m., local time, February 29, 2012, until 12:01 a.m., local time, July 1, 2012.

FOR FURTHER INFORMATION CONTACT: Catherine Bruger, telephone: 727–824–5305, email: *Catherine.Bruger@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

The commercial quota for vermilion snapper in the South Atlantic is 315,523 lb (143,119 kg) for the current fishing period, January 1 through June 30, 2012, as specified in 50 CFR 622.42(e)(4)(i).

Under 50 CFR 622.43(a), NMFS is required to close the commercial sector for vermilion snapper when its quota has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial quota for South Atlantic vermilion snapper will have been reached by February 29, 2012. Accordingly, the commercial sector for South Atlantic vermilion snapper is closed effective 12:01 a.m., local time, February 29, 2012, until 12:01 a.m., local time, July 1, 2012.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having vermilion snapper onboard must have landed and bartered, traded, or sold such vermilion snapper prior to 12:01 a.m., local time, February 29, 2012. During the closure, the bag limit specified in 50 CFR 622.39(d)(1)(v), applies to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ, including the bag limit that may be retained by the captain or crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero. During the closure, the possession limits specified in 50 CFR 622.39(d)(2) applies to all harvest or possession of vermilion snapper in or from the South Atlantic EEZ. During the closure, the sale or purchase of vermilion snapper taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of vermilion snapper that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, February 29, 2012, and were held in cold storage by a dealer or processor. For a person on board a vessel for which a Federal commercial or charter vessel/headboat permit for the South Atlantic snapper-grouper fishery has been issued, the sale and purchase provisions of the commercial closure for vermilion snapper would apply regardless of whether the fish are harvested in state or Federal waters, as specified in 50 CFR 622.43(a)(5)(ii).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds that the need to immediately implement this action to close the commercial sector for vermilion snapper constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures would be unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action to protect vermilion snapper since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30-day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 2012.

Steven Thur,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–4709 Filed 2–23–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–2]

RIN 0648–XB004

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher/Processors Using Hook-and-Line Gear in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher/processors (C/Ps) using hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2012 Pacific cod total allowable catch apportioned to C/Ps using hook-and-line gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 23, 2012, through 1200 hrs, A.l.t., September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2012 Pacific cod total allowable catch (TAC) apportioned to C/Ps using hook-and-line gear in the Central Regulatory Area of the GOA is 1,736 metric tons (mt), as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011), revision to the final 2012 harvest specifications for Pacific cod (76 FR 81860, December 29, 2011), and inseason adjustment to the final 2012 harvest specifications for Pacific cod (77 FR 438, January 5, 2012).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2012 Pacific cod TAC apportioned to C/Ps using hook-and-line gear in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,721 mt, and is setting aside the remaining 15 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by C/Ps using hook-and-line gear in the Central Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the directed fishing closure of Pacific cod for C/Ps using hook-and-line gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 21, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 2012.

Steven Thur,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–4702 Filed 2–23–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XB036

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2012 total allowable catch of pollock for Statistical Area 630 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), February 25, 2012, through 1200 hrs, A.l.t., March 10, 2012.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2012 total allowable catch (TAC) of pollock in Statistical Area 630 of the GOA is 5,787 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011) and

inseason adjustment (77 FR 438, January 5, 2012).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2012 TAC of pollock in Statistical Area 630 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,537 mt and is setting aside the remaining 250 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 630 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 21, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: February 23, 2012.

Steven Thur,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–4708 Filed 2–23–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 39
Tuesday, February 28, 2012

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 MANAGEMENT AND BUDGET

2 CFR Chapters I and II

Reform of Federal Policies Relating to Grants and Cooperative Agreements; Cost Principles and Administrative Requirements (Including Single Audit Act)

AGENCY: Executive Office of the President, Office of Management and Budget (OMB).

ACTION: Advance Notice of Proposed Guidance.

SUMMARY: In his November 23, 2009, Executive Order 13520 on *Reducing Improper Payments* and his February 28, 2011, Presidential Memorandum on *Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments,* the President directed the Office of Management and Budget (OMB) to work with Executive Branch agencies; state, local, and tribal governments; and other key stakeholders to evaluate potential reforms to Federal grants policies. Consistent with the Administration's commitment to increasing the effectiveness and efficiency of Federal programs, the reform effort seeks to strengthen the oversight of Federal grant dollars by aligning existing administrative requirements to better address ongoing and emerging risks to program outcomes and integrity. The reform effort further seeks to increase efficiency and effectiveness of grant programs by eliminating unnecessary and duplicative requirements. Through close and sustained collaboration with Federal and non-Federal partners, OMB has developed a series of reform ideas that would standardize information collections across agencies, adopt a risk-based model for Single Audits, and provide new administrative approaches for determining and monitoring the allocation of Federal funds.

DATES: To be assured of consideration, comments must be received by OMB at one of the addresses provided below, no later than 5 p.m. Eastern Standard Time (E.S.T) on March 29, 2012.

ADDRESSES: In submitting comments, please refer to file ''Grant Reform''. You may submit comments using one of the following three alternatives (please choose only one of these three alternatives):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the ''more Search Options'' tab.

2. *By express or overnight mail.* You may send written comments to the following address only: Office of Management and Budget, 725 17th St. NW., Washington, DC 20025, Attention: Office of Federal Financial Management ''Grant Reform''.

3. *By regular mail.* You may mail written comments to the following address only: Office of Management and Budget, 725 17th St. NW., Washington DC, 20500, Attention: Office of Federal Financial Management ''Grant Reform''. Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we strongly encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments sent via surface mail will be received before the comment closing date.

Comments will be most useful if they are presented in the same sequence (and with the same heading) as the section of this notice to which they apply. Also, if you are submitting comments on behalf of an organization, please identify the organization. Finally, the public comments received by OMB will be posted on OMB's Web site and at *http://www.regulations.gov* (follow the search instructions on that Web site to view public comments). Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature.

Copies of the OMB Circulars that are discussed in this notice are available on OMB's Web site at *http://www.whitehouse.gov/omb/circulars_default/.* The Cost Principles for Hospitals are in the regulations of the Department of Health and Human Services at 45 CFR part 75, Appendix E (*Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals*), at *http://www.gpo.gov/fdsys/pkg/CFR–2011-title45-vol1/pdf/CFR–2011-title45-vol1.pdf.*

FOR FURTHER INFORMATION CONTACT: Victoria Collin at (202) 395–7791 for general information.

SUPPLEMENTARY INFORMATION: This advance notice outlines the reform ideas for which OMB seeks public comment. These comments will assist OMB in its development in the coming months of a further **Federal Register** notice, to be published for comment later this year, which would propose specific revisions to existing requirements. These reform ideas relate to, and could result in proposed revisions to the following government-wide issuances: OMB Circulars A–21, A–87, A–110, and A–122 (which have been placed in 2 CFR parts 220, 225, 215, and 230); Circulars A–89, A–102, and A–133; the guidance in Circular A–50 on Single Audit Act follow-up; and the Cost Principles for Hospitals at 45 CFR Part 74, Appendix E. As part of this ongoing review, OMB will consider the consolidation of currently-separate guidelines addressing related topics as well as the continued integration of guidelines into title 2 of the Code of Federal Regulations.

The reform ideas would be applicable to grants and cooperative agreements that involve state, local, and tribal governments as well as universities and nonprofit organizations. To the extent that current OMB circulars on cost principles cover all awards including contracts for these entities, reforms to cost principles will equally apply to all Federal awards including contracts, except for those contracts that that are subject to ''full coverage'' under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201. CAS-covered contracts will continue to be subject to the relevant requirements under the Federal Acquisition Regulation (FAR). Single Audit Act requirements will continue to apply to all Federal awards including contracts, though cost reimbursement contracts may continue to be subject to additional audit requirements.

I. Objectives and Background

A. Objectives

As the President made clear in Executive Order 13563 of January 18, 2011, on *Improving Regulation and*

Regulatory Review (76 FR 3821; January 21, 2011; *http://www.gpo.gov/fdsys/pkg/FR-2011-01-21/pdf/2011-1385.pdf*), each Federal agency must ''tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations'' and, to that end, it is important that Federal agencies identify those ''rules that may be outmoded, ineffective, insufficient, or excessively burdensome,'' and ''modify, streamline, expand, or repeal them in accordance with what has been learned.'' The President reinforced his commitment in Executive Order 13579 of July 11, 2011 on *Regulation and Independent Regulatory Agencies* (76 FR 41587; July 14, 2011; *http://www.gpo.gov/fdsys/pkg/FR-2011-07-14/pdf/2011-17953.pdf*).

As in other areas involving Federal requirements, the President is committed to eliminating requirements in the financial assistance arena that are unnecessary and reforming those requirements that are overly burdensome. As part of this commitment, the President believes that the Federal government has an obligation to eliminate roadblocks to effective performance in carrying out and completing grants and cooperative agreements. Essential to this reform effort is reducing ''red tape'' that is attached to the more than $600 billion the Federal government spends annually in the form of grants and cooperative agreements. These awards provide important benefits and services to the public, and the awards go to state, local and tribal governments as well as to institutions of higher education and non-profit organizations. In order to ensure that the public receives the most value for the tax dollars spent, it is essential that these programs function as effectively and efficiently as possible, and that there be a high level of accountability to prevent waste, fraud, and abuse.

To this end, the President on February 28, 2011, issued his *Memorandum on Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments,* (Daily Comp. Pres. Docs.; *http://www.gpo.gov/fdsys/pkg/DCPD-201100123/pdf/DCPD-201100123.pdf*). In the Memorandum, the President explained that ''Federal program requirements over the past several decades have sometimes been onerous, and they have not always contributed to better outcomes. With input from our State, local, and tribal partners, we can, consistent with law, reduce unnecessary regulatory and administrative burdens and redirect resources to services that are essential to achieving better outcomes at lower cost.'' In addition to other actions, the President instructed the OMB Director to ''[r]eview and where appropriate revise guidance concerning cost principles, burden minimizations, and audits for State, local, and tribal governments in order to eliminate, to the extent permitted by law, unnecessary, unduly burdensome, duplicative, or low-priority recordkeeping requirements and effectively tie such requirements to achievement of outcomes.''

At the same time that the Federal Government must remove unnecessary and overly burdensome requirements that interfere with efficient and effective program performance, another Presidential priority is ''intensifying efforts to eliminate payment error, waste, fraud, and abuse'' in Federal programs, as the President emphasized in Executive Order 13520 of November 20, 2009, on Reducing Improper Payments (74 FR 62201; November 25, 2009; *http://www.gpo.gov/fdsys/pkg/FR-2009-11-25/pdf/E9-28493.pdf*). Accordingly, as the President explained, it is important for Federal agencies ''to more effectively tailor their methodologies for identifying and measuring improper payments to those programs, or components of programs, where improper payments are most likely to occur.'' Moreover, the elimination of unnecessary and overly burdensome requirements can advance the goal of strengthened program integrity, by enabling resources to be focused on those activities that are most effective at reducing payment errors and eliminating waste, fraud and abuse. Accordingly, in his February 2011 Memorandum on *Administrative Flexibility, Lower Costs, and Better Results for State, Local, and Tribal Governments,* the President directed Federal agencies to ''[w]ork with State, local, and tribal governments to identify the best opportunities to realize efficiency, promote program integrity, and improve program outcomes, including opportunities, consistent with law, that reduce or streamline duplicative paperwork, reporting, and regulatory burdens and those that more effectively use Federal resources across multiple programs or States.''

The reform ideas described below are being considered as approaches for pursuing these objectives.

The purpose of this notice is to solicit public input on a range of ideas for reforming the requirements that govern the management of Federal financial assistance awards. OMB is interested in receiving broad public feedback on these ideas. Based on the feedback that is received, as well as on the ongoing discussions among Federal agencies (including their Inspectors General) as well as with other stakeholders, OMB in the coming months will develop a set of proposed amendments that, later this year, will be published for public comment in the **Federal Register**. The public comments on that proposed set of revisions will in turn be considered as OMB develops a final notice that will adopt a set of reforms. Following the implementation of these reforms, OMB will continue to monitor their impacts to evaluate whether (and the extent to which) the reforms are achieving their desired results, and OMB will consider making further modifications as appropriate.

In addition, OMB is considering implementing these reforms through the development and issuance of an integrated set of guidelines that would be contained in one consolidated circular, in which current administrative requirements that currently vary by type-of-recipient would be streamlined into one set of common requirements, while at the same time some provisions that vary among different types of recipients would be retained. The goal of such a streamlining would be to increase the consistency, and decrease the complexity, in how the Federal Government's financial assistance programs are administered. Among other benefits, this will make it easier for applicants and recipients of Federal awards to understand and implement these requirements.

B. Background

The reform ideas outlined in this notice reflect input from a year of work by the Federal and non-Federal financial assistance community. In response to the President's direction that OMB and Federal agencies identify ways to make the oversight of Federal funds more effective and more efficient, OMB worked with the Office of Science and Technology Policy (OSTP) to convene meetings with both Federal and non-Federal stakeholders to discuss possible ideas for reform efforts. These meetings resulted in OMB receiving a series reform ideas at the end of August 2011 that have since been further developed as described below. In addition, over 150 comments were received from the university and research community. These comments are publicly available at *http://rbm.nih.gov/a21_task_force.htm.*

On October 27, 2011, the OMB Director issued Memorandum M–12–01,

Creation of the Council on Financial Assistance Reform (*http://www.whitehouse.gov/sites/default/files/omb/memoranda/2012/m-12-01.pdf*). To ''create a more streamlined and accountable structure to coordinate financial assistance,'' the Memorandum established the interagency Council on Financial Assistance Reform (COFAR) as a replacement for two Federal boards (the Grants Policy Council and the Grants Executive Board). The 10-member COFAR is composed of OMB's Office of Federal Financial Management (Co-Chair); the eight largest grant-making agencies, which are the Departments of Health and Human Services (a Co-Chair), Agriculture, Education, Energy, Homeland Security, Housing and Urban Development, Labor, and Transportation; and one additional rotating member to represent the perspectives of other agencies, which for the first two-year term is the National Science Foundation.

Since the COFAR's first meeting on November 4, 2011, it has worked to formulate and further develop reform ideas for consideration to streamline and improve financial management policy for Federal assistance awards. These reform ideas are presented below, in Part II of this notice. In Part III, specific questions are posed regarding these reform ideas, for which comments are especially invited, along with other comments.

II. Reform Ideas for Comment

OMB invites comments from the public on all issues addressed in this advance notice. We invite those interested in responding to answer all of the questions posed or to choose to respond only to those questions of greatest interest to them. This feedback will assist us in fully considering issues and developing policies. In addition, the public is invited to suggest additional reform ideas for our consideration. Finally, we should note that, as this is an advance notice, the fact that OMB is requesting public comment on a reform idea does not mean that OMB has concluded that the reform idea necessarily should be pursued. That is why public comment is being requested, so that OMB and Federal agencies (and other stakeholders) can have the benefit of the public's input, views and perspectives at this stage of the process, as we continue to evaluate these ideas for reform.

The reform ideas under discussion are outlined below in three main categories:

- *Section A:* reforms to audit requirements (Circulars A–133 and A–50)
- *Section B:* reforms to cost principles (Circulars A–21, A–87, and A–122, and the Cost Principles for Hospitals)
- *Section C:* reforms to administrative requirements (the government-wide Common Rule implementing Circular A–102; Circular A–110; and Circular A–89)

A. Reforms to Audit Requirements (Circulars A–133 and A–50)

This section discusses ideas for changes that would be made to the audit guidance that is contained in Circular A–133 on *Audits of States, Local Governments, and Non-Profit Organizations* and in Circular A–50 on Audit Follow-up. The following are ideas for reform that have been raised and discussed.

1. *Concentrating audit resolution and oversight resources on higher dollar, higher risk awards.*

Changing the Single Audit framework could enable agencies to focus their oversight and follow-up resources in the most efficient and effective way for targeting improper payments, waste, fraud, and abuse. The following oversight guidelines are an illustrative example of the form that a revised framework for the Single Audit requirement might take:

A. *Entities that expend less than $1 million in Federal awards* would not be required to conduct a Single Audit. This would be an increase in the current threshold of $500,000, below which entities are currently not required to conduct Single Audits.

B. *Entities that expend between $1 million and $3 million in Federal awards* would be required to undergo a more focused version of the Single Audit, which would differ from current Single Audit requirements in that once a major program determination has been made, auditors would review only two compliance requirements for those programs. Allowable and unallowable costs would always be one of the required compliance requirements, and agencies would have the discretion to select the second compliance requirement for each of their programs as they deem most appropriate. OMB would provide guidance to agencies that this second compliance requirement should be the one that, for the particular program, would best target the risk of improper payments or waste, fraud, and abuse.

C. *Entities that expend more than $3 million in Federal awards* would undergo a full Single Audit. These Audits would be strengthened per the ideas in reforms 2–5 (below) to give agencies better tools to reduce improper payments and to eliminate waste, fraud, and abuse.

Raising the threshold for a Single Audit (from $500,000 to $1 million) would reduce the administrative burden for audited entities and for auditing agencies, allowing the agencies to concentrate their audit oversight and follow-up resources more closely on other entities that are higher-dollar and higher-risk. Focusing the Single Audit requirement (for entities expending between $1 million and $3 million) to two compliance requirements would enable agencies to tighten their scrutiny on the highest risk areas of program oversight while at the same time reducing the burden—for both agencies and recipients—associated with collecting and resolving audit findings in lower risk areas. This would narrow the scope of compliance-related information that agencies receive for entities expending below $3 million. Finally, maintaining the full Single Audit for entities expending more than $3 million would ensure that agencies still receive full Single Audit compliance information for higher dollar recipients, and that they will be able to shift more resources to provide the necessary level of oversight to those recipients.

2. *Streamlining the universal compliance requirements in the Circular A–133 Compliance Supplement.*

For all entities that undergo a full Single Audit, the universal compliance requirements listed in the Circular A–133 Compliance Supplement could be streamlined to focus on proper stewardship of Federal funds.

This could be done, for example, by emphasizing—in the universal compliance requirements—those elements that address improper payments, waste, fraud, abuse, and program performance, while streamlining other elements. Under this approach, a subset of compliance requirements would be targeted for increased testing, larger sample sizes, or lower levels of materiality. Examples of these could include: Allowable or unallowable activities and costs, eligibility, reporting, selection of subrecipients and subrecipient monitoring, special tests and provisions, period of availability of Federal funds, and compliance of procurement with suspension and debarment policies. At the same time, other compliance requirements could either be made optional for testing (depending on the material effect of that requirement on the program) or could have smaller sample sizes and higher levels of materiality. In addition, Federal agencies would have the ability, on a

program-specific basis to place higher emphasis through the Compliance Supplement process on those elements (no longer universal) which the agency believes are relevant to prevent waste, fraud, or abuse.

Refocusing the Single Audit Compliance Supplement to reduce the number of types of compliance requirements tested would both reduce the audit burden on recipients and provide agencies with more risk-based audits. This refocusing of the Single Audit is intended to allow agencies to concentrate their audit resolution and oversight resources on the requirements most essential to managing waste, fraud, and abuse and reducing improper payments. This could result in a more focused audit that produces the findings needed to ensure accountability, while relieving the burden of audit work on issues that are secondary to the integrity of funds. Agencies could add back specific requirements under program specific tests and provisions where necessary. This would limit the types of compliance information that Federal agencies routinely receive from the Single Audit process.

3. *Strengthening the guidance on audit follow-up for Federal awarding agencies.*

This reform approach could include changes along the following lines:

- Requiring agencies to designate a senior accountable agency official to oversee the audit resolution process;
- Requiring agencies to implement audit-risk metrics including timeliness of report submission, number of audits that did not have an unqualified auditor opinion on major programs, and number of repeat audit findings;
- Encouraging agencies to engage in cooperative audit resolution with recipients; and
- Encouraging agencies to take a pro-active approach to resolving weaknesses and deficiencies, whether they are identified with single specific programs or cut across the systems of an audited recipient.

To improve audit follow-up, the Federal Government would digitize Single Audit reports into a searchable database to support analysis of audit results by Federal agencies and pass-through entities.

Strengthening audit resolution policies should result in agencies taking a more pro-active and collaborative approach towards following- up on audit findings, which should result in a decrease in audit findings and program risk over time. This collaborative approach would be envisioned more as a mediation process between agencies and recipients, with informal assistance as needed, rather than a more formal provision of training or technical assistance. As underlying programmatic weaknesses are resolved and repeat findings reduced, both recipients' and agencies' audit burdens will be lessened. This may require more resources from Federal agencies as they work to strike the right balance on pro-active oversight. A web-based searchable database of Single Audit findings will provide a key tool to improve the utility of audits.

4. *Reducing burden on pass-through entities and subrecipients by ensuring across-agency coordination.*

In order to reduce redundancy and burden, this reform idea would involve making more explicit the existing requirement that Federal awarding agencies are responsible for coordinating additional audits of a recipient entity with the Federal cognizant or oversight agency for audit for that entity. This would in no way impact the ability of Inspectors General to conduct audit work as deemed necessary in accordance with the Inspector General Act of 1978, as amended.

Ensuring that audits are coordinated across Federal agencies, and that agencies conduct audit follow-up for internal-control issues at those subrecipients which receive the majority of their Federal funds through direct Federal assistance, would reduce the number of subrecipients for which pass-through entities engage in follow-up efforts that could duplicate the Federal efforts.

5. *Reducing burdens on pass-through entities and subrecipients from audit follow-up.*

For those situations in which an entity receives a majority of its Federal funds through direct grants from the Federal government, and some Federal funds through subawards, the reform idea would be to require Federal agencies to conduct audit follow-up of the subawards for those audit findings regarding financial or internal control systems that are not specific to the program delivery of the subawards.

Such a change to Circular A–133 would be aimed at eliminating duplicative audit follow-up work performed by a pass-through entity without providing significant additional work to Federal agencies that already will be following-up on these same audit findings, as well as at simplifying the follow-up for the subrecipient. Pass-through entities that give subawards would no longer be required to resolve financial and internal control issues but could instead focus on the programmatic requirements of the subawards they make. Subrecipients would not be required to negotiate with both the Federal government and the pass-through entity over the same financial and control issues that affect both types of awards. However, once the Federal government has resolved the financial and control issues with the subrecipient, a pass-through entity that awarded a subaward would be responsible for audit follow-up monitoring of these general findings to ensure that the subrecipient complies with the audit resolution as it applies to the subgrants made by the primary grantee. The subrecipient's Federal awarding agency would perform a normal audit follow-up for the financial and control issues, issuing management decisions on these audit findings, and provide a process to make these management decisions and a Federal contact person readily available to the affected pass-through entities.

B. Reforms to Cost Principles (Circulars A–21, A–87, and A–122, and the Cost Principles for Hospitals)

This section discusses ideas for changes that would be made to the OMB cost-principle circulars that have been placed at 2 CFR Parts 220, 225, and 215 (Circulars A–21, *Cost Principles for Educational Institutions;* Circular A–87, *Cost Principles for State, Local and Indian Tribal Governments;* and Circular A–122, *Cost Principles for Non-Profit Organizations*), and to the Cost Principles for Hospitals that are in the regulations of the Department of Health and Human Services at 45 CFR Part 75, Appendix E (*Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals*). The following are ideas for reform that have been raised and discussed.

1. *Consolidating the cost principles into a single document, with limited variations by type of entity.*

2. *For indirect (''facilities and administrative'') costs, using flat rates instead of negotiated rates.*

- One option would be to establish a mandatory flat rate that is discounted from the recipient's already negotiated rate. This approach could significantly reduce the burden associated with indirect cost rate calculation and negotiation, as well as reduce overall indirect costs.
- Another option would give recipients the option of accepting a flat rate or negotiating a rate. Recipients with a previously negotiated rate may have the additional option of accepting a discounted rate from their already negotiated rate. Recipients with a previously negotiated rate may have the

additional option of accepting a discounted rate from their already negotiated rate. Discounted rates could be maintained for up to a four-year period with minimal documentation, or raised through negotiation with full documentation.

Under both options, OMB would work with cognizant federal agencies and the HHS Division of Cost Allocation to develop a list of flat rates and discount factors by entity type. The aim of such approaches would be to reduce negotiation costs for agencies while reducing—for agencies, recipients, and subrecipients—the administrative burden associated with rate preparation and negotiations. Entities with CAS-covered contracts would still be required to use a negotiated rate for those contracts.

Establishing either a mandatory or optional flat indirect cost rate could reduce administrative burdens on recipients associated with documenting, justifying, negotiating, and maintaining support for a negotiated rate. This burden can be substantial depending on the extent to which an entity analyzes, documents, and negotiates a rate or group of rates. By setting the flat rate at a lower level than the negotiated rate would have been, this approach could also reduce indirect-costs expenses incurred by Federal agencies. OMB would continue to work with stakeholders to address potential challenges to implementation, including finding the right algorithms for setting the rates and reducing overall indirect costs.

One consideration here is the issue of whether Federal agencies would actually end up incurring additional indirect costs if each grantee had the option of choosing to use a flat rate or a negotiated rate. The concern here is that, through their choices, grantees would apply those rates that would result in the highest indirect cost reimbursement, with these increases in indirect costs thereby resulting in less funding being available for direct programmatic activities. OMB is seeking input on how to structure a reform approach in a way that would ensure a reduction in overall indirect costs.

3. *Exploring alternatives to time-and-effort reporting requirements for salaries and wages.*

This reform idea would involve working with the Federal grant and Inspector General (IG) communities to identify risks associated with justifications for salaries and wages and to identify possible alternative mechanisms for addressing those risks beyond current time-and-effort reporting requirements.

This would include consideration of the ideas described in existing pilots or development of new pilots to accountably document the allowability and allocability of salaries and wages charged to Federal awards as direct costs. The first three pilots under consideration are those of the Federal Demonstration Partnership (*http://sites.nationalacademies.org/PGA/fdp/PGA_055834*); the Department of Labor's Workforce Innovation Fund (*http://www.doleta.gov/grants/find_grants.cfm*); and the Department of Education's Request for Ideas (*http://www.ed.gov/blog/2011/10/granting-administrative-flexibility-for-better-measures-of-success/*).

Considering and developing pilot programs that provide alternatives to time-and-effort reporting could result in substantial reductions of the administrative burden currently associated with compliance, while enhancing compliance and stewardship. OMB will work with IGs and other stakeholders to ensure that any alternative provides appropriate levels of auditable and accountable information.

4. *Expanding application of the Utility Cost Adjustment for research to more higher education institutions.*

This reform idea would expand application of the 1.3% indirect (facilities and administration) costs adjustment for utility costs of research to more institutions of higher education.

The Utility Cost Adjustment (UCA) is currently provided to 65 institutions of higher education for research grants. Under this proposal, the UCA would be extended to other institutions that submit to their cognizant Federal agency a utility cost study justifying an increase in utility cost reimbursement and an approved plan to reduce their utility costs over time. OMB would work with Department of Defense's Office of Naval Research and the Department of Health and Human Services' Division of Cost Allocation to develop guidelines and a format for the cost studies to ensure standardization across entities.

Extending the opportunity to apply for the UCA to more institutions of higher education for research is aimed at resolving the equitable treatment concern that has been raised by those academic institutions that have not been offered this opportunity since the UCA became available to some institutions in 1998. This revision would address that concern while still ensuring cost accountability and reduced utility consumption by requiring a utility cost study (to be developed by OMB in coordination with DOD's Office of Naval Research and HHS' Division of Cost Allocation) as well as a plan to reduce utility costs in order for the adjustment to be approved. If all remaining institutions apply for and receive this adjustment, this revision could raise Federal indirect cost reimbursements for utility costs by up to approximately $80 million per year once fully implemented.

5. *Charging directly allocable administrative support as a direct cost.*

This reform idea would involve clarifying the circumstances under which institutions of higher education, and other entities where appropriate, may charge directly allocable administrative support as a direct cost. Included are project-specific activities such as managing substances/chemicals, data and image management, complex project management, and security.

This clarification would be aimed at ensuring that charges are appropriately classified in order to provide support for all of the costs directly associated with a Federal award, while reducing the burdens of securing special permission to purchase what have become routine supplies. This is not intended to result in a net cost increase, but rather to provide clarity in how allowable costs are routinely charged.

6. *Including the cost of certain computing devices as allowable direct cost supplies.*

This reform idea would involve explicitly including the cost of computing devices not otherwise subject to inventory controls (i.e. cost less than the organization's equipment threshold) as allowable direct cost supplies. Applicants for Federal awards would be required to document these items as a separate line-item in their budget requests, but would not be required to conduct the more stringent inventory controls in place for equipment.

This clarification would be aimed at ensuring that charges are appropriately classified in order to provide support for all of the costs directly associated with a Federal award, while reducing the burdens of securing special permission to purchase what have become routine supplies. This is not intended to result in a net cost increase, but rather to provide clarity in how allowable costs are routinely charged.

7. *Clarifying the threshold for an allowable maximum residual inventory of unused supplies.*

This reform idea would involve harmonizing cost principles with existing language in Circulars A–110 and A–102 to clarify that $5,000 is the threshold for an allowable maximum residual inventory of unused supplies that may be retained for use on another

Federal award at no cost, as long as the cost was properly allocable to the original agreement at the time of purchase.

This clarification would be aimed at minimizing confusion about appropriate disposal or re-expensing of unused inventories at the conclusion of an award and at ensuring consistency in the application of the cost principles in the circulars.

8. *Eliminating requirements to conduct studies of cost reasonableness for large research facilities.*

This reform idea would involve eliminating requirements for institutions of higher education, and other entities where appropriate, to conduct studies of cost reasonableness for large research facilities. This would be aimed at reducing paperwork that is costly to generate and may yield information that is of minimal use to the awarding agency.

9. *Eliminating restrictions on use of indirect costs recovered for depreciation or use allowances.*

This reform idea would involve eliminating the restrictions on the use of the portion of indirect cost recoveries associated with depreciation or use allowances. This would be aimed at reducing paperwork that is costly to generate and may yield information that is of minimal use to the awarding agency.

10. *Eliminating requirements to conduct a lease-purchase analysis for interest costs and to provide notice before relocating federally sponsored activities from a debt-financed facility.*

This reform idea would involve eliminating requirements for institutions of higher education, and other entities where appropriate, to conduct a lease-purchase analysis to justify interest costs, and to notify the cognizant Federal agency prior to relocating federally sponsored activities from a facility financed by debt. This would be aimed at reducing paperwork that is costly to generate and may yield information that is of minimal use to the awarding agency.

11. *Eliminate requirements that printed ''help-wanted'' advertising comply with particular specifications.*

This reform idea would update the cost principles to reflect the media now used for those notices.

12. *Allowing for the budgeting for contingency funds for certain awards.*

This reform idea would involve clarifying that budgeting for contingency funds associated with a Federal award for the construction or upgrade of a large facility or instrument, or for IT systems, is an acceptable and necessary practice; that the method by which contingency funds are managed and monitored is at the discretion of the Federal funding agency. Contingency related amounts should not be included in recipient proposed budgets for specific awards or in the actual award documents; risk-adjusted total cost estimates should be based on verifiable supporting data consistent in compliance with Generally Accepted Accounting Principles (GAAP) and with standard project-management practices. Rebudgeting out of these funds would not be allowable.

Allowing recipients to budget for contingency funds is aimed at clarifying and harmonizing the rules on what is deemed standard project management practice and to encourage development of shared IT services. There could be some cost implications to projects if and when the contingency funds become necessary spending.

13. *Requesting that the Cost Accounting Standards Board (CASB) consider increasing the minimum threshold for disclosure statements.*

This reform idea would involve OMB requesting that the Cost Accounting Standards Board consider the following—

- Increasing the minimum threshold for institutions of higher education to file a disclosure statement of cost-accounting standards from $25 million to $50 million in Federal awards per year based on the average of the entity's most recent three years;
- Establish that the requirement no longer applies if an entity drops below that threshold and is not required to file under current Cost Accounting Standards Board (CASB) requirements described at 48 CFR 9903.202–1; and
- Remove exhibit A of Circular A–21 from future guidance.

OMB would also request that the CASB reassess its rule to increase the $25 million procurement contract threshold for institutions of higher education to conform to the $50 million threshold for other types of entities. OMB would also link the requirement to future adjustments to the CASB rule.

14. *Allowing for excess or idle capacity for certain facilities, in anticipation of usage increases.*

This reform idea would allow for excess or idle capacity in consolidated data centers, telecommunications, and public safety facilities. In order to consolidate data centers and operate in a cloud-based environment, data centers require excess capacity at their creation in order to accommodate increases in usage later on. Other telecommunications facilities and public safety projects have similar characteristics. Federal sharing of these costs would be contingent on the grantee providing a multi-year plan for reaching full capacity of the data center. The OMB cost principles currently do not address the excess or idle capacity in consolidated data centers.

15. *Allowing costs for efforts to collect improper payment recoveries.*

This reform idea would involve revising OMB guidelines to allow costs for expenses associated with the effort to collect improper payment recoveries or related activities, if such costs are specifically approved or directed by the awarding agency.

This change would be aimed at meeting the President's directive to improve the Federal government's ability to recover improper payments. While this could result in increased upfront costs to the agencies, the intention here is that awarding agencies would approve these costs only when the anticipated amount of recovered funding more than justifies the expense of collection.

16. *Specifying that gains and/or losses due to speculative financing arrangements are unallowable.*

This reform idea would involve specifying that gains and/or losses, related to debt arrangements on capital assets, due to speculative financing arrangements (such as hedges, derivatives, etc.) are unallowable. Due to the volatile nature of such instruments, all derivative and hedging instruments would be unallowable, including derivative and hedging instruments embedded in other contracts, whether used for risk management purposes, forecasting, calculations used for the preparation of proposals for federal funding (e.g., forecasting contingencies) or otherwise, and regardless of whether related to assets, liabilities, or expenses.

This change would be aimed at updating the cost principles to address all types of debt arrangements.

17. *Providing non-profit organizations an example of the Certificate of Indirect Costs.*

This reform idea would involve providing non-profit organizations an example of the required certification (Certificate of Indirect Costs) similar to the information that is already provided for state, local, and tribal governments. This would be aimed at providing uniformity in documentation requirements across different types of entities.

18. *Providing non-profit organizations with an example of indirect cost proposal documentation requirements.*

This reform idea would involve providing, for non-profit organizations, an example of indirect cost proposal

documentation requirements that are similar to the information provided for state, local, and tribal governments. This would be aimed at providing uniformity in documentation requirements across different types of entities.

C. Reforms to Administrative Requirements (the Common Rule implementing Circular A–102; Circular A–110; and Circular A–89)

This section discusses ideas for changes that would replace the government-wide common rule implementing Circular A–102 on *Grants and Cooperative Agreements with State and Local Governments* and that would revise Circular A–110 on *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations* (2 CFR part 215) and Circular A–89 on *Catalog of Federal Domestic Assistance.* The following are ideas for reform that have been raised and discussed

1. *Creating a consolidated, uniform set of administrative requirements.*

This reform idea would involve consolidating the administrative requirements in OMB Circulars A–102 and A–110 into a uniform set of administrative requirements for all grant recipients. This uniform guidance would continue to include limited exceptions by type of recipient.

2. *Requiring pre-award consideration of each proposal's merit and each applicant's financial risk.*

This reform idea would involve requiring agency consideration of the merit of each proposal and the financial risk associated with each applicant prior to making an award. (Many agencies currently award grants based on merit review under current law and policy. The proposed change would be a reform in the sense that such merit-based review would be required for the first time in an OMB circular.) Indicators of risk would include past financial, internal control, and programmatic performance. The outcome of the review should affect award decisions, and risk assessment may also affect terms and conditions. This would formalize a ''best practice'' that is already conducted by many agencies, and agencies will continue to have the discretion to determine the format of the review. This reform would not apply to formula grants.

This change would be aimed at ensuring greater transparency in the award making process as well as higher quality of awarded projects, and at delivering improved results with less risk of waste, fraud, or abuse during implementation.

In evaluating risks, agencies would be required to consider factors that could include: Financial stability; quality of management and internal control systems and the ability to meet the management standards prescribed in the amended guidance; history of performance; Federal award Single Audit reports and findings for previous awards; and any other factors that may affect the applicant's ability to effectively implement statutory, regulatory, or other requirements imposed on recipients. Merit reviews may be implemented according to the individual practices of each agency. This reform would include explicit authority for agencies to modify award decisions as well as the terms and conditions of any award based on the findings of a risk review.

Articulating the requirement for this review in an OMB circular could ensure greater transparency in the award making process and higher quality of awarded projects. There may be some additional burden for agencies that do not currently conduct such reviews to incorporate them into their processes, and could also result in additional information collections from recipients.

3. *Requiring agencies to provide 90-day notice of funding opportunities.*

This reform idea would involve requiring Federal agencies to provide 90-day advance forecast of funding opportunities in an updated Catalog of Federal Financial Assistance (CFFA) that will replace the existing Catalog of Federal Domestic Assistance (CFDA). This would not affect the requirement to post actual notices of funding opportunities on Grants.gov.

This change would be aimed at providing applicants with additional time and information with which to prepare financial assistance applications, thereby improving the relevance and quality of proposals submitted to Federal agency programs. Exceptions to the 90-day notice requirement would include statutory obligations or exigent circumstances that dictate a shorter timeframe. The new enhanced CFFA will include both domestic and international funding priorities for grants, loans, insurance, and other types of financial assistance, including information about projected amounts of available funds and a summary of general eligibility requirements. These notices of intended priorities may change based on modifications to funding cycles and/or statutory authorities.

4. *Providing a standard format for announcements of funding opportunities.*

This reform idea would incorporate into circulars the existing requirement for certain categories of information to be published in announcements of public funding opportunities. See OMB Memorandum M–04–01 of October 15, 2003 (*http://www.whitehouse.gov/omb/memoranda_fy04_m04-01*), which announced the **Federal Register** notice that OMB published at 68 FR 58146 (October 8, 2003).

Among other information, the opportunity announcement must include specific eligibility or qualification information and a clear description of all criteria used in agency review of applications for the grant opportunity. Further, agencies must disclose all terms and conditions that may be attached to the funded awards and general information regarding post-award reporting requirements, except for award specific terms and conditions determined during the pre-award process. Providing this level of transparency at the solicitation stage assists applicants in determining not only whether they are eligible and/or qualified for an award, but also the scope of recipient responsibilities associated with an award.

5. *Reiterating that information collections are subject to Paperwork Reduction Act approval.*

This reform idea would involve reiterating that information collection requests are limited to standardized data elements approved by OMB, as required under the Paperwork Reduction Act of 1995 (PRA), plus OMB-approved exceptions for all applications and reports.

Continued efforts at data standardization are intended to improve governmentwide program management; enhance transparency in Federal awards; and streamline and reduce the reporting burden, including the time necessary to comply with application and reporting requirements. For both applications and post-award reporting, there are current requirements that agencies use standard OMB-approved governmentwide information collections, with deviations approved by OMB on a limited basis. Continued data standardization will also support OMB and Federal agency efforts to develop a comprehensive, end-to-end grants reporting system that allows applicants and recipients to apply for and report on all Federal grants at one location. Approved collections would be designed to include necessary information for program measurement and monitoring. This reform would in some cases limit Federal agencies' ability to require unique information

collections for particular program, except where required by statute.

III. Questions for Comment

The list below includes the questions about these reform ideas that address issues which are of greatest interest to OMB at this stage of the process. Comments addressing any other concerns, and other types of feedback, are also welcome.

In addition, as was explained at the beginning of this notice, the public comments received by OMB will be posted on OMB's Web site and at *http://www.regulations.gov.* Accordingly, please do not include in your comments any confidential business information or information of a personal-privacy nature.

A. Overarching Questions

1. Which of these reform ideas would result in reduced or increased administrative burden to you or your organization?

2. Which of these reform ideas would be the most or least valuable to you or your organization?

3. Are there any of these reform ideas that you would prefer that OMB not implement?

4. Are there any reform ideas, beyond those included in this notice, that OMB should consider as a way to relieve administrative burden?

B. Single Audits

1. In general terms, how important are Single Audits to your entity or to entities you audit for subrecipient monitoring?

2. In general terms, what impacts would the following changes to the Single Audit framework have on your organization in administrative burden and in ability to provide oversight to subrecipients?

a. Increasing the Single Audit threshold to $1 million?

b. Requiring a more focused Single Audit (with only two compliance requirements) for any entity expending between $1 million and $3 million?

c. Requiring full Single Audits for any entity expending more than $3 million?

3. Should the Single Audit threshold(s) be increased, and if so, to what extent?

4. Which types of currently universal Single Audit compliance requirements do you think are most essential to identifying and mitigating waste, fraud, and abuse?

5. What processes or tools should the Federal Government implement in order to ensure better coordination in the Single Audit oversight by Federal agencies and pass-through agencies, including in the resolution of audit findings that cut across multiple agencies' programs?

C. Cost Principles

1. On indirect cost rates:

a. Would administrative burden be reduced by having an indirect cost rate in place for 4 years?

b. Are there any existing Federal or state level statutory/regulatory/agency requirements that would prohibit recipients from using a ''flat'' indirect cost rate if it were proposed?

2. What are your views on the following types of indirect cost rates?

a. A flat rate

b. Longer term for negotiated rates to be in effect

c. A flat rate that would be a fixed percentage of the organization's already existing negotiated rate

3. In general terms, what would be the cost implications of implementing each of the following reforms, and/or of all of them together?

a. The proposed clarifications to allowable charges of directly allocable administrative support as a direct cost. As currently envisioned, reforms would clarify that project-specific activities such as managing substances/chemicals, data and image management, and security are allowable.

b. Allowing costs associated with recovery of improper payments.

c. Allowing excess capacity for telecommunications and public safety projects?

4. Would you be potentially interested in participating in a piloted alternative for time-and-effort reporting? Is there a permanent change to time-and-effort requirements that you recommend OMB consider?

5. If your organization is an educational institution that does not currently receive the Utility Cost Adjustment (UCA), what are the general factors that your organization would likely consider in deciding whether to conduct a cost study, and complete a plan to reduce utility costs, in order to justify receiving the UCA?

6. For organizations with CAS-covered contracts, are there differences between what is envisioned here and the standards for CAS-covered contracts in the FAR that you believe could be challenging to address?

D. Administrative Requirements

1. What areas of past performance should be considered as part of a Federal agency assessment of recipient risk (e.g., fulfillment of statutory matching requirements, record of sound financial management practices with no significant or material findings or weaknesses, ability to meet established deadlines)?

2. What specific standards should be considered in Federal agencies' evaluation of merit prior to making Federal awards?

a. How should these be applied?

b. What elements and what source materials should be looked at?

3. With respect to the existing government-wide standard information collection requests (ICRs) for grant applications and grant reporting—

a. Do these ICRs provide necessary information to enable Federal agencies to review grant applications or to monitor the progress of grant awardees?

b. Are these ICRs unnecessarily burdensome and, if so, in what way(s)?

4. Should there be sets of standard data elements based on the type of assistance being provided (e.g. research, construction, social services, scholarships or aid program awards, etc.)?

5. Are there any system issues and associated costs that may arise as a result of implementing the new pre-award and post award requirements? In general, what is the rough order of relative magnitude of these costs?

Daniel I. Werfel,

Controller.

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BILLING CODE P

DEPARTMENT OF ENERGY

10 CFR Part 431

[Docket No. EERE–2010–BT–STD–0043]

RIN 1904–AC36

Energy Conservation Program: Public Meeting and Availability of the Framework Document for High-Intensity Discharge Lamps

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meeting and availability of the Framework Document.

SUMMARY: The U.S. Department of Energy (DOE) is initiating the rulemaking and data collection process to consider establishing energy conservation standards for high-intensity discharge (HID) lamps. Accordingly, DOE will hold a public meeting to discuss and receive comments on its planned analytical approach and the issues it will address in this rulemaking proceeding. DOE welcomes written comments from the

public on this rulemaking. To inform stakeholders and to facilitate this process, DOE has prepared a framework document which details the analytical approach and identifies several issues on which DOE is particularly interested in receiving comment. The framework document is posted at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/high_intensity_discharge_lamps.html*.

DATES: The Department will hold a public meeting on March 29, 2012, from 9 a.m. to 4 p.m. in Washington, DC. Additionally, DOE plans to allow for participation in the public meeting via webinar. Any person requesting to speak at the public meeting should submit such request along with a signed original and an electronic copy of the statement to be given at the public meeting before 4 p.m., March 16, 2012. Written comments on the framework document are welcome, especially following the public meeting, and should be submitted by April 5, 2012.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue SW, Washington, DC 20585–0121. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures. If a foreign national wishes to participate in the public meeting, please inform DOE of this fact as soon as possible by contacting Ms. Brenda Edwards at (202) 586–2945, so that the necessary procedures can be completed. Please also note that those wishing to bring laptops to the meeting will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes.

Interested parties may submit comments, identified by docket number EERE–2010–BT–STD–0043 and/or Regulation Identifier Number (RIN) 1904–AC36, by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.
- *Email: HIDLamps–2010–STD–0043@ee.doe.gov.* Include EERE–2010–BT–STD–0043 and/or RIN 1904–AC36 in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Framework Document for High-Intensity Discharge Lamps, EERE–2010–BT–STD–0043 and/or RIN 1904–AC36, 1000 Independence Avenue SW., Washington, DC 20585–0121. Please submit one signed paper original.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW., Washington, DC 20024. Please submit one signed paper original.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking.

Docket: The docket for this rulemaking is available for review at *www.regulations.gov*, and will include **Federal Register** notices, framework documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. Not all documents listed in the index may be publicly available, however, such as information that is exempt from public disclosure.

A link to the docket Web page for this notice can be found at: *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/high_intensity_discharge_lamps.html*. The regulations.gov Web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT:

Ms. Lucy deButts, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–2J, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 287–1604. Email: *lucy.debutts@ee.doe.gov*.

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–7796. Email: *elizabeth.kohl@hq.doe.gov*.

For information on how to submit or review public comments and on how to participate in the public meeting, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue SW., Washington, DC, 20585–0121. Telephone (202) 586–2945. Email: *brenda.edwards@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: Title III of Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6291, *et seq.;* EPCA or ''the Act'') sets forth a variety of provisions designed to improve energy efficiency. (All references to EPCA refer to the statute as amended through the Energy Independence and Security Act of 2007 (EISA 2007), Public Law 110–140 (Dec. 19, 2007).) Under EPCA, this program consists essentially of four parts: (1) Testing; (2) labeling; (3) Federal energy conservation standards; and (4) certification, compliance, and enforcement. Part B of Title III (42 U.S.C. 6291–6309) established the ''Energy Conservation Program for Consumer Products Other Than Automobiles.'' Part C of title III (42 U.S.C. 6311–6317), establishes an energy conservation program for certain industrial and commercial equipment.[1] Although HID lamps are defined in 42 U.S.C. 6291(46), DOE is required to set standards for HID lamps in 42 U.S.C. 6317(a)(1). Therefore, DOE has determined that the provisions of Part C are applicable to HID lamps.

DOE published a positive final determination for specified HID lamps on July 1, 2010. 75 FR 37975. Pursuant to the positive final determination, DOE must establish testing requirements for the HID lamps specified in the determination. (42 U.S.C. 6317(a)(1)) As directed by EPCA, DOE must complete the HID lamps test procedure final rule within 30 months of the completion of the final determination (by January 1, 2013). DOE recently published a notice of proposed rulemaking (NOPR) for the HID lamp test procedures. 76 FR 77914 (December 15, 2011).

DOE must also complete the HID lamps energy conservation standards rulemaking within 18 months of the publication of the HID lamps test procedure final rule (by July 1, 2014). (42 U.S.C. 6317(b)) During the standards rulemaking, DOE will decide whether and at what level(s) to promulgate energy conservation standards. The decision, which will incorporate public participation, will be based on consideration of the technological feasibility, economic justification, and energy savings of specific potential standard levels as required by EPCA. (*See, e.g.,* 42 U.S.C. 6295(o)–(p))

DOE has prepared a framework document to explain the issues, analyses, and processes it anticipates using for the development of potential energy conservation standards for HID lamps. Interested parties may obtain the framework document from DOE's Web site (*http://www1.eere.energy.gov/buildings/appliance_standards/commercial/high_intensity_discharge_lamps.html*). DOE will hold a public meeting in Washington, DC on the date specified in the **DATES** section to discuss the analyses presented and issues identified in the framework document prepared

[1] For editorial reasons, Parts B and C were re-designated as Parts A and A–1 on codification in the U.S. Code.

for the development of potential HID lamp energy conservation standards. At the public meeting, the Department will make a presentation, invite discussion on the rulemaking process as it applies to the covered products, and solicit comments, data, and information from participants and other interested parties. Participants can also attend the public meeting via webinar. Registration information, participant instructions, and information about the capabilities available to webinar participants will be published on the following Web site: *https://www1.gotomeeting.com/register/221154352*. Participants are responsible for ensuring their computer systems are compatible with the webinar software. The Department encourages those who wish to participate in the public meeting to obtain the framework document and to be prepared to discuss its contents.

Public meeting participants need not limit their comments to the issues identified in the framework document. The Department is also interested in receiving views concerning other relevant issues that participants believe would affect energy conservation standards for this equipment or that DOE should address in the NOPR. Furthermore, the Department welcomes all interested parties, regardless of whether they participate in the public meeting, to submit in writing by the date specified in the **DATES** section, comments and information on matters addressed in the framework document and on other matters relevant to consideration of standards for HID lamps. At this time, DOE is tentatively considering setting standards based on the information included in the framework document. DOE will consider modifications to its approach based on the data and comments received in response to the framework document and public meeting.

The public meeting will be conducted in an informal, facilitated, conference style. There shall be no discussion of proprietary information, costs or prices, company market shares, or other commercial matters regulated by U.S. antitrust laws. A court reporter will record the proceedings of the public meeting, after which a transcript will be made available on DOE's Web site at *http://www1.eere.energy.gov/buildings/appliance_standards/commercial/high_intensity_discharge_lamps.html*.

After the public meeting and the close of the comment period on the framework document, DOE will collect data, conduct the analyses as discussed in the framework document and at the public meeting, and review the comments received.

DOE considers public participation to be a very important part of the process for setting energy conservation standards. DOE actively encourages the participation and interaction of the public during the comment period in each stage of the rulemaking process. Beginning with the framework document, and during each subsequent public meeting and comment period, interactions with and between members of the public provide a balanced discussion of the issues to assist DOE in the standards rulemaking process. Accordingly, anyone who would like to participate in the public meeting, receive meeting materials, or be added to the DOE mailing list to receive future notices and information regarding this rulemaking on HID lamps should contact Ms. Brenda Edwards at (202) 586–2945, or via email at: *Brenda.Edwards@ee.doe.gov*.

Issued in Washington, DC, on February 21, 2012.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2012–4639 Filed 2–27–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0177; Directorate Identifier 2009–SW–59–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Eurocopter France Model EC155B and EC155B1 helicopters with a VIP 4-seat bench. This proposed AD is prompted by the determination that the load strength of the seat attachment hardware of the seat installation does not meet certification specifications. The proposed actions are intended to prevent overloading of the seat structure at the attachment point during a hard landing or emergency landing, which could result in the VIP 4-seat bench detaching from the floor and subsequent injury to the seat occupants.

DATES: We must receive comments on this proposed AD by April 30, 2012.

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

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic 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 service information identified in this proposed AD, contact American Eurocopter Corporation, 2701 N. Forum Drive, Grand Prairie, TX 75052, telephone (972) 641–0000 or (800) 232–0323, fax (972) 641–3775, or at *http://www.eurocopter.com/techpub.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aerospace Engineer, FAA, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5130; fax: (817) 222–5961, email *gary.b.roach@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are

filed electronically, commenters should submit only one time.

We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued AD No. 2009–0078R1, dated June 30, 2009 (AD No. 2009–0078R1), which supersedes Emergency AD No. 2009–0078–E, dated April 1, 2009 (AD No. 2009–0078–E), to correct an unsafe condition for the Eurocopter model EC155B and EC155B1, all serial numbers up to and including 6892, fitted with a VIP 4-seat bench, part number (P/N) 365V85–0045–01 or 365V85–0046–01. EASA advises that Eurocopter identified an unsafe condition while performing customization work that involved the installation of the VIP 4-seat bench. During the installation work, Eurocopter determined that the load strength of the seat attachment hardware of the seat installation did not meet certification specifications. EASA advises that this condition, if not corrected, would lead to overloading of the seat structure at the attachment point during an emergency landing, which could result in the seat bench detaching from the floor fitting rails and potentially resulting in injury to the seat occupants.

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in their AD. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Related Service Information

Eurocopter has issued Emergency Alert Service Bulletin (ASB) No. 04A009, Revision 1, dated June 24, 2009 (Emergency ASB No. 04A009R1) which revises Emergency Alert Service Bulletin No. 04A009, Revision 0, dated March 30, 2009 (Emergency ASB No. 04A009R0). Emergency ASB No. 04A009R0 specified revising the RFM to restrict the VIP 4-seat bench to a maximum of 3 occupants. It also specified converting the VIP 4-seat bench into a 3-seat bench at ''the next flight-related inspection scheduled at 15 hours or 7 days,'' whichever occurred first. EASA classified Emergency ASB No. 04A009R0 as mandatory to ensure the continued airworthiness of these helicopters and issued EASA Emergency AD No. 2009–0078–E.

Eurocopter has now developed optional terminating action. Eurocopter issued ASB No. 25–095, dated June 25, 2009 (ASB No. 25–095) that specifies installing new shims between the attachment rails and the cabin floor at the seat position to strengthen the attachment security of the seat using a rear VIP bench seat retrofit kit, P/N 365V08–0079–0171, or front VIP bench seat retrofit kit, P/N 365V08–0079–0271. Eurocopter also issued Emergency ASB No. 04A009R1, which retained the requirements of Emergency ASB No. 04A009R0, and also specified that helicopters equipped with the bench modification kits in accordance with ASB No. 25–095 had met the requirements of Emergency ASB No. 04A009R1. In response, EASA issued AD No. 2009–0078R1, which retained the requirements of Emergency AD No. 2009–0078–E, and added the optional terminating action of modifying the seat configuration to strengthen the attachment security of the seat using the bench modification kit. EASA also stated that after installing the bench modification kit, you could remove the RFM limitation of 3 occupants and reconfigure the 3-seat bench to a 4-seat bench.

Proposed AD Requirements

This proposed AD would require the following actions:

- Before further flight, revise the Limitations section of the RFM by inserting the following statement into the Limitations section: ''The VIP 4-seat bench, P/N 365V85–0045–01 or 365V85–0046–01, is limited to 3 passengers.'' The change to the Limitations section of the RFM may be made in pen and ink, or by inserting a copy of the AD into the Limitations section of the RFM.
- Within the next 15 hours time-in-service (TIS), convert the VIP 4-seat bench into a 3-seat configuration.
- Instead of revising the Limitations section of the RFM and converting the VIP 4-seat bench into a 3-seat configuration, you may modify the rear VIP 4-seat bench by installing the shims contained in kit P/N 365V08–0079–0171 (which corresponds to modification 365V08–0079–01), or the front VIP 4-seat bench by installing the shims contained in kit P/N 365V08–0079–0271 (which corresponds to modification 365V08–0079–02). This action constitutes terminating action for the requirements of this proposed AD.

Differences Between This Proposed AD and the EASA AD

This proposed AD specifies that the conversion of the VIP 4-seat bench to a 3-seat bench must occur within 15 hours TIS, while the EASA AD specifies that compliance must occur within 15 hours TIS or 7 days, whichever occurs first. This proposed AD uses different P/Ns for the bench modification kits, because AD No. 2009–0078R1 and ASB No. 25–095 use different P/Ns for the same part, and this proposed AD uses the P/N in ASB No. 25–095.

Costs of Compliance

We estimate that this proposed AD would affect 4 helicopters of U.S. registry. We estimate that it would take a negligible amount of work hours per helicopter to amend the Limitation section of the applicable RFM. We estimate it would take approximately 0.25 hour to convert the VIP 4-seat bench to a 3-seat bench at an average labor rate of $85 per work hour. Estimated labor costs for the conversion are approximately $21.25 per helicopter, and approximately $85 for the fleet. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $85, assuming that no helicopter has been previously modified with the rear VIP bench seat retrofit kit P/N 365V08–0079–0171 and the front VIP bench seat retrofit kit P/N 365V08–0079–0271.

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, 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);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

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

We prepared an economic evaluation of the estimated costs to comply with this proposed AD 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 Airworthiness Directive (AD):

EUROCOPTER FRANCE: Docket No. FAA–2012–0177; Directorate Identifier 2009–SW–59–AD.

(a) Applicability

This AD applies to Model EC155B and EC155B1 helicopters, all serial numbers up to and including 6892, with a VIP 4-seat bench, part number (P/N) 365V85–0045–01 or 365V85–0046–01, installed; certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as possible overloading of the seat structure at the attachment point during a hard landing or emergency landing. This condition could result in the bench seat detaching from the floor and subsequent injury to the seat occupants.

(c) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless accomplished previously.

(d) Required Actions

(i) Before further flight, revise the Limitations section of the Rotorcraft Flight Manual (RFM) by inserting the following statement into the Limitations section: ''The VIP 4-seat bench, P/N 365V85–0045–01 or 365V85–0046–01 is limited to 3 passengers.'' You may make the change to the Limitations section of the RFM in pen and ink, or by inserting a copy of this AD into the Limitations section of the RFM.

(ii) Within the next 15 hours time-in-service, convert the VIP 4-seat bench into the 3-seat configuration in accordance with paragraphs 2.B.1 through 2.B.3 and Figure 1 of Eurocopter Emergency Alert Service Bulletin No. 04A009, Revision 1, dated June 24, 2009.

(iii) Instead of complying with paragraphs (d)(i) and (d)(ii) of this AD, you may modify the *rear* VIP 4-seat bench by installing the shims contained in rear VIP bench seat retrofit kit, P/N 365V08–0079–0171 (which corresponds to modification 365V08–0079–01), or the *front* VIP 4-seat bench by installing the shims contained in front VIP bench seat retrofit kit, P/N 365V08–0079–0271 (which corresponds to modification 365V08–0079–02), in accordance with the Operational Procedure, paragraph 2.B. of the Eurocopter Alert Service Bulletin No. 25–095, dated June 25, 2009. Modifying the VIP 4-seat bench constitutes terminating action for the requirements of this AD.

(e) Alternative Methods of Compliance (AMOC)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Gary Roach, Aerospace Engineer, FAA, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone: (817) 222–5130; fax: (817) 222–5961, email *gary.b.roach@faa.gov.*

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(f) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency AD No. 2009–0078R1, dated June 30, 2009.

(g) Subject

Joint Aircraft Service Component (JASC) Code: 2500: Cabin Equipment/Furnishings.

Issued in Fort Worth, Texas, on February 10, 2012.

Lance T. Gant,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–4606 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0186; Directorate Identifier 2011–NM–268–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by reports of flight crew failure to activate air data probe heat. This proposed AD would require modifying the anti-icing system for the angle of attack sensor, the total air temperature, and the pitot probes. We are proposing this AD to prevent ice from forming on air data system sensors and consequent loss of or misleading airspeed indication on all airspeed indicating systems, which could lead to loss of control of the airplane.

DATES: We must receive comments on this proposed AD by April 13, 2012.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000,

extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Frank Carreras, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6442; fax: 425–917–6590; email: *frank.carreras@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0186; Directorate Identifier 2011–NM–268–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

The air data sensor heating system, when ON, heats the pitot probes that measure air pressure resulting from the airplane's motion through the air in order to provide airspeed indications to the flight crew. This heating prevents ice from forming inside the pitot probes, which would degrade or block the probes' ability to measure air pressure. The pitot heat switch, however, is not always set to ON. Although the existing ice protection system provides indication of activation to the flight crew, three reported incidents on Model 737 airplanes were attributed to failure to activate the air data sensor heating system. The affected airplanes do not have an automatic activation of the air data sensor heating system; pilots activate the system manually as a pretakeoff checklist item. Failure to activate the air data sensor heating system could result in ice formation on air data system sensors, which could lead to misleading airspeed data or loss of all airspeed indicating systems, and loss of control of the airplane.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 737–30A1063, dated November 16, 2011. This service bulletin describes procedures for modifying the anti-icing system for the angle of attack sensor, the total air temperature, and the pitot probes. The modification involves the following:

- Changing the wires and replacing the P5–9 window/pitot heat module on the P5 overhead panel in the flight compartment (the modified P5–9 window/pitot heat module changes the current ON and OFF positions of the pitot heat switch to ON and AUTO);
- Replacing two circuit breakers; installing relay supports, relays, and decals; and changing wiring at the P18 circuit breaker panels in the flight compartment; and
- Changing the wiring at the E2–2 and E3–1 electronics shelves in the electrical/electronics compartment.

These modifications to the air data sensor heating system provide automatic activation of the heating system when the modified pitot heat switch is set to AUTO and either engine is running.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD affects 1,025 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	60 to 79 work-hours × $85 per hour = $5,100 to $6,715.	$4,991 to $7,506	Up to $14,221	Up to $14,576,525.

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),

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2012–0186; Directorate Identifier 2011–NM–268–AD.

(a) Comments Due Date

We must receive comments by April 13, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 737–30A1063, dated November 16, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 3030, Pitot/Static Anti-Ice System.

(e) Unsafe Condition

This AD was prompted by reports of flight crew failure to activate air data probe heat. We are issuing this AD to prevent ice from forming on air data system sensors and consequent loss of or misleading airspeed indication on all airspeed indicating systems, which could lead to loss of control of the airplane.

(f) Compliance

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

(g) Modification

Within 24 months after the effective date of this AD: modify the anti-icing system for the angle of attack sensor, the total air temperature, and the pitot probes, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–30A1063, dated November 16, 2011.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

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

(i) Related Information

(1) For more information about this AD, contact Frank Carreras, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6442; fax: 425–917–6590; email: *frank.carreras@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on February 10, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4645 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0184; Directorate Identifier 2011–NM–118–AD]

RIN 2120–AA64

Airworthiness Directives; Saab AB, Saab Aerosystems Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Model SAAB 2000 Airplanes. This proposed AD was prompted by reports that environmentally friendly de-icing agents used on certain electrical connectors and braids could cause corrosion damage. This proposed AD would require performing in certain locations a detailed inspection for corrosion of the electrical and electronics installation, and if corrosion is found repairing each affected harness braid or replacing each affected component and/or wiring harness. We are proposing this AD to detect and correct corrosion of critical system wiring, which could result in arcing and, in combination with other factors, a fire and consequent damage to the airplane.

DATES: We must receive comments on this proposed AD by April 13, 2012.

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 W12–140, 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 Saab AB, Saab Aerosystems, SE–581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* Internet *http://www.saabgroup.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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; 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–2012–0184; Directorate Identifier 2011–NM–118–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 2011–0079, dated May 5, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Environmentally friendly de-/anti-icing agents (acetates or formats) are a known cause of corrosion damage to components of the Electrical Wiring Interconnection System (EWIS) on aeroplanes.
>
> Investigations by SAAB have identified certain electrical connectors and braids which are susceptible to such damage, in zones 191 and 192 of the center wing fuselage and in zones 323, 332 and 342, affecting the wiring harnesses of elevator and rudder servos.
>
> This condition, if not detected and corrected, could lead to damage of critical system wiring, possibly resulting in arcing and, in combination with other factors, a fire and consequent damage to, or loss of, the aeroplane.
>
> To address this unsafe condition, SAAB have issued Service Bulletin (SB) 2000–92–005 and SB 2000–92–006 to provide instructions to detect unacceptable corrosion on electrical and electronic installation wiring.
>
> For the reasons described above, this [EASA] AD requires a one-time [detailed] inspection of the affected components in the designated area, the reporting of all inspections results to SAAB and, depending on findings, appropriate corrective action [repair or replacement].

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Saab AB, Saab Aerosystems has issued Service Bulletins 2000–92–005, Revision 01, dated March 1, 2011; and 2000–92–006, Revision 01, dated August 18, 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.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 10 products of U.S. registry. We also estimate that it would take about 360 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 $306,000, or $30,600 per product.

In addition, we estimate that any necessary follow-on actions would take about 40 work-hours and require parts costing $12,454, for a cost of $15,854 per product. We have no way of determining the number of products that may need these actions.

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);

3. Will not affect intrastate aviation in Alaska; and

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

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:

Saab AB, Saab Aerosystems: Docket No. FAA–2012–0184; Directorate Identifier 2011–NM–118–AD.

(a) Comments Due Date

We must receive comments by April 13, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Saab AB, Saab Aerosystems Model SAAB 2000 airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 92.

(e) Reason

This AD was prompted by reports that environmentally friendly de-icing agents used on certain electrical connectors and braids could cause corrosion damage. We are issuing this AD to detect and correct corrosion of critical system wiring, which could result in arcing and, in combination with other factors, a fire and consequent damage to the airplane.

(f) Compliance

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

(g) Inspection

Within 24 months after the effective date of this AD, do a detailed inspection for corrosion of the electrical and electronics installation, at the locations specified in and in accordance with the Accomplishment Instructions of SAAB Service Bulletin 2000–92–005, Revision 01, dated March 1, 2011; and SAAB Service Bulletin 2000–92–006, Revision 01, dated August 18, 2010. These inspections do not need to be accomplished concurrently.

(h) Corrective Action

If any corrosion is found during any inspection required in paragraph (g) of this AD: Before next flight, repair each affected harness braid or replace each affected component and/or wiring harness, as applicable, in accordance with the Accomplishment Instructions of SAAB Service Bulletin 2000–92–005, Revision 01, dated March 1, 2011; and SAAB Service Bulletin 2000–92–006, Revision 01, dated August 18, 2010.

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using according to SAAB Service Bulletin 2000–92–005, dated May 5, 2010; and SAAB Service Bulletin 2000–92–006, dated March 29, 2010.

(j) Reporting Requirement

Submit a report of the findings (both positive and negative) of the inspection required by paragraph (g) of this AD, using the Feedback Form in SAAB Service Bulletin 2000–92–005, Revision 01, dated March 1, 2011; and SAAB Service Bulletin 2000–92–006, Revision 01, dated August 18, 2010. Send the report to SAAB Aerotech, Support Services Division, SE–581 88 Linkoping, Sweden; fax +46 13 18 4874; email *saab2000.techsupport@saabgroup.com;* at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the level of corrosion found on each connector.

(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.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, 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: Shahram Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Information may be emailed 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.

(l) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0079, dated May 5, 2011, and the service information specified in paragraphs (l)(1) and (l)(2) of this AD, for related information.

(1) SAAB Service Bulletin 2000–92–005, Revision 01, dated March 1, 2011.

(2) SAAB Service Bulletin 2000–92–006, Revision 01, dated August 18, 2010.

Issued in Renton, Washington, on February 14, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4646 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0185; Directorate Identifier 2011–NM–001–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A300 B4–103, B4–203, and B4–2C airplanes, and Model B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R Variant F airplanes (collectively called A300–600 series airplanes). This proposed AD was prompted by reports of cracking in the forward lug of the main landing gear (MLG) rib 5 aft bearing attachment. This proposed AD would require repetitive inspections for cracking of the left-hand (LH) and right-hand (RH) wing MLG rib 5 aft bearing forward lugs and repair if necessary. We are proposing this AD to detect and correct cracking of the LH and RH wing MLG rib 5 aft bearing forward lugs which, if not corrected,

could affect the structural integrity of the MLG attachment, which could result in MLG collapse during landing or rollout with consequent damage to the airplane and injury to occupants.

DATES: We must receive comments on this proposed AD by April 13, 2012.

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 W12–140, 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—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email: *account.airworth-eas@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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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–2012–0185; Directorate Identifier 2011–NM–001–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 2010–0250, dated November 29, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During routine visual inspection, a crack has been found in the wing MLG [main landing gear] rib 5 aft bearing forward lug on two A310 in-service aeroplanes. Laboratory examination of cracked ribs confirmed that the crack was due to the presence of pitting corrosion in the forward lug hole. Also on both aeroplanes medium to heavy corrosion was found in the forward lugs on the opposite wing after removal of the bushes. Similarly to A310 aeroplanes, A300 and A300–600 aeroplanes are concerned by this situation which, if not detected, could affect the structural integrity of the MLG attachment.
>
> The aim of the [EASA] Emergency Airworthiness Directive (EAD) 2006–0372–E [which corresponds to FAA AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007)] was to mandate, for A300 and A300–600 aeroplanes, repetitive detailed visual inspections (DVI) of wing MLG rib 5 aft bearing forward lugs for detection of through cracks.
>
> Since then, in order to ensure the detection of any crack in the forward lug of the RH [right-hand] and LH [left-hand] MLG rib 5 aft bearing attachment at an early stage, Airbus has developed a new inspection by means of ultrasonic method. Due to the early crack detection possibility, this new means of inspection also enables extension of the inspection interval.
>
> For technical reasons, this new means of inspection is only applicable to A300B4, C4, and F4 and A300–600 aeroplane series (not to A300B2 aeroplane series).
>
> For these reasons, this new [EASA] AD * * * adds new inspection program requirements [a revised detailed inspection, optional ultrasonic inspections, and repair if necessary].

As an option, a modification which includes installing bushings with an increased interference fit in the aft bearing forward lugs terminates the repetitive inspections. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued the following service bulletins:

- Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300–B4–103, B4–2C, and B4–203 airplanes).
- Mandatory Service Bulletin A300–57–0251, including Appendix 01, dated August 8, 2007 (for Model A300 B4–103, B4–203 and B4–2C airplanes).
- Service Bulletin A300–57–6106, Revision 02, dated June 18, 2010 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and C4–605R airplanes).
- Mandatory Service Bulletin A300–57–6107, including Appendix 01, dated August 8, 2007 (for Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, C4–605R, F4–605R, and F4–622R airplanes).

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

Although the MCAI allows further flight after cracks are found during compliance with the required action, paragraph (i) of this AD requires that you repair the cracks before further flight.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 165 products of U.S. registry. We also estimate that it would take about 3 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 $42,075, or $255 per product.

In addition, we estimate that any necessary follow-on actions would take about 52 work-hours and require parts costing $4,590, for a cost of $9,010 per product. We have no way of determining the number of products that may need these actions.

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);

3. Will not affect intrastate aviation in Alaska; and

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

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–2012–0185; Directorate Identifier 2011–NM–001–AD.

(a) Comments Due Date

We must receive comments by April 13, 2012.

(b) Affected ADs

This AD affects AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007).

(c) Applicability

This AD applies to Airbus Model A300 B4–2C, B4–103, B4–203 airplanes; Model B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes; certificated in any category; all serial numbers except for airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airplanes on which LH (left-hand) and RH (right-hand) wing main landing gear (MLG) rib 5 forward lugs have oversized interference fit bushings installed per drawing R57240221.

(2) Model A300 B4–103, B4–203, and B4–2C airplanes on which Airbus Mandatory Service Bulletin A300–57–0249 has been done in service on the LH and RH wing.

(3) Model A300–600 series airplanes on which Airbus Service Bulletin A300–57–6106 has been done in service on the LH and RH wing.

(d) Subject

Air Transport Association (ATA) of America Code 57: Wings.

(e) Reason

This AD was prompted by reports of cracking in the forward lug of the MLG rib 5 aft bearing attachment. We are issuing this AD to detect and correct cracking of the LH and RH wing MLG rib 5 aft bearing forward lugs which, if not corrected, could affect the structural integrity of the MLG attachment, which could result in MLG collapse during landing or rollout with consequent damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Inspections

Except as provided by paragraph (h) of this AD, before the accumulation of 12,000 total flight cycles since new, or within 12,000 flight cycles since the most recent MLG rib 5 replacement, if applicable, or within 10 days after the effective date of this AD, whichever occurs latest, do a detailed inspection or an ultrasonic inspection for cracking of the LH and RH MLG rib 5 aft bearing forward lugs, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0251, including Appendix 01, dated August 8, 2007 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Mandatory Service Bulletin A300–57–6107, including Appendix 01, dated August 8, 2007 (for Model A300–600 series airplanes). Repeat the applicable inspections thereafter at the applicable interval specified in paragraph (g)(1) or (g)(2) of this AD, until the modification specified in paragraph (j) of this AD is accomplished.

(1) Repeat the detailed inspections at intervals not to exceed 100 flight cycles.

(2) Repeat the ultrasonic inspections at intervals not to exceed 675 flight cycles.

(h) Exception

For airplanes on which an inspection required by AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007), has been done as of the effective date of this AD: Within 100 flight cycles after doing the most recent inspection required by AD 2007–03–18, or within 10 days after the effective date of this AD, whichever occurs later, do a detailed or ultrasonic inspection as specified in paragraph (g) of this AD. Repeat the applicable inspection thereafter at the times specified in paragraph (g) of this AD.

(i) Repair

If any cracking is detected during any detailed or ultrasonic inspection of the LH and RH MLG rib 5 aft bearing forward lugs required by paragraph (g) of this AD, before further flight, repair 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).

(j) Optional Terminating Modification

Performing the applicable actions specified in paragraphs (j)(1), (j)(2), (j)(3) and (j)(4) of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Service Bulletin A300–57–6106, Revision 02, dated June 18, 2010 (for Model A300–600 series airplanes); terminates the repetitive inspections required by this AD.

(1) Perform a general visual inspection and dye penetrant flaw detection inspection for corrosion and damage of the bore and spotfaces of the lug.

(2) Determine that the diameter of the bore of the lug (dimension Y) is within the tolerance specified in the Accomplishment Instructions of Airbus Mandatory Service

Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Service Bulletin A300–57–6106, Revision 02, dated June 18, 2010 (for Model A300–600 series airplanes).

(3) If damage or corrosion is detected during any inspection specified in paragraph (j)(1) of this AD, or if dimension Y is outside the tolerance specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Service Bulletin A300–57–6106, Revision 02, dated June 18, 2010 (for Model A300–600 series airplanes); repair 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).

(4) Install bushings with an increased interference fit in the aft bearing forward lugs, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Service Bulletin A300–57–6106, Revision 02, dated June 18, 2010 (for Model A300–600 series airplanes).

(k) Terminating Action for AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007)

Doing the inspection required by paragraph (g) of this AD terminates the requirements of AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007), for that airplane.

(l) Reporting

Submit a report (including both positive and negative findings), using the applicable report sheet attached to Airbus Mandatory Service Bulletin A300–57–0251, including Appendix 01, dated August 8, 2007 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Mandatory Service Bulletin A300–57–6107, including Appendix 01, August 8, 2007 (for Model A300–600 series airplanes); of the first inspection required by paragraph (g) of this AD. Submit the report to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, Attn: SEDCC1 Technical Data and Documentation Services; fax: (+33) 5 61 93 28 06; email: *sb.reporting@airbus.com;* at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD.

(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.

(m) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable service bulletins specified in paragraphs (m)(1), (m)(2), (m)(3), and (m)(4) of this AD.

(1) Airbus Service Bulletin A300–57–0249, dated May 22, 2007 (for Model A300 B4–2C, B4–103, and B4–203 airplanes).

(2) Airbus Service Bulletin A300–57–0249, Revision 01, dated December 19, 2007 (for Model A300 B4–2C, B4–103, and B4–203 airplanes).

(3) Airbus Service Bulletin A300–57–6106, dated May 22, 2007 (Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and Model A300 C4–605R Variant F airplanes).

(4) Airbus Service Bulletin A300–57–6106, Revision 01, dated January 28, 2008 (Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and Model A300 C4–605R Variant F airplanes).

(n) Other FAA AD Provisions

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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed 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.

(o) Related Information

Refer to MCAI EASA Airworthiness Directive 2010–0250, dated November 29, 2010, and the service information in paragraphs (o)(1), (o)(2), (o)(3), and (o)(4) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010.

(2) Airbus Mandatory Service Bulletin A300–57–0251, including Appendix 01, dated August 8, 2007.

(3) Airbus Service Bulletin A300–57–6106, Revision 02, dated June 18, 2010.

(4) Airbus Mandatory Service Bulletin A300–57–6107, including Appendix 01, August 8, 2007.

Issued in Renton, Washington, on February 13, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–4644 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Docket No. FAA–2012–0131; Airspace Docket No. 12–ANM–2

Proposed Amendment of Class E Airspace; Rock Springs, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Rock Springs-Sweetwater County Airport, Rock Springs, WY. Decommissioning of the Rock Springs Tactical Air Navigation System (TACAN) has made this action necessary for the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also would adjust the geographic coordinates of the airport.

DATES: Comments must be received on or before April 13, 2012.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366–9826. You must identify FAA Docket No. FAA–2012–0131; Airspace Docket No. 12–ANM–2, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Communications should identify both docket numbers (FAA Docket No. FAA 2012–0131 and Airspace Docket No. 12–ANM–2) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2012–0131 and Airspace Docket No. 12–ANM–2''. The postcard will be date/time stamped and returned to the commenter.

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

Availability of NPRMs

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

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

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E surface airspace and Class E airspace extending upward from 700 feet above the surface at Rock Springs-Sweetwater County Airport, Rock Springs, WY. Airspace reconfiguration is necessary due to the decommissioning of the Rock Springs TACAN. Also, the geographic coordinates of the airport would be updated to coincide with the FAA's aeronautical database. This action would enhance the safety and management of IFR operations at Rock Springs-Sweetwater County Airport, Rock Springs, WY.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9V, dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify controlled airspace at Rock Springs-Sweetwater County Airport, Rock Springs, WY.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E. ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM WY E2 Rock Springs, WY [Modified]

Rock Springs-Sweetwater County Airport, WY

(Lat. 41°35′39″ N., long. 109°03′55″ W.)

Within 4.8 miles each side of the Rock Springs-Sweetwater County Airport 095° and 275° bearings extending from the airport to 13.5 miles west and 13.2 miles east.

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

* * * * *

ANM WY E5 Rock Springs, WY [Modified]

Rock Springs-Sweetwater County Airport, WY
(Lat. 41°35′39″ N., long. 109°03′55″ W.)
Rock Springs VOR/DME
(Lat. 41°35′25″ N., long. 109°00′55″ W.)

That airspace extending upward from 700 feet above the surface within a 10.1-mile radius of the Rock Springs-Sweetwater County Airport, and within 8.5 miles north and 6.3 miles south of the Rock Springs-Sweetwater County Airport 269° and 089° bearings extending from the 10.1-mile radius to 23.4 miles west and 20.4 miles east of the airport, and within 2.2 miles north and 4.4 miles south of the Rock Springs-Sweetwater County Airport 109° bearing extending to 18.6 miles east of the airport; that airspace extending upward from 1,200 feet above the surface within a 20.1-mile radius of the Rock Springs VOR/DME, including that airspace bounded on the north by V–4 and V–6, on the southeast by V–208, and on the southwest by V–328.

Issued in Seattle, Washington, on February 22, 2012.

Bill Buck,

Acting Manager, Operations Support Group, Western Service Center

[FR Doc. 2012–4705 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter II

[Docket No. FR–5572–C–02]

Federal Housing Administration (FHA) Risk Management Initiatives: Revised Seller Concessions; Addresses for the Submission of Public Comments

AGENCY: Office of General Counsel, HUD.

ACTION: Correction.

SUMMARY: On February 23, 2012 (77 FR 10695), HUD published a request for comments on its proposal to reduce the amount of closing costs a seller may pay on behalf of a homebuyer purchasing a home with financing insured by the Federal Housing Administration (FHA). The document inadvertently omitted the **ADDRESSES** advising interested members of the public how to submit comments. This document corrects the omission.

DATES: The due date for comments provided in the February 23, 2012, document is unchanged. Comments are due on or before: March 26, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding the February 23, 2012, document to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the docket number (FR–5572–N–01) and title (Federal Housing Administration (FHA) Risk Management Initiatives: Revised Seller Concessions).

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karin Hill, Director, Office of Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9278, Washington, DC 20410; telephone number 202–708–4308 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339.

Dated: February 23, 2012.

Aaron Santa Anna,

Assistant General Counsel for Regulations.

[FR Doc. 2012–4696 Filed 2–27–12; 8:45 am]

BILLING CODE 4210–67–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2009–0631 ; A–1–FRL–9638–2]

Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Rhode Island State Implementation Plan (SIP) submitted by the Rhode Island Department of Environmental Management (RI DEM) on August 7, 2009, that addresses regional haze for the first planning period from 2008 through 2018. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I areas (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

DATES: Written comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2009–0631 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2009–0631,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5

Post Office Square—Suite 100 (Mail code OEP05–2), Boston, MA 02109–3912.

5. Hand Delivery or Courier. *Deliver your comments to:* Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100 (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2009–0631. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov* your email 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the State Air Agency; Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908–5767.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100 (Mail Code OEP05–02), Boston, MA 02109–3912, telephone number (617) 918–1697, fax number (617) 918–0697, email *mcwilliams.anne@epa.gov.*

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Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles and their precursors (*e.g.,* sulfur dioxide, nitrogen oxides, and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), which also impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the Western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without manmade air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. See 64 FR 35715, (July 1, 1999).

B. Background Information

In section 169A(a)(1) of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I

Federal areas [1] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment'' (RAVI). See 45 FR 80084 (Dec. 2, 1980). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the Regional Haze Rule. The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in Section II. The requirement to submit a regional haze SIP applies to all 50 States, the District of Columbia and the Virgin Islands. Forty CFR 51.308(b) requires States to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007. On January 15, 2009, EPA found that 37 States, the District of Columbia and the U.S. Virgin Islands failed to submit this required implementation plan. See 74 FR 2392, (Jan. 15, 2009). In particular, EPA found that Rhode Island failed to submit a plan that met the requirements of 40 CFR 51.308. See 74 FR 2393. On August 7, 2009, RI DEM submitted revisions to the Rhode Island SIP to address regional haze as required by 40 CFR 51.308. EPA has reviewed Rhode Island's submittal and proposes to find that it is consistent with the requirements of 40 CFR 51.308 outlined in Section II.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among States, tribal governments, and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the States and Tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their States and Tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of $PM_{2.5}$ and other pollutants leading to regional haze.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) RPO is a collaborative effort of State governments, Tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Northeastern United States. Member State and Tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, and Vermont.

II. What are the requirements for regional haze SIPs?

A. The CAA and the Regional Haze Rule (RHR)

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require States to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install Best Available Retrofit Technology (BART) controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is determined by measuring the visual range (or deciview), which is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[2]

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., manmade sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program and as part of the process for determining reasonable progress, States must calculate the degree of existing visibility impairment at each Class I area within

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions (42 U.S.C. 7472(a)). Although States and Tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). (42 U.S.C. 7602(i)). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[2] The preamble to the RHR provides additional details about the deciview. See 64 FR 35714, 35725 (July 1, 1999).

the State at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year planning period. To do this, the RHR requires States to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, States must also develop an estimate of natural visibility conditions for the purposes of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to States regarding how to calculate baseline, natural, and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005, available at *www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003 (EPA–454/B–03–004 located at *www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*)), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of impairment for the 20 percent least impaired days and 20 percent most impaired days at the time the regional haze program was established. Using monitoring data from 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area within the State, based on the average of annual values over the five year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that establish RPGs for Class I areas for each (approximately) 10-year planning period. The RHR does not mandate specific milestones or rates of progress, but instead calls for States to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions for their Class I areas. In setting RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in the CAA and in EPA's RHR: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. See 40 CFR 51.308(d)(1)(i)(A). States have considerable flexibility in how they take these factors into consideration, as noted in EPA's July 1, 2007 memorandum from William L. Wehrum, Acting Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10, entitled *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program* (p. 4–2, 5–1)(EPA's Reasonable Progress Guidance). In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glide path'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. The year 2064 represents a rate of progress which States are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each State with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing States,'' *i.e.,* other nearby States with emission sources that may be contributing to visibility impairment at the Class I State's areas. See 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs States to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, the CAA requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the State. (CAA 169A(b)(2)a)).[3] States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist States in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART applicability determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a State must use the approach set forth in the BART Guidelines. A State is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter (PM). EPA has stated that States should use their best judgment in determining whether volatile organic compounds (VOCs), or ammonia (NH_3) and ammonia compounds impair visibility in Class I areas.

The RPOs provided air quality modeling to the States to help them in

[3] The set of ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

determining whether potential BART sources can be reasonably expected to cause or contribute to visibility impairment in a Class I area. Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the State should not be higher than 0.5 deciviews. See 70 FR 39161, (July 6, 2005).

In their SIPs, States must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. The term ''BART-eligible source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. See 70 FR 39161, (July 6, 2005). In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor. See 70 FR 39170, (July 6, 2005).

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a State has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP, as required by CAA (section 169(g)(4)) and the RHR (40 CFR 51.308(e)(1)(iv)). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. States have the flexibility to choose the type of control measures they will use to meet the requirements of BART.

E. Long-Term Strategy (LTS)

Forty CFR 51.308(d)(3) of the RHR requires that States include a LTS in their SIPs. The LTS is the compilation of all control measures a State will use to meet any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the State. See 40 CFR 51.308(d)(3).

When a State's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the RHR requires the impacted State to coordinate with the contributing States in order to develop coordinated emissions management strategies. See 40 CFR 51.308(d)(3)(i). In such cases, the contributing State must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, States must describe how each of the seven factors listed below is taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. See 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the State's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the State must revise its plan to provide for review and revision of a coordinated LTS for addressing reasonably attributable and regional haze visibility impairment, and the State must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic reviews of a State's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Forty CFR 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the State. The strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through participation in the IMPROVE network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a State with mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas both within and outside the State;
- Procedures for using monitoring data and other information in a State with no mandatory Class I areas to determine the contribution of emissions from within the State to regional haze

visibility impairment at Class I areas in other States;

• Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State, and where possible, in electronic format;

• Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A State must also make a commitment to update the inventory periodically; and

• Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

Forty CFR 51.308(f) of the RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of 40 CFR 51.308(d) with the exception of BART. The BART provisions of 40 CFR 51.308(e), as noted above, apply only to the first implementation period. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that States consult with FLMs before adopting and submitting their SIPs. See 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a State must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. What is EPA's analysis of Rhode Island's regional haze submittal?

On August 7, 2009, RI DEM's Office of Air Resources submitted revisions to the Rhode Island SIP to address regional haze as required by EPA's RHR, specifically 40 CFR 51.308. EPA has reviewed Rhode Island's submittal and is proposing to find that it is consistent with the requirements of 40 CFR 51.308 as outlined in Section II. A detailed analysis follows.

Rhode Island is responsible for developing a regional haze SIP which addresses Rhode Island's impact on any nearby Class I areas. As Rhode Island has no Class I areas within its borders, Rhode Island is not required to address the following Regional Haze SIP elements: (a) calculation of baseline and natural visibility conditions, (b) establishment of reasonable progress goals, (c) monitoring requirements and (d) RAVI requirements.

In addition, Rhode Island evaluated the major point sources in the State and determined that none meet the criteria (as discussed in Section II.D) to be considered BART eligible. EPA is proposing to approve RI DEM's determination that there are no BART-eligible sources in Rhode Island.

A. Rhode Island's Impact on MANE–VU Class I Areas

Rhode Island is a member of the MANE–VU RPO. The MANE–VU RPO contains seven Class I areas in four States: Moosehorn Wilderness Area, Acadia National Park, and Roosevelt/Campobello International Park in Maine; Presidential Range/Dry River Wilderness Area and Great Gulf Wilderness Area in New Hampshire; Brigantine Wilderness Area in New Jersey; and Lye Brook Wilderness Area in Vermont.

Through source apportionment modeling, MANE–VU assisted States in determining their contribution to the visibility impairment of each Class I area in the MANE–VU region. Rhode Island and the other MANE–VU States adopted a weight-of-evidence approach which relied on several independent methods for assessing the contribution of different sources and geographic source regions to regional haze in the northeastern and mid-Atlantic portions of the United States. Details about each technique can be found in the NESCAUM Document *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States,* August 2006 (hereinafter referred to as the ''Contribution Report'').[4]

The source apportionment modeling demonstrated that the contribution of Rhode Island emissions to total sulfate (the main contributor to visibility impairment in the Northeast) was consistently determined to be no more than 0.31% of the total sulfate at any Class I area. This finding was consistently predicted by different assessment techniques that are based on the application of disparate chemical, meteorological and physical principles. The greatest modeled contribution from Rhode Island for each of the MANE–VU Class I areas was 0.31% sulfate at Acadia National Park, 0.22% sulfate at Moosehorn Wilderness Area and Roosevelt Campobello International Park, 0.11% sulfate at Great Gulf Wilderness Area and Presidential Range—Dry River Wilderness Area, 0.08% sulfate at Lye Brook Wilderness Area, and 0.14% at Brigantine Wilderness Area. The impact of sulfate on visibility is discussed in greater detail below.

The MANE–VU Class I States determined that any State contributing at least 2% of the total sulfate observed on the 20 percent worst visibility days in 2002 were contributors to visibility impairment at the Class I area. Connecticut, Rhode Island, Vermont, and the District of Columbia were determined to contribute less than 2% of sulfate at any of the Class I areas in the Northeast.

EPA is proposing to find that RI DEM has adequately demonstrated that emissions from Rhode Island sources do not cause or contribute to visibility impairment in nearby Class I Areas.

B. Long-Term Strategy

As described in Section II.E of this action, the LTS is a compilation of State-specific control measures relied on by the State to obtain its share of emission reductions to support the RPGs established by Maine, New Hampshire, Vermont, and New Jersey, the nearby Class I area States. Rhode Island's LTS for the first implementation period addresses the emissions reductions from federal, State, and local controls that take effect in the State from the baseline period starting in 2002 until 2018. Rhode Island participated in the MANE–VU regional strategy development process and supported a regional approach towards deciding which control measures to pursue for regional haze, which was based on technical analyses documented in the following reports: (a) The Contribution Report; (b)

[4] The August 2006 NESCAUM document ''Contributions to Regional Haze in the Northeast and Mid-Atlantic United States'' has been provided as part of the docket to this proposed rulemaking.

Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas (available at *www.marama.org/visibility/RPG/FinalReport/RPGFinalReport_070907.pdf*); (c) *Five-Factor Analysis of BART-Eligible Sources: Survey of Options for Conducting BART Determinations* (available at *www.nescaum.org/documents/bart-final-memo-06-28-07.pdf*); and (d) *Assessment of Control Technology Options for BART-Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants and Paper, and Pulp Facilities* (available at *www.nescaum.org/documents/bart-control-assessment.pdf*).

1. Emissions Inventory for 2018 with Federal and State Control Requirements

The State-wide emissions inventories used by MANE–VU in its regional haze technical analyses were developed by MARAMA for MANE–VU with assistance from Rhode Island. The 2018 emissions inventory was developed by projecting 2002 emissions forward based on assumptions regarding emissions growth due to projected increases in economic activity and emissions reductions expected from federal and State regulations. MANE–VU's emissions inventories included estimates of NO_X, coarse particulate matter (PM_{10}), $PM_{2.5}$, and SO_2, VOC, and NH_3. The BART guidelines direct States to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in Section III.B.3 below, MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic region. It was also determined that the total ammonia emissions in the MANE–VU region are extremely small.

MANE–VU developed emissions inventories for four inventory source classifications: (1) Stationary point sources, (2) stationary area sources, (3) non-road mobile sources, and (4) on-road mobile sources. The New York Department of Environmental Conservation also developed an inventory of biogenic emissions for the entire MANE–VU region. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. Non-road mobile sources are equipment that can move but do not use the roadways. On-road mobile source emissions are automobiles, trucks, and motorcycles that use the roadway system. The emissions from these sources are estimated by vehicle type and road type. Biogenic sources are natural sources like trees, crops, grasses, and natural decay of plants. Stationary point sources emission data is tracked at the facility level. For all other source types, emissions are summed on the county level.

There are many federal and State control programs being implemented that MANE–VU and Rhode Island anticipate will reduce emissions between the baseline period and 2018. Emission reductions from these control programs in the MANE–VU region were projected to achieve substantial visibility improvement by 2018 at all of the MANE–VU Class I areas. To assess emissions reductions from ongoing air pollution control programs, BART, and reasonable progress goals, MANE–VU developed 2018 emissions projections called ''Best and Final.'' The emissions inventory provided by the State of Rhode Island for the Best and Final 2018 projections is based on expected control requirements.

Rhode Island relied on emission reductions from the following ongoing and expected air pollution control programs as part of the State's long term strategy. For electrical generating units (EGUs), Rhode Island relied on Air Pollution Control (APC) Regulations Numbers 38 and 41 which limit NO_X emissions from all EGUs. The State also relied on source specific permit restrictions limiting the sulfur content of fuel oil to 0.05% at Dominion Energy Manchester Street, 0.0015% at Ocean State Power and 0.2% at Pawtucket Power. Rhode Island also relied on the following controls on non-EGU point sources in estimating 2018 emissions inventories: NO_X SIP Call Phases I and II; NO_X Reasonably Available Control Technology (RACT) in 1-hour Ozone SIP; NO_X Ozone Transport Commission (OTC) 2001 Model Rule for Industrial, Commercial, and Institutional (ICI) Boilers; VOC 2-year, 4-year, 7-year and 10-year Maximum Achievable Control Technology (MACT) Standards; Combustion Turbine and Reciprocating Internal Combustion Engine (RICE) MACT; and Industrial Boiler/Process Heater MACT (also known as the Industrial Boiler MACT).

On July 30, 2007, the U.S. Court of Appeals for the District of Columbia vacated and remanded the Industrial Boiler MACT Rule. *NRDC* v. *EPA*, 489F.3d 1250 (DC Cir. 2007). This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator (CISWI) definition rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010 (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). On May 18, 2011, EPA stayed the effective date of the Industrial Boiler MACT pending review by the DC Circuit or the completion of EPA's reconsideration of the rule. See 76 FR 28662.

On December 2, 2011, EPA issued a proposed reconsideration of the MACT standards for existing and new boilers at major (76 FR 80598) and area (76 FR 80532) source facilities, and for Commercial and Industrial Solid Waste Incinerators (76 FR 80452). On January 9, 2012, the U.S. District Court for the District of Columbia vacated EPA's stay of the effectiveness date of the Industrial Boiler MACT, reinstating the original effective date and therefore requiring compliance with the current rule in 2014. *Sierra Club* v. *Jackson,* Civ. No. 11–1278, slip op. (D.D.C. Jan. 9, 2012).

Even though Rhode Island's modeling is based on the old Industrial Boiler MACT limits Rhode Island's modeling conclusions are unlikely to be affected because the expected reductions in SO_2 and PM resulting from the vacated MACT rule are a relatively small component of the Rhode Island inventory and the expected emission reductions from the final MACT rule are comparable to those modeled. In addition, the new MACT rule requires compliance by 2014 and therefore the expected emission reductions will be achieved prior to the end of the first implementation period in 2018. Thus, EPA does not expect that differences between the old and revised Industrial Boiler MACT emission limits would affect the adequacy of the existing Rhode Island regional haze SIP. If there is a need to address discrepancies between projected emissions reductions from the old Industrial Boiler MACT and the Industrial Boiler MACT finalized in March 2011, we expect Rhode Island to do so in their 5-year progress report.

Controls on area sources expected by 2018 include: the OTC VOC rules for consumer products (APC Regulation No. 31); architectural and industrial maintenance coatings (APC Regulation No. 33) and solvent cleaning (APC Regulation No. 36); mobile equipment repair and refinishing APC Regulation No. 30); VOC control measures for adhesive and sealants (APC Regulation No. 44); VOC control measures for emulsified and cutback asphalt paving (APC Regulation No. 25); and VOC

control measures for portable fuel containers (contained in EPA's Mobile Source Air Toxics rule).

Controls on mobile sources expected by 2018 include: enhanced safety inspection program (Rhode Island Motor Vehicle Safety and Emissions Control Regulation No. 1); on-board diagnostics testing for 1996 and new vehicles (APC Regulation No. 34); Federal On-Board Refueling Vapor Recovery (ORVR) Rule; Federal Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Requirements; Federal Heavy-Duty Diesel Engine Emission Standards for Trucks and Buses; and Federal Emission Standards for Large Industrial Spark-Ignition Engines and Recreation Vehicles.

Controls on non-road sources expected by 2018 include the following federal regulations: Control of Air Pollution: Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression Ignition Engines at or above 37 kilowatts (59 FR 31306, June 17, 1994); Control of Emissions of Air Pollution from Nonroad Diesel Engines (63 FR 56967, Oct. 23, 1998); Control of Emissions from Nonroad Large Spark-Ignition Engines and Recreational Engines (67 FR 68241, Nov. 8, 2002); and Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuels (69 FR 38958, June 29, 2004).

Tables 1 and 2 are summaries of the 2002 baseline and 2018 estimated emissions inventories for Rhode Island. The 2018 estimated emissions include emissions growth as well as emission reductions due to ongoing emission control strategies and reasonable progress goals.

TABLE 1—2002 EMISSIONS INVENTORY SUMMARY FOR RHODE ISLAND

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	1,928	2,764	183	300	58	2,666
Area	31,402	3,886	2,064	8,295	883	4,557
On-Road Mobile	12,358	16,677	211	345	853	425
Non-Road Mobile	7,780	5,001	443	500	4	377
Biogenics	19,233	211	0	0	0	0
Total	72,881	28,540	2,901	9,440	1,797	8,026

TABLE 2—2018 EMISSIONS INVENTORY SUMMARY FOR RHODE ISLAND

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	1,841	3,018	340	473	195	1,509
Area	23,305	4,249	1,570	4,269	1,025	52
On-Road Mobile	6,305	5,351	148	168	1,200	100
Non-Road Mobile	5,389	2,723	303	348	5	42
Biogenics	19,233	211	0	0	0	0
Total	56,073	15,553	2,362	5,260	2,425	1,703

2. Modeling to Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

MANE–VU performed modeling for the regional haze LTS for the 11 Mid-Atlantic and Northeast States and the District of Columbia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. MANE–VU used the following modeling system:

- Meteorological Model: The Fifth-Generation Pennsylvania State University/National Center for Atmospheric Research (NCAR) Mesoscale Meteorological Model (MM5) version 3.6 is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.
- Emissions Model: The Sparse Matrix Operator Kernel Emissions (SMOKE) version 2.1 modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.
- Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) version 4.5.1 is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale.
- Air Quality Model: The Regional Model for Aerosols and Deposition (REMSAD), is a Eulerian grid model that was primarily used to determine the attribution of sulfate species in the Eastern US via the species-tagging scheme.
- Air Quality Model: The California Puff Model (CALPUFF), version 5 is a non-steady-state Lagrangian puff model used to access the contribution of individual States' emissions to sulfate levels at selected Class I receptor sites.

CMAQ modeling of regional haze in the MANE–VU region for 2002 and 2018 was carried out on a grid of 12x12 kilometer (km) cells that covers the 11 MANE–VU States (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont) and the District of Columbia and States adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. MANE–VU conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The

MANE–VU States' modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,* April 2007 (EPA–454/B–07–002, available at *www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*), and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* August 2005 and updated November 2005 (EPA–454/R–05–001, available at *www.epa.gov/ttnchie1/eidocs/eiguid/index.html*) (hereinafter referred to as ''EPA's Modeling Guidance'').

MANE–VU examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. MANE–VU used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once MANE–VU determined the model performance to be acceptable, MANE–VU used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the State of Rhode Island provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glide path and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA is proposing to find the MANE–VU technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress acceptable because the modeling system was chosen and used according to EPA Modeling Guidance. EPA agrees with the MANE–VU model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the Rhode Island LTS and regional haze SIP.

3. Relative Contributions of Pollutants to Visibility Impairment

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, MANE–VU developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the MANE–VU region, MANE–VU's contribution assessment demonstrated that sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic Region. Sulfate particles commonly account for more than 50 percent of particle-related light extinction at northeastern Class I areas on the clearest days and for as much as, or more than, 80 percent on the haziest days. For example, at the Brigantine National Wildlife Refuge Class I area (the MANE–VU Class I area with the greatest visibility impairment), on the 20 percent worst visibility days in 2000–2004, sulfate accounted for 66 percent of the particle extinction. After sulfate, organic carbon (OC) consistently accounts for the next largest fraction of light extinction. Organic carbon accounted for 13 percent of light extinction on the 20 percent worst visibility days for Brigantine, followed by nitrate that accounts for 9 percent of light extinction.

The emissions sensitivity analyses conducted by MANE–VU predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the MANE–VU region, more than any other visibility-impairing pollutant. As a result of the dominant role of sulfate in the formation of regional haze in the Northeast and Mid-Atlantic Region, MANE–VU concluded that an effective emissions management approach would rely heavily on broad-based regional SO_2 control efforts in the eastern United States.

4. Reasonable Progress Goal

Since the State of Rhode Island does not have a Class I area, it is not required to establish RPGs. However, as a MANE–VU member State, Rhode Island adopted the ''Statement of MANE–VU Concerning a Request for a Course of Action by States Within MANE–VU Toward Assuring Reasonable Progress'' on June 7, 2007. This document included four emission management strategies that will provide for reasonable progress towards achieving natural visibility at the MANE–VU Class I areas. These emission management strategies are collectively known as the MANE–VU ''Ask,'' and include: (a) Timely implementation of BART requirements; (b) a 90 percent reduction in SO_2 emissions from each of the EGU stacks identified by MANE–VU comprising a total of 167 stacks [5]; (c) adoption of a low sulfur fuel oil strategy; and (d) continued evaluation of other control measures to reduce SO_2 and NO_X emissions.

Rhode Island does not have any BART eligible units, nor does it have any EGU stacks identified by MANE–VU as a top contributor to visibility impairment in any of the MANE–VU Class I areas.

The MANE–VU low sulfur fuel oil strategy includes: Phase I reduction of distillate oil to 0.05% sulfur by weight (500 parts per million (ppm)) by no later than 2014; Phase II reductions of #4 residual oil to 0.25% sulfur by weight by no later than 2018; #6 residual oil to 0.5% sulfur by weight by no later than 2018; and further reduce the sulfur content of distillate oil to 15 ppm by 2018.

The expected reduction in SO_2 emissions by 2018 from the MANE–VU ''Ask'' will yield corresponding reductions in sulfate aerosol, the main culprit in fine-particle pollution and regional haze. For Rhode Island, the MANE–VU analysis demonstrates that the reduction of the sulfur content in fuel oil will lead to an average reduction of 0.25–0.36 $\mu g/m^3$ in the 24 hour $PM_{2.5}$ concentration within the State, improving health and local visibility. In addition, the use of low sulfur fuels will result in cost savings to owners/operators of residential furnaces and boilers due to reduced maintenance costs and extended life of the units.

In its August 7, 2009 SIP submittal, Rhode Island states that ''RI DEM intends to adopt the low-sulfur fuel oil requirements by January 1, 2012 and will have a compliance date of 2014 for Phase I and 2018 for Phase II.'' RI DEM continues to work toward the adoption of this regulation. However, in a letter dated January 31, 2012, RI DEM informed EPA that they do not

[5] See Appendix H—''2018 Emissions from EGUs in the Eastern US'' of the Rhode Island SIP submittal for a complete listing of the 167 stacks.

anticipate being able to adopt the low-sulfur fuel oil requirements before the end of 2012. RI DEM articulated that they are still committed to adopting the low-sulfur oil requirements but cannot do so on the time line of their original commitment.

EPA is today proposing approval of the Rhode Island Regional Haze SIP for the first implementation period without inclusion of an adopted low sulfur fuel oil regulation.[6] As described in Section III.A of this notice, Rhode Island neither causes nor contributes to visibility impairment in the closest Class I areas located in New Jersey, Vermont, New Hampshire, and Maine. For each of these Class I areas, the contribution of Rhode Island's emissions to total sulfate is less than the 2% threshold set by the MANE–VU States to determine whether any State contributed to visibility impairment. While the SO_2 reductions being achieved by Rhode Island are somewhat less than the statewide reductions that were projected to result from adoption of a low-sulfur fuel oil strategy by 2012, this shortfall is not anticipated to interfere with the ability of other States to meet their respective reasonable progress goals. All emissions from Rhode Island contribute no more than 0.31% of total sulfate at any Class I area. We encourage adoption of a low-sulfur fuel oil strategy by Rhode Island as such a strategy will have local air quality and some, limited visibility benefits, however, we do not believe it is a necessary component of an approvable Regional Haze SIP for Rhode Island for the first implementation period.

5. Additional Considerations for the LTS

Forty CFR 51.308(d)(3)(v) requires States to consider the following factors in developing the long term strategy:

a. Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment;

b. Measures to mitigate the impacts of construction activities;

c. Emission limitations and schedules for compliance to achieve the reasonable progress goal;

d. Source retirement and replacement schedules;

e. Smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes;

f. Enforceability of emissions limitations and control measures; and

g. The anticipated net effect on visibility due to projected changes in point area, and mobile source emissions over the period addressed by the long term strategy.

a. Emission reductions including RAVI

Since Rhode Island does not contain any Class I areas, the State is not required to address RAVI, nor has any Rhode Island source been identified as subject to RAVI. A list of Rhode Island's ongoing air pollution control programs is included in Section III.B.1.

b. Construction Activities

The Regional Haze Rule requires Rhode Island to consider measures to mitigate the impacts of construction activities on regional haze. MANE–VU's consideration of control measures for construction activities is documented in ''Technical Support Document on Measures to Mitigate the Visibility Impacts of Construction Activities in the MANE–VU Region, Draft, October 20, 2006.'' [7]

The construction industry is already subject to requirements for controlling pollutants that contribute to visibility impairment. For example, federal regulations require the reduction of SO_2 emissions from construction vehicles. At the State level, Rhode Island Air Pollution Control Regulation Number 5, ''Fugitive Dust'' regulates dust from construction and demolition activities. Section 5.3 of that regulation states, ''No person shall cause or permit any materials, including but not limited to sand, gravel, soil, aggregate and any other organic or inorganic solid matter capable of releasing dust, to be handled, transported, mined, quarried, stored or otherwise utilized in any way so as to cause airborne particulate matter to travel beyond the property line of the emission source without taking adequate precautions to prevent particulate matter from becoming airborne.''

MANE–VU's Contribution Report found that, from a regional haze perspective, crustal material generally does not play a major role. On the 20 percent best-visibility days during the 2000–2004 baseline period, crustal material accounted for 6 to 11 percent of the particle-related light extinction at the MANE–VU Class I Areas. On the 20 percent worst-visibility days, however, the contribution was reduced to 2 to 3 percent. Furthermore, the crustal fraction is largely made up of pollutants of natural origin (e.g., soil or sea salt) that are not targeted under the Regional Haze Rule. Nevertheless, the crustal fraction at any given location can be heavily influenced by the proximity of construction activities; and construction activities occurring in the immediate vicinity of MANE–VU Class I area could have a noticeable effect on visibility.

For this regional haze SIP, Rhode Island concluded that its current regulations are currently sufficient to mitigate the impacts of construction activities. Any future deliberations on potential control measures for construction activities and the possible implementation will be documented in the first regional haze SIP progress report in 2012. EPA proposes to find that Rhode Island has adequately addressed measures to mitigate the impacts of construction activities.

c. Emission Limitations and Schedules for Compliance To Achieve the RPG

In addition to the existing CAA control requirements discussed in Section III.B.1, Rhode Island has committed to adopt a low sulfur fuel oil strategy consistent with the MANE–VU ''Ask'' by the end of 2012. It is expected that the compliance date for Phase I will be in 2014 and the compliance date for Phase II will be in 2018. As described in Section III.B.4 above, we do not believe inclusion of the low sulfur oil strategy is a necessary component of an approvable Region Haze SIP for Rhode Island. Therefore, EPA is proposing to determine that Rhode Island has satisfactorily considered emission limitations and schedules as part of the LTS.

d. Source Retirement and Replacement Schedule

Forty CFR 51.308(d)(3)(v)(D) of the Regional Haze Rule requires Rhode Island to consider source retirement and replacement schedules in developing the long term strategy. Source retirement and replacement were considered in developing the 2018 emissions. The sources in Rhode Island that were shut down after the 2002 base year and therefore were not included in the 2018 inventory are: Albin, Display World, Clariant Corporation, Leviton, CCL Custom Manufacturing, Eastern

[6] On January 15, 2009, EPA made a finding that, among other States, Rhode Island had failed to submit a Regional Haze SIP by the required deadline. 74 FR 2392. We have proposed a consent decree to resolve a deadline suit regarding this finding as well as the finding of failure for 36 other States, the District of Columbia, and the U.S. Virgin Islands. *National Parks Conservation Association* v. *Jackson,* Civ. No. 1:11–cv–1548 (D.D.C. 2011). Because we do not believe a low-sulfur fuel oil strategy is necessary for Rhode Island during this first implementation period, EPA is moving forward with this proposed approval of the State's SIP submittal in order to satisfy our obligations under the Clean Air Act.

[7] This document has been provided as part of the docket to this proposed rulemaking.

Butcher Block, Fiber Mark, Metal Recycling Company Incorporated, Slater Dye Works in Cumberland, Slater Dye Works in Pawtucket, and Charbert Incorporated. EPA is proposing to determine that Rhode Island has satisfactorily considered source retirement and replacement schedules as part of the LTS.

e. Smoke Management Techniques

The Regional Haze Rule requires States to consider smoke management techniques related to agricultural and forestry management in developing the long-term strategy. MANE–VU's analysis of smoke management in the context of regional haze is documented in ''Technical Support Document on Agricultural and Smoke Management in the MANE–VU Region, September 1, 2006.'' [8]

Rhode Island does not currently have a Smoke Management Program (SMP). However, SMPs are required only when smoke impacts from fires managed for resources benefits contribute significantly to regional haze. The emissions inventory presented in the above-cited document indicates that agricultural, managed and prescribed burning emissions are very minor; the inventory estimates that, in Rhode Island, those emissions from those source categories totaled 7.8 tons of PM_{10}, 6.7 tons of $PM_{2.5}$ and 0.5 tons of SO_2 in 2002, which constitute 0.08%, 0.2% and 0.006% of the total inventory for these pollutants, respectively.

Source apportionment results show that wood smoke is a moderate contributor to visibility impairment at some Class I areas in the MANE–VU region; however, smoke is not a large contributor to haze in MANE–VU Class I areas on either the 20% best or 20% worst visibility days. Moreover, most of wood smoke is attributable to residential wood combustion.[9] Therefore, it is unlikely that fires for agricultural or forestry management cause large impacts on visibility in any of the Class I areas in the MANE–VU region. On rare occasions, smoke from major fires degrades air quality and visibility in the MANE–VU area. However, these fires are generally unwanted wildfires that are not subject to SMPs. EPA proposes to approve Rhode Island's decision that an Agricultural and Forestry Smoke Management Plan to address visibility impairment is not required at this time.

f. Enforceability of Emission Limitations and Control Measures

All emission limitations included as part of Rhode Island's Regional Haze SIP are currently federally enforceable. EPA is proposing to find that Rhode Island has adequately addressed the enforceability of emission limitations and control measures.

g. The Anticipated Net Effect on Visibility

MANE–VU used the best and final emission inventory to model progress expected toward the goal of natural visibility conditions for the first regional haze planning period. All of the MANE–VU Class I areas are expected to achieve greater progress toward the natural visibility goal than the uniform rate of progress, or the progress expected by extrapolating a trend line from current visibility conditions to natural visibility conditions.[10]

In summary, EPA is proposing to find that Rhode Island has adequately addressed the LTS regional haze requirements.

C. Consultation With States and Federal Land Managers

On May 10, 2006, the MANE–VU State Air Directors adopted the Inter-RPO State/Tribal and FLM Consultation Framework that documented the consultation process within the context of regional phase planning, and was intended to create greater certainty and understanding among RPOs. MANE–VU States held ten consultation meetings and/or conference calls from March 1, 2007 through March 21, 2008. In addition to MANE–VU members attending these meetings and conference calls, participants from the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO, Midwest RPO, and the relevant Federal Land Managers were also in attendance. In addition to the conference calls and meeting, the FLMs were given the opportunity to review and comment on each of the technical documents developed by MANE–VU.

On January 26, 2009, Rhode Island submitted a draft Regional Haze SIP to the relevant FLMs for review and comment pursuant to 40 CFR 51.308(i)(2). The FLMs provided comments on the draft Regional Haze SIP in accordance with 40 CFR 51.308(i)(3). The comments received from the FLMs were addressed and incorporated in Rhode Island's SIP revision. Most of the comments were requests for additional detail as to various aspects of the SIP. These comments and Rhode Island's response to comments can be found in the docket for this proposed rulemaking.

On July 30, 2009, Rhode Island proposed its Regional Haze SIP for public hearing and no comments were received. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), Rhode Island commits in their SIP to ongoing consultation with the FLMs on emission strategies, major new source permits, assessments or rulemaking concerning sources identified as probable contributors to visibility impairment, any changes to the monitoring strategy, work on the periodic revisions to the SIP, and ongoing communications regarding visibility impairment.

EPA is proposing to find that Rhode Island has addressed the requirements for consultation with the Federal Land Managers.

D. Periodic SIP Revisions and Five-Year Progress Reports

Consistent with the requirements of 40 CFR 51.308(g), Rhode Island has committed to submitting a report on reasonable progress (in the form of a SIP revision) to the EPA every five years following the initial submittal of its regional haze SIP. The reasonable progress report will evaluate the progress made towards the RPGs for the MANE–VU Class I areas, located in Maine, New Hampshire, Vermont, and New Jersey.

Forty CFR 51.308(f) requires the RI DEM to submit periodic revisions to its Regional Haze SIP by July 31, 2018, and every ten years thereafter. RI DEM acknowledges and agrees to comply with this schedule.

Pursuant to 40 CFR 51.308(d)(4)(v), RI DEM will also make periodic updates to the Rhode Island emissions inventory. RI DEM proposes to complete these updates to coincide with the progress reports. Actual emissions will be compared to projected modeled emissions in the progress reports.

Lastly, pursuant to 40 CFR 51.308(h), RI DEM will submit a determination of adequacy of its regional haze SIP revision whenever a progress report is submitted. Rhode Island's regional haze SIP states that, depending on the findings of its five-year review, Rhode

[8] This document has been included as part of the docket to this proposed rulemaking.

[9] Although not included as part of the Regional Haze SIP, effective April 14, 2011, Rhode Island promulgated APC Regulation No. 48—Outdoor Wood Boilers which prohibits the sale or installation of any outdoor wood boiler on or after the effective date of the regulation unless it has been qualified by EPA to meet the Phase 2 emissions level for particulate matter (0.3 pounds per million British Thermal Units output).

[10] Projected visibility improvements for each MANE–VU Class I area can be found in the NESCAUM document dated May 13, 2008, ''2018 Visibility Projections'' (*www.nescaum.org/documents/2018-visibility-projections-final-05-13-08.pdf/*).

Island will take one or more of the following actions at that time, whichever actions are appropriate or necessary:

• If Rhode Island determines that the existing State Implementation Plan requires no further substantive revision in order to achieve established goals for visibility improvement and emissions reductions, RI DEM will provide to the EPA Administrator a negative declaration that further revision of the existing plan is not needed.

• If Rhode Island determines that its implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources in one or more other State(s) which participated in the regional planning process, Rhode Island will provide notification to the EPA Administrator and to those other State(s). Rhode Island will also collaborate with the other State(s) through the regional planning process for the purpose of developing additional strategies to address any such deficiencies in Rhode Island's plan.

• If Rhode Island determines that its implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources in another country, Rhode Island will provide notification, along with available information, to the EPA Administrator.

• If Rhode Island determines that the implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources within the State, Rhode Island will revise its implementation plan to address the plan's deficiencies within one year from this determination.

IV. What action is EPA proposing to take?

EPA is proposing approval of Rhode Island's August 7, 2009 SIP revision as meeting the applicable requirements of the Regional Haze Rule found in 40 CFR 51.308.

V. Statutory and Executive Order Reviews

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 13, 2012.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

[FR Doc. 2012–4656 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2008–0599; A–1–FRL–9639–1]

Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the New Hampshire State Implementation Plan (SIP) submitted by the New Hampshire Department of Environmental Services (NHDES) on January 29, 2010, with supplemental submittals on January 14, 2011, and August 26, 2011, that addresses regional haze for the first planning period from 2008 through 2018. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I areas (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

DATES: Written comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2008–0559 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: arnold.anne@epa.gov.*

3. *Fax:* (617) 918–0047.

4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2008–0599 Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier:* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office,

Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2008–0599. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov* your email 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Air Resources Division, Department of Environmental Services, 6 Hazen Drive, P.O. Box 95, Concord, NH 03302–0095.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone number (617) 918–1697, fax number (617) 918–0697, email *mcwilliams.anne@epa.gov.*

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Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles and their precursors (e.g., sulfur dioxide, nitrogen oxides, and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), which also impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the Western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without manmade air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range

that would exist under estimated natural conditions. See 64 FR 35715, (July 1, 1999).

B. Background Information

In section 169A(a)(1) of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [1] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment'' (RAVI). See 45 FR 80084, (Dec. 2, 1980). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the Regional Haze Rule. The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in Section II. The requirement to submit a regional haze SIP applies to all 50 States, the District of Columbia and the Virgin Islands. Forty CFR 51.308(b) requires States to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007. On January 15, 2009, EPA found that 37 States, the District of Columbia and the U.S. Virgin Islands failed to submit this required implementation plan. See 74 FR 2392 (Jan. 15, 2009). In particular, EPA found that New Hampshire failed to submit a plan that met the requirements of 40 CFR 51.308. See 74 FR 2393. On January 14, 2011, the Air Resources Division of the New Hampshire Department of Environmental Services (NHDES) submitted revisions to the New Hampshire State Implementation Plan (SIP) to address regional haze as required by 40 CFR 51.308. A revision to this submittal was made on August 26, 2011. EPA has reviewed New Hampshire's submittal and is proposing to find that it is consistent with the requirements of 40 CFR 51.308 as outlined in Section II.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among States, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the States and Tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their States and Tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of $PM_{2.5}$ and other pollutants leading to regional haze.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) RPO is a collaborative effort of State governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Northeastern United States. Member State and Tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, and Vermont.

II. What are the requirements for regional haze SIPs?

A. The CAA and the Regional Haze Rule (RHR)

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require States to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install Best Available Retrofit Technology (BART) controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is determined by measuring the visual range (or deciview), which is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[2]

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions (42 U.S.C. 7472(a)). Although States and Tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). (42 U.S.C. 7602(i)). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[2] The preamble to the RHR provides additional details about the deciview. See 64 FR 35714, 35725 (July 1, 1999).

in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., manmade sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program and as part of the process for determining reasonable progress, States must calculate the degree of existing visibility impairment at each Class I area within the State at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year planning period. To do this, the RHR requires States to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, States must also develop an estimate of natural visibility conditions for the purposes of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to States regarding how to calculate baseline, natural and current visibility conditions in documents titled, *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005) available at *www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf* (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003 (EPA–454/B–03–004), available at *www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf* (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of impairment for the 20 percent least impaired days and 20 percent most impaired days at the time the regional haze program was established. Using monitoring data from 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area within the State, based on the average of annual values over the five year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that establish RPGs for Class I areas for each (approximately) 10-year planning period. The RHR does not mandate specific milestones or rates of progress, but instead calls for States to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions for their Class I areas. In setting RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in the CAA and in EPA's RHR: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. See 40 CFR 51.308(d)(1)(i)(A). States have considerable flexibility in how they take these factors into consideration, as noted in EPA's July 1, 2007 memorandum from William L. Wehrum, Acting Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10, entitled *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program* (p. 4–2, 5–1)(EPA's Reasonable Progress Guidance). In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glide path'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. The year 2064 represents a rate of progress which States are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each State with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing States,'' i.e., other nearby States with emission sources that may be contributing to visibility impairment at the Class I State's areas. See 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs States to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, the CAA requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the State. (CAA 169A(b)(2)a)).[3] States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist States in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART applicability determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a State must use the approach set forth in the BART Guidelines. A State is encouraged, but not required, to follow the BART Guidelines in making BART

[3] The set of ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

determinations for other types of sources.

States must address all visibility impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter (PM). EPA has stated that States should use their best judgment in determining whether volatile organic compounds (VOCs), or ammonia (NH_3) and ammonia compounds impair visibility in Class I areas.

The RPOs provided air quality modeling to the States to help them in determining whether potential BART sources can be reasonably expected to cause or contribute to visibility impairment in a Class I area. Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the State should not be higher than 0.5 deciviews. See 70 FR 39161 (July 6, 2005).

In their SIPs, States must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. The term ''BART-eligible source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. See 70 FR 39161 (July 6, 2005). In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor. See 70 FR 39170 (July 6, 2005).

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a State has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP, as required by CAA (section 169(g)(4)) and the RHR (40 CFR 51.308(e)(1)(iv)). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. States have the flexibility to choose the type of control measures they will use to meet the requirements of BART.

E. Long-Term Strategy (LTS)

Forty CFR 51.308(d)(3) of the RHR requires that States include a LTS in their SIPs. The LTS is the compilation of all control measures a State will use to meet any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the State. See 40 CFR 51.308(d)(3).

When a State's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the RHR requires the impacted State to coordinate with the contributing States in order to develop coordinated emissions management strategies. See 40 CFR 51.308(d)(3)(i). In such cases, the contributing State must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, States must describe how each of the seven factors listed below is taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. See 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the State's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the State must revise its plan to provide for review and revision of a coordinated LTS for addressing reasonably attributable and regional haze visibility impairment, and the State must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic reviews of a State's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Forty CFR 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the State. The strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through participation in the IMPROVE network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a State with mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas both within and outside the State;
- Procedures for using monitoring data and other information in a State with no mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas in other States;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A State must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

Forty CFR 51.308(f) of the RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of 40 CFR 51.308(d) with the exception of BART. The BART provisions of 40 CFR 51.308(e), as noted above, apply only to the first implementation period. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that States consult with FLMs before adopting and submitting their SIPs. See 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a State must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. What is EPA's analysis of New Hampshire's regional haze SIP submittal?

On January 29, 2010, NHDES's Air Resources Division submitted revisions to the New Hampshire SIP to address regional haze as required by 40 CFR 51.308. Amended SIP revisions were submitted on January 14, 2011, and August 26, 2011. EPA has reviewed New Hampshire's submittals and is proposing to find that it is consistent with the requirements of 40 CFR 51.308 as outlined in Section II. A detailed analysis follows.

New Hampshire is responsible for developing a regional haze SIP which addresses visibility in New Hampshire's two Class I areas. These areas are the Great Gulf Wilderness and the Presidential Range—Dry River Wilderness, both located within the White Mountains National Forest. The State must also address New Hampshire's impact on any other nearby Class I areas.

A. New Hampshire's Affected Class I Areas

New Hampshire is home to two Class I areas: (1) Great Gulf Wilderness Area (Great Gulf); and (2) Presidential Range—Dry River Wilderness Area (Dry River).

In addition to these areas, the MANE–VU RPO contains five other Class I areas in three States: Lye Brook Wilderness Area in Vermont; Acadia National Park, Moosehorn Wilderness Area and Roosevelt Campobello International Park in Maine; and the Brigantine Wilderness Area in New Jersey.

The New Hampshire regional haze SIP establishes RPGs for visibility improvement at its Class I areas and a LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the RPG for each Class I area, New Hampshire considered both emission sources inside and outside of New Hampshire that may cause or contribute to visibility impairment in New Hampshire's Class I area. The State also identified and considered emission sources within New Hampshire that may cause or contribute to visibility impairment in Class I areas in neighboring States as required by 40 CFR 51.308(d)(3). The MANE–VU RPO worked with the State in developing the technical analyses used to make these determinations, including State-by-State contributions to visibility impairment in specific Class I areas, which included the two areas in New Hampshire and those areas affected by emissions from New Hampshire.

B. Determination of Baseline, Natural and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, New Hampshire calculated baseline/current and natural conditions for its Class I areas.

1. Estimating Natural Visibility Conditions

Natural background refers to visibility conditions that existed before human activities affected air quality in the region. The national goal, as set out in the Clean Air Act, is a return to natural visibility conditions.

Estimates of natural visibility conditions are based on annual average concentrations of fine particle components. The IMPROVE [4] equation is a formula for estimating light extinction from species measured by the IMPROVE monitors. As documented in EPA's 2003 Natural Visibility Guidance, EPA determined, with concurrence from the IMPROVE Steering Committee, that States may use a ''refined approach'' to the then current IMPROVE formula to estimate the values that characterize the natural visibility conditions of the Class I areas. The purpose of the refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction. The new IMPROVE equation takes into account the most recent review of the science [5] and

[4] The Interagency Monitoring of Protected Visual Environments (IMPROVE) program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing man-made visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[5] The science behind the revised IMPROVE equation is summarized in numerous published papers. *See, eg.,* J. L. Hand & W. C. Malm, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report,* March

accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations. New Hampshire opted to use this refined approach, referred to as the ''new IMPROVE equation,'' for its two areas.

Natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by MANE–VU. EPA is proposing to find that the best and worst 20 percent natural visibility values for Great Gulf and Dry River (shown in Table 1) were calculated using the EPA guidelines.

2. Estimating Baseline Conditions

Great Gulf and Dry River do not contain an IMPROVE monitor. In cases where onsite monitoring is not available, 40 CFR 51.308(d)(2)(i) requires States to use the most representative monitoring available for the 2000–2004 period to establish baseline visibility conditions, in consultation with EPA. New Hampshire used, and EPA concurs with the use of, 2000–2004 data from the IMPROVE monitor located at Camp Dodge in Pinkham Notch, New Hampshire as representative of Great Gulf and Dry River. The Camp Dodge IMPROVE monitor is adjacent to the Great Gulf area.

As explained in Section II.B, for the first regional haze SIP, baseline visibility conditions are the same as current conditions. A five-year average of the 2000–2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days for Great Gulf and Dry River. IMPROVE data records for the period 2000–2004 meet the EPA requirements for data completeness. See page 2–8 of EPA's 2003 Tracking Progress Guidance.

3. Summary of Baseline and Natural Conditions

For the New Hampshire Class I areas, baseline visibility conditions on the 20 percent worst days are 22.8 deciviews at Great Gulf and Dry River. Natural visibility conditions for these areas are estimated to be 12.0 dv on the 20 percent worst visibility days. The natural and background conditions for Great Gulf and Dry River for both the 20 percent worst and 20 percent best days are presented in Table 1 below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR GREAT GULF AND DRY RIVER

Class I areas	2000–2004 Baseline (dv)		Natural conditions (dv)	
	Worst 20%	Best 20%	Worst 20%	Best 20%
Great Gulf and Dry River	22.8	7.7	12.0	3.7

4. Uniform Rate of Progress

In setting the RPGs, New Hampshire considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glide path'') and the emission reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glide path.

For Great Gulf and Dry River, the overall visibility improvement necessary to reach natural conditions is the difference between the baseline visibility of 22.8 dv and natural background visibility of 12.0 dv, or an improvement of 10.8 dv for the 20 percent worst visibility days. New Hampshire must also ensure no degradation in visibility for the best 20 percent visibility days over the same period in accordance with 40 CFR 51.308(d)(1).

New Hampshire's SIP submittal presents two graphs, one for the 20 percent best days, and one for the 20 percent worst days, for its Class I areas. New Hampshire constructed the graphs for the worst days (i.e., the glide path) in accordance with EPA's 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of natural visibility conditions in 2064. For the best days, the graph includes a horizontal, straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. New Hampshire's SIP shows that the State's RPG for its Class I areas provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best visibility days over the same period in accordance with 40 CFR 51.308(d)(1).

C. Reasonable Progress Goals

As a State containing two Class I areas, 40 CFR 51.308(d)(1) of the RHR requires New Hampshire to develop the reasonable progress goals for visibility improvement during the first planning period.

1. Relative Contributions of Pollutants to Visibility Impairment

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, MANE–VU developed emission sensitivity model runs using EPA's Community Multiscale Air Quality (CMAQ) air quality model[6]

2006 (Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, CO), available at *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm*; Marc Pitchford, *Natural Haze Levels II: Application of the New IMPROVE Alogrithm to Natural Species Concentrations Estimates: Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup,* Sept. 2006, available at *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[6] CMAQ is a photochemical grid model. The model uses simulations of chemical reactions, emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors, and the Pennsylvania State University/National Center for

Continued

to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the MANE–VU region, MANE–VU's contribution assessment demonstrated that sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic Region.[7] Sulfate particles commonly account for more than 50 percent of particle-related light extinction at northeastern Class I areas on the clearest days and for as much as, or more than, 80 percent on the haziest days. For example, at the Brigantine National Wildlife Refuge Class I area (the MANE–VU Class I area with the greatest visibility impairment), on the 20 percent worst visibility days in 2000 through 2004, sulfate accounted for 66 percent of the particle extinction. After sulfate, organic carbon (OC) consistently accounts for the next largest fraction of light extinction. Organic carbon accounted for 13 percent of light extinction on the 20 percent worst visibility days for Brigantine, followed by nitrate that accounts for 9 percent of light extinction.

The emissions sensitivity analyses conducted by MANE–VU predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the MANE–VU region, more than any other visibility-impairing pollutant. As a result of the dominant role of sulfate in the formation of regional haze in the Northeast and Mid-Atlantic Region, MANE–VU concluded that an effective emissions management approach would rely heavily on broad-based regional SO_2 control efforts in the eastern United States.

Through source apportionment modeling, MANE–VU assisted States in determining their contribution to the visibility impairment of each Class I area in the MANE–VU region. New Hampshire and the other MANE–VU States adopted a weight-of-evidence approach which relied on several independent methods for assessing the contribution of different sources and geographic source regions to regional haze in the northeastern and mid-Atlantic portions of the United States. Details about each technique can be found in the NESCAUM Document *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States,* August 2006 (hereinafter referred to as ''Contribution Report'').[8]

The MANE–VU Class I States determined that any State contributing at least 2% of the total sulfate observed on the 20 percent worst visibility days in 2002 were contributors to visibility impairment at the Class I area. Connecticut, Rhode Island, Vermont, and the District of Columbia were determined to contribute less than 2% of sulfate at any of the Northeast Class I areas. States found to contribute 2% or more of the sulfate at any of the MANE–VU Class I areas were: Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

The contribution of New Hampshire emissions to the total sulfate was determined to contribute to the visibility impairment in not only the New Hampshire Class I areas (3.95% of total sulfate), but Acadia National Park in Maine as well (2.25% of total sulfate). The impact of sulfate on visibility is discussed in greater detail below.

EPA is proposing to find that NHDES has adequately demonstrated that emissions from New Hampshire sources contribute to visibility impairment in nearby Class I Areas.

2. Procedure for Identifying Sources to Evaluate for Reasonable Progress Controls

In developing the 2018 reasonable progress goal, New Hampshire relied primarily upon the information and analysis developed by MANE–VU to meet this requirement. Based on the Contribution Report, MANE–VU focused on SO_2 as the dominant contributor to visibility impairment at all MANE–VU Class I areas during all seasons. In addition, the Contribution Report found that only 25 percent of the sulfate at the MANE–VU Class I areas originate in the MANE–VU States. Sources in the Midwest and Southeast regions were responsible for 15 to 25 percent, respectively. Point sources dominated the inventory of SO_2 emissions. Therefore, MANE–VU's strategy includes additional measures to control sources of SO_2 both within the MANE–VU region and in other States that were determined to contribute to regional haze at the MANE–VU Class I Areas.

Based on information from the Contribution Report and additional emission inventory analysis, MANE–VU and New Hampshire identified the following source categories for further examination for reasonable controls:

- Coal and oil-fired Electrical Generating Units (EGUs);
- Point and area source industrial, commercial and institutional boilers;
- Cement and Lime Kilns;
- Heating Oil; and
- Residential wood combustion.

MANE–VU analyzed these sources categories as potential sources of emission reductions for making reasonable progress based on the ''four statutory factors'' according to 40 CFR 51.308(d)(3)(V).

3. Application of the Four Clean Air Act Factors in the Reasonable Progress Analysis

As discussed in Section II.C above, New Hampshire must consider the following factors in developing the RPGs: (1) The cost of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. MANE–VU's four factor analysis can be found in ''*Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas,*'' July 9, 2007, otherwise known as the Reasonable Progress Report.[9]

New Hampshire and the other MANE–VU States reviewed the Reasonable Progress Report, consulted with one another about possible control measures, and agreed to the following measures as recommended strategies for making reasonable progress: implementation of BART requirements; a 90 percent reduction in SO_2 emissions from 167 EGU emission points[10] (or if it is infeasible to achieve that level of reduction from a unit, alternative measures will be pursued in such State); and a low sulfur fuel oil strategy. These measures are collectively known as the MANE–VU ''Ask.''

MANE–VU used model projections to calculate the RPG for the Class I areas in the MANE–VU region. The projected improvement in visibility due to emission reductions expected by the end of the first period, 2018, is shown in Table 2.

Atmospheric Research Mesoscale Meteorological Model to produce speciated $PM_{2.5}$ concentrations. For more information, see www.epa.gov/asmdnerl/CMAQ/cmaq_model.html

[7] See the NESCAUM Document ''Regional Haze and Visibility in the Northeast and Mid-Atlantic States,'' January 31, 2001.

[8] This document has been provided as part of the docket to this proposed rulemaking.

[9] This report has been included as part of the docket for this rulemaking.

[10] MANE–VU identified these 167 units based on source apportionment modeling using two different meteorological data sets. From each of the modeling runs, MANE–VU identified the top 100 units which contribute to visibility impairment. Differences in model output resulted in a total of 167 units being identified for further control.

TABLE 2—PROJECTED REASONABLE PROGRESS GOAL AND UNIFORM RATE OF PROGRESS (URP) FOR NEW HAMPSHIRE CLASS I AREAS FROM NESCAUM 2018 VISIBILITY PROJECTIONS IN DECIVIEWS

Class I areas		2000–2004 Baseline	2018 CMAQ	URP	Natural background
Great Gulf and Dry River	20% Worst Visibility Days	22.8	19.23	20.3	12.0
	20% Best Visibility Days	7.7	7.2		3.7

At the time of MANE–VU modeling (discussed in further detail in Section III.E.2), some of the other States with sources potentially impacting visibility, in the Class I areas in both New Hampshire and the rest of the MANE–VU domain, had not yet made final control determinations for BART, and thus, these controls are not included in the modeling prepared by MANE–VU and used by New Hampshire. This is a conservative approach because additional emission reductions could result from the application of BART controls. The modeling conducted by MANE–VU demonstrates that the 2018 control scenario (2018 projection) provides for an improvement in visibility greater than the uniform rate of progress for the New Hampshire Class I areas for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

Consistent with EPA guidance at the time, the MANE–VU modeling included reductions from the Clean Air Interstate Rule (CAIR) in estimating the RPGs for 2018. The regional haze provisions specify that a State may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. See 40 CFR 51.308(d)(1)(vi). Therefore, in estimating the RPGs for 2018, many States took into account emission reductions anticipated from CAIR. MANE–VU initially reduced emissions from highest impacting 167 EGUs by ninety percent. However, many of the units targeted for the 90% reduction were part of the CAIR program. Since the 90% reduction was larger, in total tons of emissions reduced, than the reductions expected from CAIR, MANE–VU added the excess emissions back into the inventory to account for trading of the emission credits across the modeling domain. This way, MANE–VU States would not overestimate the emission reductions or the related visibility improvement if States used the CAIR program as their response to the MANE–VU's ''Ask'' of ninety percent reduction from the 167 EGUs in the eastern United States.

The RPGs for Great Gulf and Dry River in New Hampshire are based on modeled projections of future emissions that were developed using the best available information at the time the analysis was completed. While MANE–VU's emission inventory used for modeling included estimates of future emission growth, projections can change as additional information regarding future conditions becomes available. It would be both impractical and resource-intensive to require a State to continually adjust the RPG every time an event affecting these future projections changed. EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions, and addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a mandatory standard which must be achieved by a particular date. See 64 FR 35733. At the same time, EPA established a requirement for a five-year, midcourse review and, if necessary, correction of the States' regional haze plans. See 40 CFR 52.308(g). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emission management strategies in meeting the RPG and to provide an assessment of whether current implementation strategies are sufficient for the State or affected States to meet their RPGs. If a State concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the State to take appropriate action. See 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the State's conclusion that the current strategies are insufficient to meet the RPGs. In its SIP submittal, New Hampshire commits to the midcourse review and submitting revisions to the regional haze plan where necessary. Therefore, EPA is proposing to approve New Hampshire's RPG for the first regional haze planning period irrespective of the status of CAIR and irrespective of the associated issues regarding the adequacy of other State's plans. For similar reasons, EPA believes the approvability of the New Hampshire plan is not affected by the status of the Cross State Air Pollution Rule, which was promulgated on August 8, 2011 (76 FR 48208), and stayed on December 30, 2011. (EME Homer City Generation, L.P. v. EPA, Civ. No. 11–1302, slip op. (DC Cir. Dec. 30, 2011), available at *www.epa.gov/airtransport/pdfs/CourtDecision.pdf.*)

D. Best Available Retrofit Technology (BART)

1. Identification of All Bart Eligible Sources

Determining BART-eligible sources is the first step in the BART process. The New Hampshire BART-eligible sources were identified in accordance with the methodology in Appendix Y of the Regional Haze Rule, *Guidelines for BART Determinations Under the Regional Haze Rule, Part II, How to Identify BART–Eligible Sources.* See 70 FR 39158. This guidance consists of the following criteria:

- The unit falls into one of the listed source categories;
- The unit was constructed or reconstructed between 1962 and 1977; and
- The unit has the potential to emit over 250 tons per year of sulfur dioxide, nitrogen oxides, particulate matter, volatile organic compounds, or ammonia.

The BART Guidelines requires States to address SO_2, NO_X, and particulate matter. States are allowed to use their best judgment in deciding whether VOC or ammonia emissions from a source are likely to have an impact on visibility in the area. The State of New Hampshire addressed SO_2, NO_X, and used particulate matter less than 10 microns in diameter (PM_{10}) as an indicator for particulate matter to identify BART eligible units, as the BART Guidelines require. Consistent with the BART Guidelines, the State of New Hampshire did not evaluate emissions of VOCs and ammonia in BART determinations due to the lack of impact on visibility in the area due to anthropogenic sources. The majority of VOC emissions in New Hampshire are biogenic in nature, especially near the New Hampshire Class I areas. Therefore, the ability to further reduce total ambient VOC concentrations at Class I areas is

limited. Point, area, and mobile sources of VOCs in New Hampshire are already comprehensively controlled as part of ozone attainment and maintenance strategy. In respect to ammonia, the overall ammonia inventory is very uncertain, but the amount of anthropogenic emissions at sources that were BART-eligible is relatively small, and no additional sources were identified that had greater than 250 tons per year ammonia and required a BART analysis.

The identification of BART sources in New Hampshire was undertaken as part of a multi-State analysis conducted by the Northeast States for Coordinated Air Use Management (NESCAUM). NESCAUM worked with NH DES licensing engineers to review all sources and determine their BART eligibility. NH DES identified two sources as BART-eligible. These sources are listed below.

TABLE 3—BART-ELIGIBLE SOURCES IN NEW HAMPSHIRE

Source and unit	Location	BART source category	2002 Emissions (ton/yr)	Base visibility impact (dv)
PSNH—Merrimack Station, Unit MK2.	Bow, NH	320 MW EGU	SO_2: 20,902 NO_X: 2,871 PM: 210	Acadia NP: 2.25. Great Gulf: 1.81. Lye Brook: 0.61.
PSNH—Newington Station, Unit NT1.	Newington, NH	400 MW EGU	SO_2: 5,226 NO_X: 943 PM: 338	Acadia NP: 1.22. Great Gulf: 0.99. Lye Brook: 0.28.

2. Identification of Sources Subject to BART

New Hampshire, working with MANE–VU, found that every MANE–VU State with BART-eligible sources contributes to visibility impairment at one or more Class I areas to a significant degree (see the Contribution Report). According to Section III of the 2005 Regional Haze Rule, once the State has compiled its list of BART-eligible sources, it needs to determine whether to make BART determinations for all of the sources or to consider exempting some of them from BART because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Because both of the BART-eligible sources in New Hampshire contribute to visibility impairment to a significant degree, they are both subject to BART.

3. The New Hampshire BART Analysis Protocol

Forty CFR 51.308(e)(1)(ii)(A) requires that, for each BART-eligible source within the State, any BART determination must be based on an analysis of the best system of continuous emission control technology available and the associated emission reductions achievable. In addition to considering available technologies, this analysis must evaluate five specific factors for each source: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of visibility improvement which may reasonably be anticipated from the use of BART.

To address the fifth factor, the degree of visibility improvement which may be reasonably anticipated from the use of BART, NH DES conducted California Puff Model (CALPUFF) and CALGRID photochemical grid[11] modeling analyses to assess the visibility effects of BART controls for both PSNH Merrimack Station Unit MK2 and PSNH Newington Station Unit NT1. For theses analyses, NH DES ran the CALPUFF model for each unit under uncontrolled (current allowable) and controlled conditions (post-control scenarios being assessed). Results were tabulated for the average of the 20% worst natural visibility days at each nearby Class I area and the 20% worst baseline visibility modeled day at each nearby Class I area. For any pair of control levels evaluated, the difference in the level of impairment predicted is the degree of improvement in visibility expected.

4. Source Specific BART Determinations

The following section discusses the BART determinations for sources in New Hampshire.

a. Public Service of New Hampshire (PSNH) Merrimack Station

i. Background

PSNH Merrimack Station has two coal-fired steam-generating boilers. Only one of the boilers (MK2) is subject to BART, the other unit (MK1) was put into operation prior to 1962.

Unit MK2 is a wet bottom, cyclone-type boiler with a heat input rating of 3,473 MMBtu/hr and an electrical output of 320 MW. The unit is currently equipped with selective catalytic reduction (SCR) for NO_X control, and two electrostatic precipitators (ESPs) operated in series to capture particulate matter (PM) in the flue gases.

ii. Boiler MK2

(1) PM BART Review: PM levels are currently controlled with two dry ESPs in combination with fly ash reinjection. These existing ESPs were previously upgraded to include state-of-the-art electronic controls. Adding a third ESP was found to be unreasonable due to space limitations. The current permit limit for this unit is 0.227 lb of total suspended particulate (TSP)/million british thermal unit (MMBtu). Limited stack tests indicate that the actuall TSP emission rate is much lower, averaging 0.034 lb TSP/MMBtu. The NH DES model scenario of upgrading the current ESPs to 90% control resulted in a visibility improvement of 0.16 dv at Acadia, 0.12 dv at Great Gulf, and 0.03 dv at Lye Brook.

NH DES determined that the installation of additional PM controls is unlikely to result in substantial visibility improvement. However, based on the limited available stack test data, NH DES determined that the current emission limit of 0.227 lb/MMBtu was not reflective of the performance capabilities of the control equipment. The MANE–VU recommended particulate matter limit for non-CAIR EGUs is 0.02–0.04 lb/MMBtu.[12] New Hampshire has adopted a new regulation [13] which places Units MK1 and MK2 within a regulatory ''bubble'' for the purposes of TSP compliance. The revised emission limit is 0.08 lb TSP/MMBtu for both Units MK1 and MK2. New Hampshire defined this level of control as BART.

[11] Additional detail regarding the CALPUFF and CALGRID modeling is provided in Attachment X-BART Analysis for Sources in New Hampshire of the SIP submittal.

[12] The MANE–VU Workgroup Recommended level of BART control can be found in Attachment W—''MANE–VU Five-Factor Analysis of BART-eligible Sources'' of the SIP submittal.

[13] Env-A 2300 Mitigation of Regional Haze, effective January 8, 2011.

(2) SO_2 BART Review: Emissions of SO_2 from MK2 are currently controlled by a fuel sulfur limit of 2.0 lb sulfur/MMBtu. The most stringent retrofit control technology for SO_2 controls is wet flue gas desulfurization (FGD). New Hampshire law requires the installation of a wet FGD for mercury removal [14] on unit MK1 and MK2. As a co-benefit, the FGD is required to achieve at least 90% SO_2 control. Because this installation is already mandated and the removal rate approaches the MANE–VU recommended limit of 95% for non-CAIR EGUs, New Hampshire determined that the BART SO_2 emission limit for this unit is at least 90% control. Current permit conditions require the facility to submit calendar monthly emission rates for the preceding 12 months by December 31, 2014. At that time, New Hampshire will determine the maximum sustainable rate of control. As specified by permit conditions, in no case may this rate be less than 90% control. In addition, emissions from MK1 will also be controlled via the FGD.

(3) NO_X BART Review: PSNH currently operates SCR on MK2. It was installed in 1994 to meet other air quality requirements (ozone season NO_X). Selective non-catalytic reduction (SNCR) is the only other post combustion control technology available for controlling NO_X and is generally considered to be less effective. The existing SCR has received previous retrofits to improve performance. Additional upgrades would require major redesign and construction. Capital cost would be comparable to installing a new SCR and would achieve only marginal additional reduction. Because Unit MK2 has an existing SCR system and can operated year-round at reasonable cost, full time operation of the existing SCR was determined by New Hampshire to be BART for NO_X control. In addition, New Hampshire reduced the permitted NO_X emission limit from a 0.86 lb/MMBtu annual average to a 0.30 lb/MMBtu 30-day rolling average.

iii. EPA Assessment

For PM, New Hampshire decided to provide some level of flexibility to Merrimack Station which has a source subject to BART (MK2) and a source not subject to BART (MK1). If only MK1 operated, the emission limit required by New Hampshire would represent a decrease of 70.4% from the MK1 emission limit of 0.27 lb/MMBtu. At worst, when only MK2 is operating, the emission limit represents a decrease of 64.8% from the currently permitted limit of 0.227 lb/MMBtu. Additionally, the emission limit chosen by New Hampshire also results in a lower emission rate from the combined units than if New Hampshire had only required MK2 to meet the limit suggested by MANE–VU.[15] Therefore New Hampshire's proposed BART control limits for PM are reflective of the MANE–VU recommended limitation. Considering the current controls on emissions from Merrimack Station—two ESPs in series—as well as the reductions guaranteed by New Hampshire's limits, EPA is proposing to find that New Hampshire's BART limits for PM at Merrimack Station are reasonable.

EPA is also proposing to find that New Hampshire's analyses and conclusions of BART emission limits for SO_2 and NO_X for units located at the Merrimack Station facility are reasonable. EPA has reviewed the New Hampshire analyses and concluded they were conducted in a manner consistent with the RHR and EPA's BART Guidelines.

b. PSNH Newington Station

i. Background

PSNH Newington is comprised of one 400 MW electrical generating unit, NT1. Unit NT1 is principally operated during periods of peak electrical demand. The unit is capable of burning oil and/or natural gas. However, because of physical limitations on the boiler's design, the unit can only operate up to 50 percent maximum heat input when firing only natural gas.

Current emission controls consist of: low-NO_X burners, an overfire air system, and water injection for NO_X control; a sulfur in fuel oil limit of 2.0% for SO_2 control; and an ESP for PM control.

ii. Boiler NT1

(1) PM BART Review: PM is currently controlled with an ESP. An ESP is considered the most stringent control available. The current permit limit is 0.22 lb TSP/MMBtu. A single available stack test yielded a controlled TSP emission rate in the vicinity of 0.06 lb TSP/MMBtu. The facility's Title V operating permit requires a compliance stack test for PM emissions be performed and the permit limit to be amended, as appropriate, prior to March 31, 2012.

(2) SO_2 BART Review: SO_2 is currently controlled by a 2.0% sulfur by weight fuel oil limit for No. 6 oil, a 0.4% sulfur by weight in fuel oil limit for No. 2 oil, and the use of natural gas. New Hampshire identified FGD, a 1.0% sulfur limit, a 0.5% sulfur limit, and 0.3% sulfur limit as feasible controls.

There is little experience with the cost data for installing flue gas desulfurization at oil-fired power plants. Using the FGD installation at Merrimack station as a guide, New Hampshire estimated that the capital cost would roughly be $422 million.[16]

New Hampshire analyzed switching from 2% sulfur by weight No. 6 oil to 1%, 0.7%, 0.5%, or 0.3% sulfur by weight No. 6 oil as potential BART controls. A summary of the cost, the expected visibility improvement at the highest visibility impacted Class I area—Acadia National Park, and the cumulative visibility improvement, are detailed in Table 4, below.

[14] See NH RSA Chapter 125–I, Air Toxics Control Act (*www.gencourt.state.nh.us/rsa/html/x/125-i/125-i-mrg.htm*), and in NH Code of Administrative Rules Chapter Env-A 1400, Regulated Toxic Air Pollutants. (*http://des.nh.gov/organization/commissioner/legal/rules/documents/env-a1400.pdf*).

[15] For the ''bubble,'' the combined emission rate if both units are operating is 377 lb/hr:

0.08 lb/MMBtu × 4,711 MMBtu/hr = 377 lb/hr.

Without the ''bubble,'' the sum of the individual emission rates applying MANE–VU's presumptive PM emission limit of 0.04 lb/MMBtu would be 473 lb/hr:

(0.04 lb/MMBtu × 3,473 MMBtu/hr) + (0.27 lb/MMBtu × 1,238 MMBtu/hr) = 473 lb/hr.

New Hampshire's approach therefore results in a decrease of almost 100 lb/hr beyond what application of the MANE–VU suggested limit would require.

[16] At this cost, conservatively assuming a 100% removal efficiency (NT1 emitted 5226 tons of SO_2 per year during the baseline period), the $/ton for FGD is approximately $80,750/ton. In addition, the 2005 NESCAUM report, ''*Assessment of Control Options for BART-Eligible Sources,*'' *www.nescaum.org/documents/bart-control-assessment.pdf/*, estimated the cost of FGD for oil-fired units could be twice that of coal-fired units. EPA is proposing to find as reasonable New Hampshire's determination that the installation of FGD is cost prohibitive.

TABLE 4—INCREASED COST AND VISIBILITY IMPROVEMENT EXPECTED FROM INSTALLATION OF SO_2 CONTROLS

% Sulfur	Increased cost/hr		$/ton SO_2 reduced		Visibility improvement Acadia (dv)	Cumulative visibility improvement (dv)
	Low	High	Low	High		
2% to 1%	$0.00	$2,993	$0.00	$1,030	0.3	0.59
2% to 0.7%	1,346	4,712	402	1,407	.....	.....
2% to 0.5%	2,020	6,059	528	1,583	0.46	0.89
2% to 0.3%	2,693	11,445	627	2,664	0.52	1.0

In addition to cost and expected visibility improvement, New Hampshire looked at other non-environmental impacts such as fuel availability, current fuel oil usage, and the existing inventory. While 0.5% sulfur by weight No. 6 fuel oil is widespread in northern New England, 0.3% sulfur by weight fuel oil is still very limited in availability. In addition, with recent utilization levels around 10% capacity, it is uncertain when NT1 will consume the existing supply of higher sulfur fuel oil stored on site.

New Hampshire has determined that an SO_2 emission limit of 0.5 lb SO_2/MMBtu is the appropriate level of BART control. This emission limit is comparable to requiring the use of 0.5% sulfur by weight No. 6 fuel oil while giving the facility flexibility to blend the existing fuel oil with natural gas.

(3) NO_X BART Review: NT1 currently operates low-NO_X burners, an over-fire air system, and water injection to minimize NO_X formation. The facility's existing permit limits NO_X emission to a daily average of 0.35 lb/MMBtu when burning oil and 0.25 lb/MMBtu when burning a combination of oil and gas. Other potential NO_X controls include SNCR and SCR. New Hampshire estimates the cost of control to be $1,030/ton and $1,180 ton for SNCR and SCR, respectively. The annualized cost is $0.7 million for SNCR and to $1.3 million for SCR. However, both SNCR and SCR will increase ammonia emissions which can result in additional visibility impairment. Modeling indicates that the greatest expected visibility improvement from SCR is 0.34 dv at Acadia, with a cumulative potential improvement of 0.76 dv across three impacted Class I areas. New Hampshire determined that the current system of low-NO_X burners, over-fire air, and water injection represents BART.

iii. EPA Assessment

EPA is proposing to find that New Hampshire's determination of PM BART controls for Newington Station is reasonable. ESP is considered the most stringent control technology and EPA assumes that the permit limit set after stack testing will reflect the fullest extent of reductions that the facility can meet with the use of the ESP.

While New Hampshire did not require the lowest sulfur content fuel potentially available, EPA believes that New Hampshire's consideration of additional factors, such as the limited availability of 0.3% sulfur No. 6 fuel oil and the limited additional improvement in visibility, is reasonable. Therefore EPA is proposing to approve New Hampshire's determination of SO_2 BART controls for Newington Station.

Finally, while the cost per ton for the installation of SNCR or SCR is likely not cost prohibitive, given the limited visibility improvement projected as compared to the current controls and with the limited use of the unit, EPA is proposing to find that New Hampshire's determination that current controls satisfy NO_X BART is reasonable.

5. Enforceability of BART

As part of New Hampshire's January 14, 2011 supplemental Regional Haze SIP submittal, NH DES included the newly adopted ''Env-A 2300 Mitigation of Regional Haze'' and the Merrimack Station temporary permit TP–0008, which detail emission limits, and recordkeeping and reporting requirements associated with the installation of the identified BART controls. EPA is proposing to approve the submitted rule and permit as part of this rulemaking action. If finalized, as proposed, these conditions will become federally enforceable.

E. Long-Term Strategy (LTS)

As described in Section II.E of this action, the LTS is a compilation of State-specific control measures relied on by the State to obtain its share of emission reductions to support the RPGs established by Maine, New Hampshire, Vermont, and New Jersey (the nearby Class I area States). New Hampshire's LTS for the first implementation period addresses the emissions reductions from federal, State, and local controls that take effect in the State from the baseline period starting in 2002 until 2018. New Hampshire participated in the MANE–VU regional strategy development process. As a participant, New Hampshire supported a regional approach toward deciding which control measures to pursue for regional haze, which was based on technical analyses documented in the following reports: (a) The MANE–VU Contribution Report; (b) the Reasonable Progress Report; (c) *Five-Factor Analysis of BART-Eligible Sources: Survey of Options for Conducting BART Determinations,* available at *www.nescaum.org/documents/bart-final-memo-06-28-07.pdf;* and (d) *Assessment of Control Technology Options for BART-Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants and Paper, and Pulp Facilities,* available at *www.nescaum.org/documents/bart-control-assessment.pdf.*

The LTS was developed by New Hampshire, in coordination with MANE–VU, identifying the emissions units within New Hampshire that are currently likely to have the largest impacts on visibility at nearby Class I areas, estimating emissions reductions for 2018, based on all controls required under federal and State regulations for the 2002–2018 period (including BART), and comparing projected visibility improvement with the uniform rate of progress for the nearby Class I area.

New Hampshire's LTS includes measures needed to achieve its share of emissions reductions agreed upon through the consultation process with MANE–VU Class I States and includes enforceable emissions limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals established by Maine, Vermont, and New Jersey for their Class I areas.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The State-wide emissions inventories used in the regional haze technical analyses were developed by MARAMA for MANE–VU with assistance from New Hampshire. The 2018 emissions

inventory was developed by projecting 2002 emissions forward based on assumptions regarding emissions growth due to projected increases in economic activity and emission reductions expected from federal and State regulations. MANE–VU's emissions inventories included estimates of NO_X, coarse particulate matter (PM_{10}), $PM_{2.5}$, and SO_2, VOC, and NH_3. The BART Guidelines direct States to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in Section III.C.1 above, MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic region. It was also determined that the total NH_3 emissions in the MANE–VU region are extremely small.

MANE–VU developed emissions inventories for four inventory source classifications: (1) Stationary point sources; (2) stationary area sources; (3) non-road mobile sources; and (4) on-road mobile sources. The New York Department of Environmental Conservation also developed an inventory of biogenic emissions for the entire MANE–VU region. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. Non-road mobile sources are equipment that can move but do not use the roadways. On-road mobile source emissions are automobiles, trucks, and motorcycles that use the roadway system. The emissions from these sources are estimated by vehicle type and road type. Biogenic sources are natural sources like trees, crops, grasses, and natural decay of plants. Stationary point sources emission data is tracked at the facility level. For all other source types, emissions are summed on the county level.

There are many federal and State control programs being implemented that MANE–VU and New Hampshire anticipate will reduce emissions between the baseline period and 2018. Emission reductions from these control programs in the MANE–VU region were projected to achieve substantial visibility improvement by 2018 at all of the MANE–VU Class I areas. To assess emissions reductions from ongoing air pollution control programs, BART, and reasonable progress measures, MANE–VU developed emissions projections for 2018 called ''Best and Final.'' The emissions inventory provided by the State of New Hampshire for the ''Best and Final'' 2018 projections is based on expected control requirements.

New Hampshire relied on emission reductions from a number of ongoing and expected air pollution control programs as part of the State's long term strategy. For electrical generating units (EGUs), New Hampshire's Regulation Chapter Env-A 3200, NO_X Budget Trading Program which limits ozone season NO_X emissions on all fossil-fuel-fired EGUs greater than 15 MW to 0.15 lb/MMBtu. However, a unit can meet this limit via NO_X credits.

New Hampshire also relied on the following controls on non-EGU point sources in estimating 2018 emissions inventories: 2-year, 4-year, 7-year, and 10-year Maximum Achievable Control Technology (MACT) Standards; Combustion Turbine and Reciprocating Internal Combustion Engine (RICE) MACT; and Industrial Boiler/Process Heater MACT.

On July 30, 2007, the U.S. District Court of Appeals mandated the vacatur and remand of the Industrial Boiler MACT Rule. *NRDC* v. *EPA,* 489F.3d 1250 (D.C. Cir. 2007). This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator (CISWI) Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010, (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). On May 18, 2011, EPA stayed the effective date of the Industrial Boiler MACT pending review by the D.C. Circuit or the completion of EPA's reconsideration of the rule. See 76 FR 28662.

On December 2, 2011, EPA issued a proposed reconsideration of the MACT standards for existing and new Boilers at major (76 FR 80598) and area (76 FR 80532) source facilities, and for Commercial and Industrial Solid Waste Incinerators (76 FR 80452). On January 9, 2012, the U.S. District Court for the District of Columbia vacated EPA's stay of the effectiveness date of the Industrial Boiler MACT, reinstating the original effective date and therefore requiring compliance with the current rule in 2014. *Sierra Club* v. *Jackson,* Civ. No. 11–1278, slip op. (D.D.C. Jan. 9, 2012).

Even though New Hampshire's modeling is based on the old Industrial Boiler MACT limits, New Hampshire modeling conclusions are unlikely to be affected because the expected reductions in SO_2 and PM resulting from the new MACT are small relative to the New Hampshire inventory. Therefore, EPA is proposing to find that the expected reductions of the new rule are acceptable since the final rule requires compliance by 2014. This provides New Hampshire time to assure the required controls are in place prior to the end of the first implementation period in 2018. In addition, the RHR requires that any resulting differences between emissions projections and actual emissions reductions that may occur will be addressed during the five-year review prior to the next 2018 regional haze SIP.

Controls on area sources expected in 2018 include VOC control for consumer products (Env-A 4100), architectural and industrial maintenance coatings (Env-A 4200), portable fuel containers (Env-A 4000), and solvent cleaning (Env-A 1221).

Controls on mobile sources expected in 2018 include: Stage I vapor recovery systems at gasoline dispensing facilities in the State and Stage II vapor recovery at any gasoline dispensing facility in the four southern counties classified as ozone nonattainment areas (Rockingham, Strafford, Hillsborough, and Merrimack) (Env-A 1205, later re-numbered to Env-Wm 1404);[17] Federal On-Board Refueling Vapor Recovery (ORVR) Rule; Federal Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Requirements; Federal Heavy-Duty Diesel Engine Emission Standards for Trucks and Buses; and Federal Emission Standards for Large Industrial Spark-Ignition Engines and Recreation Vehicles.

Controls on non-road sources expected by 2018 include the following federal regulations: Control of Air Pollution: Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression Ignition Engines at or above 37 kilowatts (59 FR 31306, (June 17, 1994)); Control of Emissions of Air Pollution from Nonroad Diesel Engines (63 FR 56967, (October 23, 1998)); Control of Emissions from Nonroad Large Spark-Ignition Engines and Recreational Engines (67 FR 68241, (November 8, 2002)); and Control of Emissions of Air Pollution from

[17] New Hampshire recently revised Env-Wm 1404 to no longer require Stage II vapor recovery controls as of January 1, 2012. The previous version of the rule, however, is still currently included in the New Hampshire SIP. New Hampshire DES is currently developing a SIP submittal for the revised rule which would ensure that Clean Air Act antibacksliding requirements are met. The SIP submittal must provide for equivalent or greater reductions than under the currently approved Stage II program. Therefore, consideration of these reductions in the model is reasonable.

Nonroad Diesel Engines and Fuels (69 FR 38958, (June 29, 2004)).

Tables 5 and 6 are summaries of the 2002 baseline and 2018 estimated emissions inventories for New Hampshire. The 2018 estimated emissions include emissions growth as well as emission reductions due to ongoing emission control strategies and reasonable progress goals.

TABLE 5—2002 EMISSION INVENTORY SUMMARY FOR NEW HAMPSHIRE

[Tons per year]

	VOC	NO_X	PM_{10}	$PM_{2.5}$	SO_2	NH_3
Point	1,599	9,759	3,332	2,938	46,560	74
Area	65,370	10,960	43,328	17,532	7,072	2,158
On-Road Mobile	16,762	33,283	814	562	777	1,447
Non-Road Mobile	22,376	9,912	1,058	965	891	9
Biogenics	141,894	482	0	0	0	0
Total	248,001	64,396	48,532	21,997	55,300	3,688

TABLE 6—2018 EMISSIONS INVENTORY SUMMARY FOR NEW HAMPSHIRE

[Tons per year]

	VOC	NO_X	PM_{10}	$PM_{2.5}$	SO_2[18]	NH_3
Point	1,291	4,258	3,397	3,208	13,880	184
Area	62,649	12,180	21,775	14,993	7,421	2,789
On-Road Mobile	6,564	7,671	282	263	537	1,916
Non-Road Mobile	15,003	6,344	697	634	246	11
Biogenics	141,894	482	0	0	0	0
Total	227,401	30,935	[19] 26,151	19,098	22,084	4,900

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

MANE–VU performed modeling for the regional haze LTS for the 11 Mid-Atlantic and Northeast States and the District of Columbia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. MANE–VU used the following modeling system:

• Meteorological Model: The Fifth-Generation Pennsylvania State University/National Center for Atmospheric Research (NCAR) Mesoscale Meteorological Model (MM5) version 3.6 is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.

• Emissions Model: The Sparse Matrix Operator Kernel Emissions (SMOKE) version 2.1 modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.

• Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) version 4.5.1 is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale.

• Air Quality Model: The Regional Model for Aerosols and Deposition (REMSAD), is a Eulerian grid model that was primarily used to determine the attribution of sulfate species in the Eastern U.S. via the species-tagging scheme.

• Air Quality Model: The California Puff Model (CALPUFF), version 5 is a non-steady-state Lagrangian puff model used to access the contribution of individual States' emissions to sulfate levels at selected Class I receptor sites.

CMAQ modeling of regional haze in the MANE–VU region for 2002 and 2018 was carried out on a grid of 12x12 kilometer (km) cells that covers the 11 MANE–VU States (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont) and the District of Columbia and States adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. MANE–VU conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The MANE–VU States' modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, April 2007 (EPA–454/B–07–002), available at *www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf,* and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* August 2005 and updated

[18] The 2018 SO_2 Emission Inventroy has been adjusted to account for the lack of a low sulfur fuel oil strategy. The State had estimated that the low sulfur fuel oil strategy would result in an SO_2 reduction of 6,449 tons from area sources and 2,030 ton reduction from non-EGU point sources.

[19] An adjustment factor was applied during the processing of emissions data to restate fugitive particulate matter emissions. Grid models have been found to overestimate fugitive dust impacts when compared with ambient samples; therefore, an adjustment is typically applied to account for the removal of particles by vegetation and other terrain features. The summary emissions for PM_{10} in Table 6 reflect this adjustment. A comparable adjustment was not made to the PM_{10} value listed in Table 5.

November 2005 (EPA–454/R–05–001), available at *www.epa.gov/ttnchie1/eidocs/eiguid/index.html* (hereinafter referred to as '' EPA's Modeling Guidance'').

MANE–VU examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. MANE–VU used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once MANE–VU determined the model performance to be acceptable, MANE–VU used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the State of New Hampshire provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glide path and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA is proposing to find that the MANE–VU technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress is acceptable because the modeling system was chosen and used according to EPA Modeling Guidance. EPA agrees with the MANE–VU model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the New Hampshire LTS and regional haze SIP.

2. Meeting the MANE–VU ''Ask''

New Hampshire is home to two Class I areas, therefore it is required to establish RPGs. New Hampshire, in cooperation with the MANE–VU States, developed the MANE–VU ''Ask'' that will provide for reasonable progress towards achieving natural visibility at the MANE–VU Class I area. The ''Ask'' consists of: (a) Timely implementation of BART requirements; (b) a 90 percent reduction in SO_2 emissions from each of the EGU stacks identified by MANE–VU comprising a total of 167 stacks; (c) adoption of a low sulfur fuel oil strategy; and (d) continued evaluation of other control measures to reduce SO_2 and NO_X emissions.

a. Timely Implementation of BART

The New Hampshire BART determinations are discussed in detail in Section III.D. As previously noted, EPA is proposing to find that the BART determinations for Merrimack Station Unit MK2 and Newington Station NT1 are reasonable.

b. Ninety Percent Reduction in SO_2 Emissions From Each of the EGU Stacks Identified by MANE–VU Comprising a Total of 167 Stacks

New Hampshire has three EGU stacks identified by MANE–VU as a top contributor to visibility impairment in any of the MANE–VU Class I areas: MK1 and MK2 at Merrimack Station; and NT1 at Newington Station.

Merrimack Station is installing a wet flue gas desulfurization system on MK1 and MK2 which will reduce SO_2 emissions by at least 90%. Permit conditions require the facility to submit calendar monthly emission rates for the preceding 12 months by December 31, 2014. At that time, New Hampshire will determine the maximum sustainable rate of control. As specified by current permit conditions, in no case may this rate be less than 90% control. It is expected that the level of control will approach 95%. The New Hampshire BART determination for Newington Station NT1 is an SO_2 emission limit of 0.50 lb/MMBtu. This represents a 67% reduction in SO_2 emission from NT1.

The combination of reductions from the three identified stacks results in at least an overall 87% reduction in SO_2 emissions, comparable to the MANE–VU projected 90% reduction.

c. Continued Evaluation of Other Control Measures To Reduce SO_2 and NO_X Emissions Including the MANE–VU Low Sulfur Fuel Oil Strategy

The MANE–VU low sulfur fuel oil strategy includes: The Phase I reduction of distillate oil to 0.05% sulfur by weight (500 parts per million (ppm)) by no later than 2014; and the Phase II reductions of #4 residual oil to 0.25% sulfur by weight by no later than 2018; #6 residual oil to 0.5% sulfur by weight by no later than 2018; and further reduce the sulfur content of distillate oil to 15 ppm by 2018.

The reduction in SO_2 emissions from this low-sulfur fuel oil strategy by 2018 will yield corresponding reductions in sulfate aerosol, the main culprit in fine-particle pollution and regional haze. The MANE–VU analysis demonstrates that the reduction of the sulfur content in fuel oil will lead to an average reduction of 0.13–0.18 ug/m^3 in the 24 hour $PM_{2.5}$ concentration within New Hampshire, improving health and local visibility. In addition, the use of low sulfur fuels will result in cost savings to owners/operators of residential furnaces and boilers due to reduced maintenance costs and extended life of the units.

In its August 26, 2011 submittal, New Hampshire committed to the ''[c]ontinued evaluation of other possible control measures for haze-causing emissions, including participation in MANE–VU's low sulfur fuel oil strategy by 2018.'' While New Hampshire has not yet submitted a federally enforceable low sulfur fuel oil strategy, in addition to previously discussed SO_2 reductions, SO_2 emissions in New Hampshire have been reduced through the conversion of coal-fired Unit 5 at Schiller Station to a biomass-firing unit and the shutdown of Fraser LLC pulp and paper mill.[20]

EPA is proposing approval of the New Hampshire Regional Haze SIP for the first implementation period without inclusion of an adopted low sulfur fuel oil regulation.[21] While the additional reductions are somewhat less than the reductions projected to result from adoption of a low-sulfur fuel oil strategy, this shortfall is not anticipated to interfere with the ability of New Hampshire and the other Class I States to meet their respective reasonable progress goals. We encourage adoption of a low-sulfur fuel oil strategy by New Hampshire as such a strategy will have local air quality and some, limited visibility benefits, however, we do not believe it is a necessary component of an approvable Regional Haze SIP for New Hampshire for the first implementation period.

EPA also notes that implementation of recent federal measures, such as the

[20] The annual 2002 SO_2 emissions from Schiller Station Unit 5 and Fraser LLC were 2,796 tons and 638 tons, respectively.

[21] On January 15, 2009, EPA made a finding that, among other States, New Hampshire had failed to submit a Regional Haze SIP by the required deadline. 74 FR 2392. We have proposed a consent decree to resolve a deadline suit regarding this finding as well as the finding of failure for 36 other States, the District of Columbia, and the U.S. Virgin Islands. National Parks Conservation Association v. Jackson, Civ. No. 1:11-cv-1548 (D.D.C. 2011). Because we do not believe a low-sulfur fuel oil strategy is necessary for New Hampshire during this first implementation period, EPA is moving forward with this proposed approval of the State's SIP submittal in order to satisfy our obligations under the Clean Air Act.

Mercury and Air Toxics Standards (MATS) and the revised one hour SO_2 standard, is expected to result in further SO_2 emission reductions during the first planning period. Although expected emission reductions cannot be relied upon to demonstrate that New Hampshire has obtained its share of the emission reductions needed to meet the RPG for the area, once these measures are implemented and the reductions quantified, EPA expects that New Hampshire's overall SO_2 emission reductions will exceed those agreed to in the RPO process.

3. Additional Considerations for the LTS

Forty CFR 51.308(d)(3)(v) requires States to consider the following factors in developing the long term strategy:

- Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment;
- Measures to mitigate the impacts of construction activities;
- Emission limitations and schedules for compliance to achieve the reasonable progress goal;
- Source retirement and replacement schedules;
- Smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes;
- Enforceability of emissions limitations and control measures; and
- The anticipated net effect on visibility due to projected changes in point area, and mobile source emissions over the period addressed by the long term strategy.

a. Emission Reductions Including RAVI

No source in New Hampshire has been identified as subject to RAVI. A list of New Hampshire's ongoing air pollution control programs is included in Section III.E.1.

b. Construction Activities

The Regional Haze Rule requires New Hampshire to consider measures to mitigate the impacts of construction activities on regional haze. MANE–VU's consideration of control measures for construction activities is documented in ''*Technical Support Document on Measures to Mitigate the Visibility Impacts of Construction Activities in the MANE–VU Region,''* Draft, October 20, 2006.[22]

The construction industry is already subject to requirements for controlling pollutants that contribute to visibility impairment. For example, federal regulations require the reduction of SO_2 emissions from construction vehicles. At the State level, New Hampshire currently regulates emissions of fugitive dust through New Hampshire's Code of Administrative Rules Env-A 1002, Fugitive Dust, which requires the control of direct emissions of particulate matter from mining, transportation, storage, use, and removal activities.

MANE–VU's Contribution Report found that, from a regional haze perspective, crustal material generally does not play a major role. On the 20 percent best-visibility days during the 2000–2004 baseline period, crustal material accounted for 6 to 11 percent of the particle-related light extinction at the MANE–VU Class I Areas. On the 20 percent worst-visibility days, however, the contribution was reduced to 2 to 3 percent. Furthermore, the crustal fraction is largely made up of pollutants of natural origin (e.g., soil or sea salt) that are not targeted under the Regional Haze Rule. Nevertheless, the crustal fraction at any given location can be heavily influenced by the proximity of construction activities; and construction activities occurring in the immediate vicinity of MANE–VU Class I area could have a noticeable effect on visibility.

For this regional haze SIP, New Hampshire concluded that its current regulations are currently sufficient to mitigate the impacts of construction activities. Any future deliberations on potential control measures for construction activities and the possible implementation will be documented in the first regional haze SIP progress report. EPA is proposing to find that New Hampshire has adequately addressed measures to mitigate the impacts of construction activities.

c. Emission Limitations and Schedules for Compliance To Achieve the RPG

In addition to the existing CAA control requirements discussed in Section III.E.1, New Hampshire has adopted and submitted regulation Env-A 2300 Mitigation of Regional Haze to EPA as a SIP revision. This rule establishes SO_2, NO_X and PM emission limits for Merrimack Station units MK1 and MK2 and Newington Station NT1. EPA is proposing to approve this rule as part of today's action.

d. Source Retirement and Replacement Schedule

Forty CFR 51.308(d)(3)(v)(D) of the Regional Haze Rule requires New Hampshire to consider source retirement and replacement schedules in developing the long term strategy. Source retirement and replacement were considered in developing the 2018 emissions. The following sources in New Hampshire were shut down (or replaced) after the 2002 base year and therefore were not included in the 2018 inventory:

- PSNH Schiller Station Unit No. 5 replacement (Portsmouth, NH),
- Groveton Paperboard, Inc. (Groveton, NH), and
- Wausau Paper Printing & Writing, LLC (Groveton, NH).

Since the 2002 and 2018 inventories were developed, Fraser N.H. LLC (Berlin, NH) also shut down.

EPA is proposing to determine that New Hampshire has satisfactorily considered source retirement and replacement schedules as part of the LTS.

e. Smoke Management Techniques

The Regional Haze Rule requires States to consider smoke management techniques related to agricultural and forestry management in developing the long-term strategy. MANE–VU's analysis of smoke management in the context of regional haze is documented in ''*Technical Support Document on Agricultural and Smoke Management in the MANE–VU Region,''* September 1, 2006.[23]

New Hampshire does not currently have a Smoke Management Program (SMP). However, SMPs are required only when smoke impacts from fires managed for resources benefits contribute significantly to regional haze. The emissions inventory presented in the above-cited document indicates that agricultural, managed and prescribed burning emissions are very minor; the inventory estimates that, in New Hampshire, those emissions from those source categories totaled 498.5 tons of PM_{10}, 427.6 tons of $PM_{2.5}$ and 30.1 tons of SO_2 in 2002, which constitute 1.0%, 1.9% and 0.05% of the total inventory for these pollutants, respectively.

Source apportionment results show that wood smoke is a moderate contributor to visibility impairment at some Class I areas in the MANE–VU region; however, smoke is not a large contributor to haze in MANE–VU Class I areas on either the 20% best or 20% worst visibility days. Moreover, most of wood smoke is attributable to residential wood combustion. Therefore, it is unlikely that fires for agricultural or forestry management cause large impacts on visibility in any of the Class I areas in the MANE–VU region. On rare occasions, smoke from major fires

[22] This document has been provided as part of the docket to this proposed rulemaking.

[23] This document has been included as part of the docket to this proposed rulemaking.

degrades air quality and visibility in the MANE–VU area. However, these fires are generally unwanted wildfires that are not subject to SMPs. Therefore, a SMP is not required for New Hampshire. EPA proposes to approve New Hampshire's decision that an Agricultural and Forestry Smoke Management Plan to address visibility impairment is not required at this time.

f. Enforceability of Emission Limitations and Control Measures

All emission limitations included as part of New Hampshire's Regional Haze SIP are either currently federally enforceable or will become federally enforceable if this action is finalized as proposed. EPA is proposing to find that New Hampshire has adequately addressed the enforceability of emission limitations and control measures.

g. The Anticipated Net Effect on Visibility

As explained above, New Hampshire has not adopted the low sulfur fuel oil strategy included in the MANE–VU ''Ask.'' However, through implementation of BART and the targeted EGU strategy, New Hampshire will achieve a greater than 60% reduction in statewide SO_2 emissions. New Hampshire and EPA anticipate that the Class I areas impacted by New Hampshire will attain the visibility improvement expected for the first planning period.

In summary, EPA is proposing to find that New Hampshire's Regional Haze SIP meets, or is comparable to, the MANE–VU Ask, that the controls proposed in the SIP are reasonable for the LTS for the first implementation period, and that New Hampshire adequately addressed all the requirements of a LTS contained in the RHR.

F. Consultation With States and Federal Land Managers (FLMs)

On May 10, 2006, the MANE–VU State Air Directors adopted the Inter-RPO State/Tribal and FLM Consultation Framework that documented the consultation process within the context of regional phase planning, and was intended to create greater certainty and understanding among RPOs. MANE–VU States held ten consultation meetings and/or conference calls from March 1, 2007, through March 21, 2008. In addition to MANE–VU members attending these meetings and conference calls, participants from the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO, Midwest RPO, and the relevant Federal Land Managers were also in attendance. In addition to the conference calls and meeting, the FLMs were given the opportunity to review and comment on each of the technical documents developed by MANE–VU.

On August 1, 2008, New Hampshire submitted a draft Regional Haze SIP to the relevant FLMs for review and comment pursuant to 40 CFR 51.308(i)(2). The FLMs provided comments on the draft Regional Haze SIP in accordance with 40 CFR 51.308(i)(3). The comments received from the FLMs were addressed and incorporated in New Hampshire's SIP revision. Most of the comments were requests for additional detail as to various aspects of the SIP. These comments and New Hampshire's response to comments can be found in the docket for this proposed rulemaking.

On May 25, 2009, New Hampshire published a notice of agency rulemaking proposal. This initiated a 30-day comment period and a public hearing on June 24, 2009. On November 19, 2010, New Hampshire published a second notice of agency rulemaking proposal. This initiated a 30-day comment period and a public hearing on December 20, 2010. NHDES received comments from EPA, the Federal Land Managers, Appalachian Mountain Club, and Sierra Club. New Hampshire's response to comments is included as an attachment to the SIP submittal.

To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), New Hampshire commits in their SIP to ongoing consultation with the FLMs periodically and as circumstances require, on the following implementation items:

- Status of emission strategies identified in the SIP as contributing to improvements in the worst-day visibility;
- Summary of major new source permits issued;
- Status of New Hampshire's actions toward completing any future assessments or rulemakings on source identified as probable contributors to visibility impairment, but not directly addressed in the most recent SIP revision;
- Any changes to the monitoring strategy or status of monitoring stations that might affect tracking of reasonable progress;
- Work underway for preparing the 5-year SIP review and/or 10-year SIP revision, including any items where the FLM's consideration or support is requested; and
- Summary of topics discussed in ongoing communications (e.g. meetings, emails, etc.) between New Hampshire and the FLMs regarding implementation of the visibility improvement program.

EPA proposes to find that New Hampshire has addressed the requirements for consultation with States impacting New Hampshire's Class I areas and with the Federal Land Managers.

G. Monitoring Strategy and Other Implementation Plan Requirements

Forty CFR 51.308(d)(4) of the Regional Haze Rule requires a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all mandatory Class I Areas within the State of New Hampshire. The monitoring strategy relies upon participation in the IMPROVE network.

The State of New Hampshire participates in the IMPROVE network, and will evaluate the monitoring network periodically and make those changes needed to be able to assess whether reasonable progress goals are being achieved in each of New Hampshire's mandatory Class I Areas. In its SIP submittal, New Hampshire is committing to continued support of the IMPROVE network.

Forty CFR 51.308(d)(4)(i) requires States to establish additional monitoring sites or equipment as needed to assess whether reasonable progress goals are being achieved toward visibility improvement at mandatory Class I areas. At this time, the current monitors are sufficient to make this assessment.

In its SIP submittal, New Hampshire commits to meet the requirements under 40 CFR 51.308(d)(4)(iv) to report to EPA visibility data for each of New Hampshire's Class I Areas annually.

The Regional Haze Rule (40 CFR 51.308(d)(4)(vi)) requires the inclusion of other monitoring elements, including reporting, recordkeeping, and other measures, necessary to assess and report visibility. While the State of New Hampshire has concluded that the current IMPROVE network provides sufficient data to adequately measure and report progress toward the goals set for the MANE–VU Class I sites to which the State contributes, the State has also found additional monitoring information useful to assess visibility and fine particle pollution in the region in the past. Examples of these data include results from: The MANE–VU Regional Aerosol Intensive Network (RAIN), which provides continuous, speciated information on rural aerosol characteristics and visibility parameters; the EPA Clean Air Status and Trends Network (CASTNET), which has provided complementary rural fine particle speciation data at non-class I

sites; the EPA Speciation Trends Network (STN), which provides speciated, urban fine particle data to help develop a comprehensive picture of local and regional sources; state-operated rural and urban speciation sites using IMPROVE or STN methods; and the Supersites program, which has provided information through special studies that generally expands the understanding of the processes that control fine particle formation and transport in the region. New Hampshire plans to continue to utilize these and other data—as they are available and fiscal realities allow—to improve their understanding of visibility impairment and to document progress toward reasonable progress goals under the Regional Haze Rule.

H. Periodic SIP Revisions and Five-Year Progress Reports

Consistent with the requirements of 40 CFR 51.308(g), New Hampshire has committed to submitting a report on reasonable progress (in the form of a SIP revision) to the EPA every five years following the initial submittal of its regional haze SIP. The reasonable progress report will evaluate the progress made towards the RPGs for the MANE–VU Class I areas, located in Maine, New Hampshire, Vermont, and New Jersey.

Forty CFR 51.308(f) requires New Hampshire to submit periodic revisions to its Regional Haze SIP by July 31, 2018, and every ten years thereafter. New Hampshire acknowledges and agrees to comply with this schedule.

Pursuant to 40 CFR 51.308(d)(4)(v), NHDES will also make periodic updates to the New Hampshire emissions inventory. NHDES plans to complete these updates to coincide with the progress reports. Actual emissions will be compared to projected modeled emissions in the progress reports.

Lastly, pursuant to 40 CFR 51.308(h), NHDES will submit a determination of adequacy of its regional haze SIP revision whenever a progress report is submitted. New Hampshire's regional haze SIP states that, depending on the findings of its five-year review, New Hampshire will take one or more of the following actions at that time, whichever actions are appropriate or necessary:

- If New Hampshire determines that the existing State Implementation Plan requires no further substantive revision in order to achieve established goals for visibility improvement and emissions reductions, NHDES will provide to the EPA Administrator a negative declaration that further revision of the existing plan is not needed.
- If New Hampshire determines that its implementation plan is, or may be, inadequate to ensure reasonable progress as a result of emissions from sources in one or more other State(s) which participated in the regional planning process, NHDES will provide notification to the EPA Administrator and to those other State(s). New Hampshire will also collaborate with the other State(s) through the regional planning process for the purpose of developing additional strategies to address any such deficiencies in New Hampshire's plan.
- If New Hampshire determines that its implementation plan is, or may be, inadequate to ensure reasonable progress as a result of emissions from sources in another country, NHDES will provide notification, along with available information, to the EPA Administrator.
- If New Hampshire determines that the implementation plan is, or may be, inadequate to ensure reasonable progress as a result of emissions from sources within the State, NHDES will revise its implementation plan to address the plan's deficiencies within one year from this determination.

IV. What action is EPA proposing to take?

EPA is proposing to approve New Hampshire's January 29, 2010 Regional Haze SIP revision, amended January 14, 2011, and August 26, 2011, as meeting the applicable implementing regulations found in 40 CFR 51.308. EPA is also proposing to approve, and incorporate into the New Hampshire SIP, New Hampshire's regulation Env-A 2300 Mitigation of Regional Haze and PSNH Merrimack Station Temporary Permit TP–0008 Flue Gas Desulfurization System dated March 9, 2009, and reissued August 2, 2010, and July 8, 2011.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 15, 2012.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

[FR Doc. 2012–4677 Filed 2–27–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0144, FRL–9640–7]

Approval and Promulgation of Air Quality Implementation Plans; State of Maryland; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Maryland State Implementation Plan (SIP) submitted by the State of Maryland through the Maryland Department the Environment (MDE) on February 13, 2012, that addresses regional haze for the first implementation period. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require states to prevent any future, and remedy any existing, anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing to determine that the Regional Haze plan submitted by Maryland satisfies the requirements of the CAA. EPA is taking this action pursuant to those provisions of the CAA. EPA is also proposing to approve this revision as meeting the infrastructure requirements relating to visibility protection for the 1997 8-Hour Ozone National Ambient Air Quality Standard (NAAQS) and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS.

DATES: Comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2012–0144 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2012–0144, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2012–0144. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, Maryland 21230.

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SUPPLEMENTARY INFORMATION: On February 13, 2012, the MDE submitted a revision to its SIP to address Regional Haze for the first implementation period. Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit $PM_{2.5}$ (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter, which impairs visibility by

scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [1] in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers or about one-fifth of the visual range that would exist under estimated natural conditions (64 FR 35714, July 1, 1999).

B. Background Information

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [2] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment'' (45 FR 80084). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved. Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section II of this notice. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[3] Section 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Mid-Atlantic Region Air Management Association (MARAMA), the Northeast States for Coordination Air Use Management (NESCAUM), and the Ozone Transport Commission (OTC) established the Mid-Atlantic/Northeast Visibility Union (MANE–VU) regional planning organization. MANE–VU is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Mid-Atlantic and Northeast corridor of the United States. Member states and tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, St. Regis Mohawk Tribe, and Vermont.

D. Interstate Transport for Visibility

Sections 110(a)(1) and 110(a)(2)(D)(i)(II) of the CAA require that within three years of promulgation of a NAAQS, a state must ensure that its SIP, among other requirements, ''contains adequate provisions prohibiting any source or other types of emission activity within the state from emitting any air pollutant in amounts which will interfere with measures required to be included in the applicable implementation plan for any other State to protect visibility.'' Similarly, section 110(a)(2)(J) requires that such SIP ''meet the applicable requirements of part C of (Subchapter I) (relating to visibility protection).''

EPA's 2006 Guidance, entitled ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' recognized the possibility that a state could potentially meet the visibility portions of section 110(a)(2)(D)(i)(II) through its submission of a Regional Haze SIP, as required by sections 169A and 169B of the CAA. EPA's 2009 guidance, entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[3] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

(NAAQS),'' recommended that a state could meet such visibility requirements through its Regional Haze SIP. EPA's rationale supporting this recommendation was that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis. The common understanding was that, as a result of this collaborative environment, each state would take action to achieve the emissions reductions relied upon by other states in their reasonable progress demonstrations under the RHR. This interpretation is consistent with the requirement in the RHR that a state participating in a regional planning process must include ''all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.'' 40 CFR 51.308(d)(3)(ii).

The regional haze program, as reflected in the RHR, recognizes the importance of addressing the long-range transport of pollutants for visibility and encourages states to work together to develop plans to address haze. The regulations explicitly require each state to address its ''share'' of the emission reductions needed to meet the reasonable progress goals for neighboring Class I areas. States working together through a regional planning process are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. 40 CFR 51.308(d)(3)(ii). Given these requirements, appropriate regional haze SIPs will contain measures that will achieve these emissions reductions and will meet the applicable visibility related requirements of section 110(a)(2).

As a result of the regional planning efforts in the MANE–VU, all states in the MANE–VU region contributed information to a Technical Support System (TSS) which provides an analysis of the causes of haze, and the levels of contribution from all sources within each state to the visibility degradation of each Class I area. The MANE–VU states consulted in the development of reasonable progress goals, using the products of this technical consultation process to co-develop their reasonable progress goals for the MANE–VU Class I areas. The modeling done by MANE–VU relied on assumptions regarding emissions over the relevant planning period and embedded in these assumptions were anticipated emissions reductions in each of the states in MANE–VU, including reductions from BART and other measures to be adopted as part of the state's long term strategy for addressing regional haze. The reasonable progress goals in the regional haze SIPs that have been prepared by the states in the MANE–VU region are based, in part, on the emissions reductions from nearby states that were agreed on through the MANE–VU process.

Maryland submitted a Regional Haze SIP on February 13, 2012, to address the requirements of the RHR and the related visibility requirements set forth in section 110(a)(2)(D)(i)(II) and 110(a)(2)(J). On July 27, 2007, Maryland submitted its original 1997 Ozone NAAQS infrastructure SIP and on April 3, 2008, Maryland submitted its original 1997 $PM_{2.5}$ NAAQS infrastructure SIP. On July 21, 2010, Maryland submitted an infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS. In its Regional Haze SIP, Maryland indicated that it will meet its obligations related to visibility pursuant to section 110(a)(2) of the CAA, including but not limited to, section 110(a)(2)(D)(i)(II) and 110(a)(2)(J). While these SIP submittals address the visibility requirements of section 110(a)(2)(D)(i)(II) and 110(a)(2)(J), the February 13, 2012 submittal supersedes these previous submittals. EPA has reviewed Maryland's Regional Haze SIP and, as explained in section IV of this action, proposes to find that Maryland's Regional Haze submittal meets the portions of the requirements of the CAA section 110(a)(2) relating to visibility protection for the 1997 8–Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS.

II. What are the requirements for the regional haze SIPs?

A. The CAA and the Regional Haze Rule (RHR)

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail in this notice.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[4]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20% least impaired (''best'') and 20% most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and

[4] The preamble to the RHR provides additional details about the deciview (64 FR 35714, 35725, July 1, 1999).

then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance'') and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20% least impaired days and 20% most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each approximately 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the approximately 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emission sources that may be affecting visibility impairment at the Class I state's areas. 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [5] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as

[5] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

''BART eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. CAA section 169(g)(4)). 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for the Clean Air Interstate Rule (CAIR) (70 FR 39104, July 6, 2005). EPA's regulations provide that states participating in the CAIR cap and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97, do not require affected BART eligible electric generating units (EGUs) to install, operate, and maintain BART for emissions of SO_2 and NO_X (40 CFR 51.308(e)(4)). Since CAIR is not applicable to emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies (76 FR 82219). EPA also proposed to revise the RHR to allow states to meet the requirements of an alternative program in lieu of BART by participation in the trading programs under the Transport Rule. EPA has not taken final action on that rule.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address Reasonably Attributable Visibility Impairment; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c).

On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze

visibility impairment at Class I areas both within and outside the state;

- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. What is EPA's analysis of Maryland's Regional haze submittal?

On February 13, 2012, the MDE submitted revisions to the Maryland SIP to address regional haze as required by EPA's RHR.

A. Affected Class I Areas

Maryland has no Class I areas within its borders, but has been identified as influencing the visibility impairment of the following Class I areas: Acadia National Park, Brigantine National Wildlife Refuge, and Lye Brook Wilderness Area as well as the Dolly Sods Wilderness, Otter Creek Wilderness, and Shenandoah National Park. Maryland is responsible for developing a regional haze SIP that addresses these Class I areas, that describes its long-term emission strategy, its role in the consultation processes, and how the SIP meets the other requirements in EPA's regional haze regulations. However, since Maryland has no Class I areas within its borders, Maryland is not required to address the following Regional Haze SIP elements: (a) Calculation of baseline and natural visibility conditions; (b) establishment of reasonable progress goals; (c) monitoring requirements, and (d) RAVI requirements.

B. LTS/Strategies

As described in section II.E of this action, the LTS is a compilation of state-specific control measures relied on by the state to obtain its share of emission reductions to support the RPGs established by the impacted Class I area states. Maryland's LTS for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the State from the baseline period starting in 2002 until 2018. Maryland participated in the MANE–VU regional strategy development process. As a participant, Maryland supported a regional approach towards deciding which control measures to pursue for regional haze, which was based on technical analyses documented in the following reports: (a) Contributions to Regional Haze in the Northeast and Mid-Atlantic United States; (b) Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas; (c) Five-Factor Analysis of BART-Eligible Sources: Survey of Options for Conducting BART Determinations; and (d) Assessment of Control Technology Options for BART-Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants and Paper, and Pulp Facilities.

The LTS was developed by MANE–VU, in coordination with Maryland, identifying the emissions units within Maryland that likely have the largest impacts currently on visibility at the impacted Class I areas, estimating emissions reductions for 2018, based on all controls required under federal and state regulations for the 2002–2018 period (including BART), and comparing projected visibility improvement with the uniform rate of progress for these impacted Class I areas. Maryland's LTS includes measures needed to achieve its share of emissions reductions agreed upon through the consultation process with the impacted Class I area states and includes enforceable emissions limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals established by these Class I area states.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by MARAMA for MANE–VU with assistance from Maryland. The 2018 emissions inventory was developed by projecting 2002 emissions, and assuming emissions growth due to projected increases in economic activity as well as applying reductions expected from federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM_{10}, $PM_{2.5}$, and SO_2. The BART guidelines direct states to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in section III.B.3, of this notice. MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic region. It was also determined that the total ammonia emissions in the MANE–VU region are extremely small. In addition, since VOC emissions are aggressively controlled through the Maryland SIP, the pollutants Maryland considered under BART are NO_X, PM_{10}, $PM_{2.5}$, and SO_2.

MANE–VU developed emissions inventories for four inventory source classifications: (1) Stationary point sources; (2) area sources; (3) off-road mobile sources; and (4) on-road mobile

sources. The New York Department of Environmental Conservation also developed an inventory of biogenic emissions for the entire MANE–VU region. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. Off-road mobile sources are equipment that can move but do not use the roadways. On-road mobile source emissions are automobiles, trucks, and motorcycles that use the roadway system. The emissions from these sources are estimated by vehicle type and road type. Biogenic sources are natural sources like trees, crops, grasses, and natural decay of plants. Stationary point sources emission data is tracked at the facility level. For all other source types emissions are summed on the county level.

There are many federal and state control programs being implemented that MANE–VU and Maryland anticipate will reduce emissions between the baseline period and 2018. Emission reductions from these control programs were projected to achieve substantial visibility improvement by 2018 in the impacted Class I areas. To assess emissions reductions from ongoing air pollution control programs, BART, and reasonable progress goals MANE–VU developed 2018 emissions projections called Best and Final. The emissions inventory provided by the State of Maryland for the Best and Final 2018 projections is based on adopted and enforceable requirements.

The ongoing air pollution control programs relied upon by Maryland for the Best and Final projections include: Maryland's Healthy Air Act (HAA); the NO_X SIP Call; NO_X and/or VOC reductions from the control rules in the 1-hour and 8-hour ozone SIPs for Maryland; NO_X OTC 2001 Model Rule for Industrial, Commercial, and Institutional (ICI) Boilers; Federal 2007 heavy duty diesel engine standards for non-road trucks and buses; Federal Tier 2 tailpipe controls for the on-road vehicles; Federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules. Maryland also relied on emission reductions from various federal Maximum Achievable Control Technology (MACT) rules in the development of the 2018 emission inventory projections. These MACT rules include the combustion turbine and reciprocating internal combustion engines MACT, the industrial boiler and process heaters MACT and the 2, 4, 7, and 10 year MACT standards.

On July 30, 2007, the U.S. District Court of Appeals mandated the vacatur and remand of the Industrial Boiler MACT Rule.[6] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator (CISWI) Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010 (75 FR 32006), and issued a final rule on March 21, 2011 (76 FR 15608). The MANE–VU modeling included emission reductions from the vacated Industrial Boiler MACT rule. Maryland did not redo its modeling analysis when the rule was re-issued. However, the expected reductions in SO_2 and PM are small relative to the Maryland inventory. Therefore, EPA finds the expected reductions of the new rule acceptable since the final rule requires compliance by 2014, it provides Maryland time to assure the required controls are in place prior to the end of the first implementation period in 2018. In addition, the RHR requires that any resulting differences between emissions projections and actual emissions reductions that may occur will be addressed during the five-year review prior to the next 2018 regional haze SIP.

Tables 1 and 2 are summaries of the 2002 baseline and 2018 estimated emissions inventories for Maryland. The 2018 estimated emissions include emission reductions due to ongoing emission control strategies, BART, and reasonable progress goals as well as emission growth. As seen in Table 2, the 2018-point source emission estimates for PM and NH_3 are larger than the 2002 baseline, however, the affected Class I areas are still able to meet the reasonable progress goals.

TABLE 1—2002 EMISSION INVENTORY SUMMARY FOR MARYLAND IN TONS PER YEAR

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	6,184	95,328	5,054	12,752	305	290,927
Area	120,254	15,678	30,693	96,176	25,834	12,393
On-Road Mobile	61,846	122,210	2,200	3,168	5,594	4,057
Off-Road Mobile	56,330	37,472	4,357	4,936	28	7,941
Biogenic	210,104	2,934	.....	.....	.....	.....
Total	454,718	273,622	42,304	117,032	31,761	315,318

TABLE 2—2018 EMISSION SUMMARY FOR MARYLAND "BEST AND FINAL" IN TONS PER YEAR

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	6,854	33,597	9,934	14,080	845	82,650
Area	104,615	17,746	30,153	117,066	38,155	9,118
On-Road Mobile	20,861	29,371	1,045	1,099	7,279	682
Off-Road Mobile	37,969	24,257	3,301	3,814	36	577
Biogenic	210,104	2,934	.....	.....	.....	.....
Total	380,403	107,905	44,433	136,059	46,315	93,027

[6] *NRDC* v. *EPA,* 489F.3d 1250.

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

MANE–VU performed modeling for the regional haze LTS for the 11 Mid-Atlantic and Northeast states and the District of Columbia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. MANE–VU used the following modeling system:

- *Meteorological Model:* The Fifth-Generation Pennsylvania State University/National Center for Atmospheric Research (NCAR) Mesoscale Meteorological Model (MM5) version 3.6 is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5,}$ and regional haze regulatory modeling studies.
- *Emissions Model:* The Sparse Matrix Operator Kernel Emissions (SMOKE) version 2.1 modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.
- *Air Quality Model:* The EPA's Models-3/Community Multiscale Air Quality (CMAQ) version 4.5.1 is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale.
- *Air Quality Model:* The Regional Model for Aerosols and Deposition (REMSAD), version 8, is a Eulerian grid model that was primarily used to determine the attribution of sulfate species in the Eastern U.S. via the species-tagging scheme.
- *Air Quality Model:* The California Puff Model (CALPUFF), version 5 is a non-steady-state Lagrangian puff model used to access the contribution of individual states' emissions to sulfate levels at selected Class I receptor sites.

CMAQ modeling of regional haze in the MANE–VU region for 2002 and 2018 was carried out on a grid of 12x12 kilometer (km) cells that covers the 11 MANE–VU states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont) and the District of Columbia and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. MANE–VU conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The MANE–VU states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ Guidance and Regional Haze*, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf, (EPA-454/B-07-002), April 2007, and EPA document, Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html, EPA-454/R-05-001, August 2005, updated November 2005 (''EPA's Modeling Guidance'').*

MANE–VU examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. MANE–VU used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once MANE–VU determined the model performance to be acceptable, MANE–VU used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the State of Maryland provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glidepath and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA accepts the MANE–VU technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and used according to EPA Modeling Guidance. EPA agrees with the MANE–VU model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the Maryland LTS and regional haze SIP.

3. Relative Contributions of Pollutants to Visibility Impairment

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, MANE–VU developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20% worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the MANE–VU region, MANE–VU's contribution assessment demonstrated that sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic Region. Sulfate particles commonly account for more than 50% of particle-related light extinction at northeastern Class I areas on the clearest days and for as much as or more than 80% on the haziest days. In particular, for the Brigantine National Wildlife Refuge Class I area (the most impacted Class I area), sulfate accounted for 66% of the particle extinction on the 20% worst visibility days in 2000–2004. After sulfate, organic carbon (OC) consistently accounts for the next largest fraction of light extinction. Organic carbon accounted for 13% of light extinction on the 20% worst visibility days for Brigantine, followed by nitrate that accounts for 9% of light extinction.

The emissions sensitivity analyses conducted by MANE–VU predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the MANE–VU region, more than any other visibility-impairing pollutant. As a result of the dominant role of sulfate in the formation of regional haze in the Northeast and Mid-Atlantic Region, MANE–VU concluded that an effective emissions management approach would rely heavily on broad-based regional SO_2 control efforts in the eastern United States.

4. RPG

Since the State of Maryland does not have a Class I area, it is not required to establish RPGs. However, Maryland has been identified as influencing the visibility impairment of the following Class I areas; Acadia National Park, Brigantine National Wildlife Refuge, and Lye Brook Wilderness Area, as well as, the Dolly Sods Wilderness, Otter Creek Wilderness, and Shenandoah National Park. As such, Maryland participated in consultations to discuss the reasonable progress goals being considered by MANE–VU for the affected Class I areas. As a result, the MANE–VU Class I area states adopted four RPGs that will provide for reasonable progress towards achieving natural visibility: Timely implementation of BART requirements; a 90% reduction in SO_2 emissions from each of the EGU stacks identified by MANE–VU comprising a total of 167 stacks (12 are located in Maryland); adoption of a low sulfur fuel oil strategy; and continued evaluation of other control measures to reduce SO_2 and NO_X emissions.

In order to address a timely implementation of BART, as described in section III B.5. of this notice, the Maryland HAA was determined to be better than BART for NO_X and SO_2 emissions. The first phase of the emission limits became effective in 2009/2010 timeframe and the second phase will become effective in the 2012/2013 timeframe. The BART limitation became effective in calendar year 2010 for the PM control strategies identified in section III.B.5.

States were asked to reduce SO_2 emissions from the highest emission stacks in the eastern United States by 90% or if it was infeasible to achieve that level of reduction, an alternative had to be identified which could include other point sources. Maryland's Brandon Shores Units 1 and 2, C.P. Crane Units 1 and 2, Chalk Point Units 1 and 2, Dickerson Units 1, 2 and 3, Wagner Unit 3 and Morgantown Units 1 and 2 are twelve of the 167 units identified by MANE–VU as having the highest emissions in the eastern United States. The 2002 base year SO_2 emissions from these twelve units are 235,435 tons per year. A 90% SO_2 emission reduction from these twelve units would result in a reduction of 211,892 tons per year. However, the SO_2 emission reductions that have already resulted from the implementation of the Maryland HAA for these twelve units are 257,741 tons per year. These reductions are more than enough to satisfy the 90% emission reduction from the 2002 baseline requirements. In addition, the remaining EGU units subject to the HAA they provide an additional 11,703 of SO_2 emission reductions. Maryland's consideration of all of the emission reductions from the implementation of the HAA resulted in a surplus of 57,553 tons per year of SO_2 emission reductions.

The low sulfur fuel oil strategy has four requirements for the State of Maryland. These requirements are to reduce the distillate oil to 0.05% sulfur by weight (500 parts per million (ppm)) no later than 2014, #4 residual oil to 0.25%–0.5% sulfur by weight no later than 2018, #6 residual oil to 0.5% sulfur by weight no later than 2018, and further reduce the sulfur content of distillate oil to 15 ppm by 2018. Table 3 shows the SO_2 emission reductions in tons per year (TPY) that would result from the implementation of a low sulfur fuel oil strategy in Maryland.

TABLE 3—REASONABLE PROGRESS GOAL—LOW SULFUR FUEL OIL STRATEGY

Low sulfur fuel oil strategy	2018 SO_2 Emissions reductions (TPY) based on the low sulfur fuel oil strategy request
Residual and #4 Fuel Oil (assumes 0.5% sulfur)	1,344.1
Distillate (15 ppm sulfur)	6,129.3
Total	7,473.4

As noted in Table 3, since Maryland has not adopted a low sulfur fuel oil strategy, the state has a deficiency of 7,473.4 TPY of SO_2 emissions. However, as noted above, Maryland has a surplus of SO_2 emission reductions of 57,552 TPY resulting from the HAA. This surplus accounts for the SO_2 emission reductions needed to meet the requirements of the low sulfur fuel strategy.

5. BART

BART is an element of Maryland's LTS. The BART Regional Haze requirement consists of three components: (a) Identification of all the BART eligible sources; (b) an assessment of whether the BART eligible sources are subject to BART; and (c) the determination of the BART controls.

The first component of a BART evaluation is to identify all the BART eligible sources. The BART eligible sources were identified by utilizing the criteria in the BART Guidelines as follows:

- Determine whether one or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines (70 FR 39158–39159);
- Determine whether the emission unit(s) was in existence on August 7, 1977 and begun operation after August 6, 1962;
- Determine whether potential emissions of SO_2, NO_X, and PM_{10} from subject units are 250 tons or more per year.

The BART guidelines recommend addressing SO_2, NO_X, and PM_{10} as visibility-impairment pollutants and leave it up to the discretion of states to evaluate VOC or ammonia emissions. Because of the lack of tools available to estimate emissions and subsequently model VOC and ammonia effects on visibility, and because Maryland is aggressively addressing VOCs through its ozone SIPs, Maryland determined that SO_2, NO_X and $PM_{10/2.5}$ are the only reasonable contributing visibility impairing pollutants to target under BART.

Maryland identified seven BART eligible sources (consisting of ten emission units) as described in Table 4. However, it was later determined that Mettiki Coal Corporation should not be included in the BART eligible list since the source was not in existence by August 7, 1977. The source did not meet EPA's definition of ''in existence'' (40 CFR 51.301) since EPA did not grant approval of Mettiki Coal Corporation's construction application until February 23, 1978.

TABLE 4—MARYLAND'S BART ELIGIBLE SOURCES

	Facility and unit	Plant capacity in megawatts	Unit capacity in megawatts	Location
1	Mirant—Chalk Point Units 1, 2 and 3	>750	355, 355 and 640	Prince George's.
2	Mirant—Morgantown Units 1 and 2	>750	630 and 630	Charles.
3	CPSG—Crane Unit 2	<750	200	Baltimore.
4	CPSG—Wagner Unit 3	>750	350	Anne Arundel.
5	New Page/Westvaco/Luke Paper Unit 25	NA	NA	Allegany.
6	Holcim (Independent/St. Lawrence Cement) Unit 24.	NA	NA	Washington.
7	*Mettiki Coal Corporation Unit 1	NA	NA	Garrett.

*This source is not BART eligible.

The second component of the BART evaluation is to identify those BART eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area are subject to BART. As discussed in the BART guidelines, a state may choose to consider all BART eligible sources to be subject to BART (70 FR 39.161). Consistent with the MANE–VU Board's decision in June 2004 that because of the collective importance of BART sources, BART determinations should be made by the MANE–VU states for each BART eligible source, unless the sources shutdown or caps-out by accepting a permit limitation restricting their emissions to less than 250 tons per year.

The final component of a BART evaluation is making BART determinations for all BART subject sources. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. Section (e)(2) of the RHR provides that a state may opt to implement an emissions trading program or other alternative measure rather than to require sources subject to BART to install, operate, and maintain BART. To do so, the state must demonstrate that the emissions trading program or other alternative measure will achieve greater reasonable progress than would be achieved through the installation and operation of BART.

Four EGUs in Maryland, the State found to be subject to BART. As discussed below, Maryland chose to address the BART requirements for these sources through an alternative program regulated by COMAR 26.11.27.02, the Maryland HAA (73 FR 51599) that limits SO_2, NO_X and mercury emissions from fossil fuel fired generating units. Of the seven EGU facilities subject to the Maryland HAA, only four are facilities subject to BART, as seen in Table 5. Maryland required all of the BART subject facilities to complete full BART analysis, however, Maryland opted to rely on the emission limits from the HAA for NO_X and SO_2, as an alternative measure for BART.

TABLE 5—MARYLAND HAA SUBJECT SOURCES AND MARYLAND BART SUBJECT SOURCES

Maryland's HAA subject sources	Maryland's BART subject sources
Brandon Shores Units 1 and 2.	C.P. Crane Unit 2.
C.P. Crane Units 1 and 2.	Chalk Point Units 1, 2 and 3.
Chalk Point Units 1 and 2.	Morgantown Units 1 and 2.
Dickerson Units 1, 2 and 3.	H.A. Wagner Unit 3.
H.A. Wagner Units 2 and 3.	
Morgantown Units 1 and 2.	
*R. Paul Smith Units 3 and 4.	

*This facility is not part of Maryland's alternative measures for BART.

Maryland's HAA became effective on July 16, 2007, with the first phase requiring reductions in the 2009–2010 timeframe and the second phase of emission control occurring in the 2012–2013 timeframe. The HAA affects Maryland's largest coal-burning power plants, which accounts for 95% of the State's power plant emissions and requires year-round emission controls. The HAA does not allow facilities to obtain out-of-state emissions allowances in lieu of adding pollution control locally. During the first phase of the HAA, NO_X emissions were reduced by approximately 70% in 2009 and SO_2 emissions were reduced by approximately 80% in 2010. At full implementation, the HAA will reduce NO_X emissions by approximately 75% in 2012 from 2002 levels and SO_2 emissions will be reduced by approximately 85% in 2013 from 2002 levels.

In order to determine appropriate NO_X and SO_2 emission limitations for inclusion in Maryland's HAA, Maryland collected guidance and information from a number of sources to assist in its evaluation of appropriate emission limits. The methods Maryland used to develop the HAA incorporate many of the criteria used in the 5 factor analyses required by the RHR and included the following: (1) Control technology effectiveness; (2) costs; (3) complexity with regards to application on cycling units; (4) impact on plant operations and flexibility; (5) operation and maintenance costs; (6) size of the affected units; and (7) technical feasibility.

Of the fifteen units subject to Maryland's HAA, six have been identified as BART units. The HAA incorporates emissions limitations based on a suite of emission reduction technology capabilities. Tables 6 and 7 show Maryland promulgated emission limitations for NO_X and SO_2 in COMAR 26.11.27.02. for the thirteen units subject to the BART alternative plan.

TABLE 6—HAA EMISSION LIMITATIONS FOR NO_X IN TPY

	Facility	2002 Baseline (TPY)	2012 (TPY)
1	Brandon Shores Unit 1	6,329	2,414

TABLE 6—HAA EMISSION LIMITATIONS FOR NO_X IN TPY—Continued

	Facility	2002 Baseline (TPY)	2012 (TPY)
2	Brandon Shores Unit 2	6,034	2,519
3	C.P. Crane Unit 1	6,245	686
4	C.P. Crane Unit 2	4,285	737
5	Chalk Point Unit 1	6,327	1,166
6	Chalk Point Unit 2	6,773	1,223
7	Dickerson Unit 1	2,176	554
8	Dickerson Unit 2	2,358	607
9	Dickerson Unit 3	2,694	575
10	H.A. Wagner Unit 2	1,718	555
11	H.A. Wagner Unit 3	2,232	1,115
12	Morgantown Unit 1	10,013	2,094
13	Morgantown Unit 2	8,605	2,079
Total		65,793	16,324

TABLE 7—HAA EMISSION LIMITATIONS FOR SO_2 IN TPY

	Facility	2002 Baseline (TPY)	2013 (TPY)
1	Brandon Shores Unit 1	20,476	5,392
2	Brandon Shores Unit 2	19,498	5,627
3	C.P. Crane Unit 1	17,971	1,532
4	C.P. Crane Unit 2	14,415	1,646
5	Chalk Point Unit 1	23,537	2,606
6	Chalk Point Unit 2	25,194	2,733
7	Dickerson Unit 1	10,205	1,238
8	Dickerson Unit 2	11,061	1,355
9	Dickerson Unit 3	12,636	1,285
10	H.A. Wagner Unit 2	10,095	1,239
11	H.A. Wagner Unit 3	6,427	2,490
12	Morgantown Unit 1	37,756	4,678
13	Morgantown Unit 2	32,586	4,646
Total		241,862	36,468

Maryland did a comparison of the HAA emission limits for thirteen of the fifteen units regulated by this rule to the BART presumptive limits for the seven BART subject units. This comparison resulted in a surplus of 60,805 tons of SO_2 and 16,184 tons of NO_X, primarily because the HAA emission limits are applicable to more units than the Maryland BART subject units. The total emissions reductions achieved by the HAA, greatly exceed those which would be achieved through application of presumptive BART emissions rate limits on BART subject units only.

For PM, Maryland required the BART facilities to conduct an analysis of potential BART control in accordance with 40 CFR 51.308(e)(1)(ii). However, five of the units have already installed high efficiency electro-static precipitors (ESP) to control PM and one has already installed a fabric filter. The remaining unit has enforceable operational restriction requiring the burning of natural gas for 95% of the total heat input during ozone season. With this existing fuel restriction, it will reduce PM emissions by approximately 90% during ozone season. Mirant Chalk Point Unit 1 is a 355 MW walled fired, dry bottom, supercritical boiler with coal as the primary fuel. This unit is equipped with a cold side ESP to control PM emissions by over 99.5%. Mirant Chalk Point Unit 2 is also a 355 MW walled fired, dry bottom, supercritical boiler with coal as the primary fuel. This unit is also equipped with a cold side ESP to control PM emissions by over 99.5%. Mirant Chalk Point Unit 3 is a 640 MW tangentially fired, sub-critical unit that fire residual fuel oil or natural gas. This cycling unit has operated at an average annual capacity factor of 5% from 2006 to 2009. A consent order requires this unit to operate 95% of the time using natural gas during ozone season (May-September). Since this unit operates primarily during ozone season, the operational restriction on fuel use effectively limit PM emissions by 90%. Mirant Morgantown Unit 1 is a 630 MW tangentially fired, supercritical boiler with coal as the primary fuel. This unit is equipped with a cold side ESP to control PM emissions by over 99.5%. Mirant Morgantown Unit 2 is also a 630 MW tangentially fired, supercritical boiler with coal as the primary fuel. This unit is also equipped with a cold side ESP to control PM emissions by over 99.5%. Crane Unit 2 is a 200 MW utility boiler fired by four cyclone burners with coal as the primary fuel. This unit is equipped with a fabric filter to control PM emissions by over 99%. Wagner Unit 3 is a 350 MW supercritical once-over coal fired boiler. This unit is equipped with a cold side ESP to control PM emissions by over 99%. Maryland has determined that existing controls for PM meet the BART requirement for all of these units since they reduce PM emissions, are cost-efficient, and have no significant energy or non-air quality environmental benefit. EPA agrees with Maryland's PM BART determination for all of BART subject EGUs.

Maryland has two non-EGU BART sources that were required to conduct BART analyses to satisfy the requirements of 40 CFR 51.308(e)(1)(ii). Holcim (Independent/St. Lawrence Cement) is a cement manufacturing

plant located in Hagerstown, Maryland. The BART analysis was done for the long dry Portland cement kiln. Current controls for PM consist of multi-clones and an electrostatic precipitator. For NO_X, the facility currently utilizes a mid-kiln tire firing system with mixing air technology and a low-NO_X type burner. For SO_2 the current controls consist of injection of mixing air and inherent dry scrubbing. For this unit, Maryland determined the addition of selective non-catalytic reduction (SNCR) is BART for PM and NO_X and current controls are BART for SO_2.

New Page/Westvaco/Luke Paper is a kraft pulp mill with two BART subject power boilers (Units 25 and 26) that share a common exhaust stream and has one recovery boiler (Unit 3). The power boilers are used as the primary and back-up systems for incineration of emissions from non-condensable gas and stripper off gas, the recovery boiler is used to recover chemicals from spent agent pulping liquors and to produce steam for the mill. Unit 25 burns coal as the primary fuel with natural gas used as a secondary fuel. Unit 26 originally burned oil as the primary fuel, but in 1982 was converted to natural gas. Unit 25 currently has a multi-cyclone mechanical collector in series with a baghouse for control of PM. The boiler is also equipped with an over-five air system, low-NO_X burners and a SNCR, installed in 2006, for controlling NO_X emissions during ozone season. In a letter dated October 31, 2007, the facility committed to install either a spray dryer absorber or a circulating dry scrubber resulting in approximately 90% emission reduction from the 2002 baseline. Unit 26 currently has no controls. Unit 3 has a two level staged combustion air control system for the control of SO_2 and NO_X emissions and the three-chamber ESP for the control of PM. Maryland determined BART for Unit 25 to be the current controls for PM which consist of multi-cyclones, baghouse and year-round operation of the existing SNCR, low NO_X burners, and overfire air for NO_X controls and the addition of spray dryer absorber or a circulating dry scrubber for SO_2. For Unit 26, the natural gas fired boiler, Maryland determined BART to be that no add-on controls were necessary since the use of natural gas results in very low emissions of SO_2, NO_X, and PM. For Unit 3, the recovery boiler, the current controls consist of two level staged combustion air control system for the control of SO_2 and NO_X emissions and the three-chamber ESP for the control of PM. EPA agrees with MDE's analyses and conclusions for the non-EGU BART determinations.

C. Consultation With States and FLMs

On May 10, 2006, the MANE–VU Air Directors adopted the Inter-RPO State/Tribal and FLM Consultation Framework that documented the consultation process within the context of regional haze planning and was intended to create greater certainty and understanding among RPOs. The MANE–VU states held ten consultation meetings and/or conference calls from March 1, 2007 through March 21, 2008. In addition to the MANE–VU members attending these meetings and conference calls, participants from VISTAS, Midwest RPO, and the relevant FLMs were also in attendance. In addition to the conference calls and meeting, the FLMs were given the opportunity to review and comment on each of the technical documents developed by MANE–VU.

On September 22, 2008 and November 18, 2011, Maryland submitted a draft Regional Haze SIP to the relevant FLMs for review and comment pursuant to 40 CFR 51.308(i)(2). In a letter dated January 25, 2012, the FLMs provided comments on the draft Regional Haze SIP in accordance with 40 CFR 51.308(i)(3). The comments received from the FLMs were addressed and included in Appendix C of the Maryland Regional Haze SIP submittal.

On January 6, 2012, the MDE provided public notice of the opportunity to comment on the SIP revision and on February 9, 2012 held the public hearing. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), Maryland commits in their SIP to ongoing consultation with the FLMs on Regional Haze issues throughout the implementation.

D. Periodic SIP Revisions and Five-Year Progress Reports

Consistent with the requirements of 40 CFR 51.308(g), Maryland has committed to submitting a report on reasonable progress (in the form of a SIP revision) to the EPA every five years following the initial submittal of its regional haze SIP. The reasonable progress report will evaluate the progress made towards the RPGs for the impacted Class I areas.

IV. What action is EPA proposing to take?

EPA is proposing to approve a revision to the Maryland SIP submitted by the State of Maryland through the MDE on February 13, 2012 that addresses regional haze for the first implementation period. EPA is proposing to make a determination that the Maryland Regional Haze SIP contains the emission reductions needed to achieve Maryland's share of emission reductions agreed upon through the regional planning process. Furthermore, Maryland's Regional Haze Plan ensures that emissions from the State will not interfere with the reasonable progress goals for neighboring states' Class I areas. EPA has determined that the Regional Haze Plan submitted by the State of Maryland satisfies the requirements of the CAA. EPA is taking this action pursuant to those provisions of the CAA. Accordingly, EPA is also proposing to find that this revision meets the applicable visibility related requirements of CAA section 110(a)(2) including but not limited to 110(a)(2)(D)(i)(II) and 110(a)(2)(J), relating to visibility protection for the 1997 8–Hour Ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive

Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule approving Maryland's Regional Haze Plan does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, Volatile organic compounds.

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

Dated: February 15, 2012.

W.C. Early,

Acting, Regional Administrator, Region III.

[FR Doc. 2012–4663 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2008–0510; FRL–9640–6]

Approval and Promulgation of Implementation Plans; Louisiana; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing a partial disapproval and a partial limited approval of a revision to the Louisiana State Implementation Plan (SIP) submitted by the State of Louisiana through the Louisiana Department of Environmental Quality (LDEQ) on June 13, 2008, that addresses regional haze (RH) for the first implementation period. This revision was submitted to address the requirements of the Clean Air Act (CAA or Act) and the EPA's rules that require states to prevent any future and remedy any existing man-made impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. In a separate action, the EPA has previously proposed a limited disapproval of the Louisiana regional haze SIP because of deficiencies in the state's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (DC Circuit) to the EPA of the Clean Air Interstate Rule (CAIR). In today's action, the EPA is proposing a partial disapproval because of deficiencies in Louisiana's regional haze SIP submittal that go beyond the issues addressed in the EPA's proposed limited disapproval. The EPA is also proposing a partial limited approval of those elements of this SIP revision not addressed by our partial disapproval. The partial limited approval of the RH requirements for Louisiana is based on the conclusion that the revisions, as a whole, strengthen the Louisiana SIP. This action is being taken under section 110 and part C of the CAA.

DATES: Comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2008–0510, by one of the following methods:

• *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Email: R6AIR_LAHAZE@epa.gov.*

• *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

• *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

• *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–6762.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2008–0510. Our policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to us without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If we cannot read your comment due to technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be

a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at our Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Louisiana Department of Environmental Quality, 602 N. Fifth Street in Baton Rouge, Louisiana.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Belk, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–2164; fax number 214–665–6762; email address *belk.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. Executive Summary of Proposed Action

The EPA is proposing a partial limited approval of Louisiana's June 13, 2008, SIP revision addressing regional haze (RH) under CAA sections 301(a) and 110(k)(3) because certain provisions of the revision strengthen the Louisiana (LA) SIP. The EPA is also proposing a partial disapproval of the LA RH SIP submittal because the submittal includes several deficient provisions. The deficiencies identified in today's action go beyond those identified in the limited disapproval proposed on December 30, 2011 (76 FR 82219). Certain elements of the State's Best Available Retrofit Technology (BART) evaluations and determinations are not fully adequate to meet the federal requirements. Additionally, as a result of the deficiencies related to BART, the Long-Term Strategy (LTS) and Reasonable Progress Goals (RPGs) are not fully adequate to meet federal requirements. Finally, because visibility impacts from smoke are significant in Louisiana, we propose that Louisiana should finalize its Smoke Management Plan (SMP). The portions of the revision proposed for limited approval nevertheless represent an improvement over the current SIP, and make considerable progress in fulfilling the applicable CAA RH program requirements. This proposed rulemaking and the accompanying Technical Support Document (TSD) explain the basis for EPA's proposed partial limited approval and partial disapproval.

Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance,[1] a limited approval results in approval of portions of the SIP submittal, even though they are deficient and prevent EPA from granting a full approval of the SIP revision. In an earlier proposed action, EPA has proposed a limited disapproval of Louisiana's RH SIP revision for not meeting all the applicable requirements of the CAA (76 FR 82219). In today's proposed action, having concluded based on a careful review of the LA RH SIP revision that there are deficiencies in the SIP beyond those identified in the proposed limited disapproval of the LA RH SIP, we are proposing a partial disapproval of those additional deficiencies and a partial limited approval of the rest of the LA RH SIP. The partial limited approval proposes to give limited approval to those portions of the SIP that are not being disapproved in today's action for their benefit in strengthening the SIP even though they do not fully meet regional haze requirements.

Specifically, we are proposing to find that the following elements of the submittal fully satisfy federal requirements insofar as the elements do not rely on the sulfur dioxide (SO_2) reductions from CAIR: The State's identification of affected Class I areas; the establishment of baseline, natural and current visibility conditions, including the Uniform Rate of Progress (URP); coordination of reasonably attributable visibility impairment (RAVI) and RH requirements; the RH monitoring strategy and other SIP requirements under 40 CFR 51.308(d)(4); the State's commitment to submit periodic RH SIP revisions and periodic progress reports describing progress towards the State's RPGs; the State's commitment to make a determination of the adequacy of the existing SIP at the time a progress report is submitted; and the State's coordination with Federal Land Managers (FLMs).

We are proposing to find that Louisiana's RPGs meet some federal

[1] *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

requirements, but also contain some deficiencies. We are proposing to find that the State's RPGs are deficient given our proposed finding that certain of Louisiana's BART determinations are not fully approvable. In general, the State followed the requirements of 40 CFR 51.308(d)(1), but these goals do not reflect appropriate emissions reductions from BART.

For LTS, we are proposing to find that the State's LTS satisfies many of the requirements under 40 CFR 51.308(d)(3); however, we are proposing to find that the submitted LTS is deficient because a portion of it relies on BART determinations that we are proposing to disapprove. Also, because visibility impacts from smoke are significant in Louisiana, we propose to find that that Louisiana should finalize its SMP.

For the BART analyses for sources other than electric generating units (EGUs), we are proposing to find that the State's identification of subject-to-BART sources meets federal requirements in part, but that the state should have identified Mosaic Fertilizer as being subject to BART and made a BART determination for the source. This is discussed in more detail in section IV.D.2 of this action. We are also proposing to find that LDEQ's BART determinations for Conoco Phillips, Rhodia, and Sid Richardson Carbon Black are not fully approvable. These BART determinations are discussed in more detail in section IV.D.3 of this action.

As noted above, in an earlier proposed action, EPA proposed a limited disapproval of the Louisiana regional haze SIP. EPA's proposed limited disapproval is based on deficiencies in the state's regional haze SIP submittal arising from the state's reliance on CAIR to meet certain regional haze requirements. In the same December 30, 2011 notice, EPA proposed to find that the Transport Rule,[2] a rule issued in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States would, like CAIR, provide for greater reasonable progress towards the national goal than would BART. 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the Regional Haze Rule (RHR) to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. This proposed revision applies only to EGUs in the states in the Transport Rule region and only to the pollutants subject to the requirements of the Transport Rule. States such as Louisiana that are subject to the requirements of the Transport Rule trading program only for nitrogen oxides (NO_X) must still address BART for EGUs for SO_2 and other visibility impairing pollutants. See, 76 FR at 82224. Consequently, while we proposed on December 30, 2011 to issue a federal implementation plan (FIP) to address the deficiencies in Louisiana's SIP associated with the BART requirements for NO_X for EGUs, we did not propose a plan to address the deficiencies associated with the BART requirements for SO_2. The docket for this earlier EPA proposed limited disapproval of Louisiana's regional haze SIP may be found at Docket ID No. EPA–HQ–OAR–2011–0729.

Louisiana also relied on CAIR in assessing the need for emissions reductions from EGUs to ensure reasonable progress. Consequently, Louisiana will have to reconsider whether reductions of SO_2 from EGUs, whether subject to BART or not, are appropriate for ensuring reasonable progress.

Where a submittal addresses a mandatory requirement of the CAA, we must, within 24 months following a final disapproval, either approve a SIP or promulgate a FIP. CAA section 110(c)(1). At this time, we are not proposing a FIP for the portions of the Louisiana RH SIP we are proposing in this action to find deficient because LDEQ has expressed its intent to revise the Louisiana RH SIP by correcting the deficiencies. We are electing to not propose a FIP at this time in order to provide Louisiana time to correct these deficiencies. However, a final partial disapproval of Louisiana's RH SIP will start the two-year mandatory FIP clock. If the State submits an approvable rule revision during the FIP clock period, final approval of the rule revision correcting the deficiencies will terminate the FIP clock.

II. What is the background for our proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particulate matter ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOCs)). Fine particle precursors react in the atmosphere to form fine particulate matter that impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [3] in many Class I areas [4] (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *See,* 64 FR 35715, July 1, 1999.

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' On December 2, 1980, the EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single

[2] 76 FR 48208 (August 8, 2011).

[3] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[4] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See,* 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See,* 44 FR 69122, November 30, 1979. The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. *See,* 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' *See,* 42 U.S.C. 7602(i). When the term ''Class I area'' is used in this action, it means a ''mandatory Class I Federal area.''

source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. The EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. The EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in the EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this proposal. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[5] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the RH program will require long-term regional coordination among states, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers (km). Therefore, to address effectively the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to RH can originate from sources located across broad geographic areas, we have encouraged the states and tribes across the United States (U.S.) to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address RH and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter and other pollutants leading to RH.

The Central Regional Air Planning Association (CENRAP) is an organization of states, tribes, federal agencies and other interested parties that identifies RH and visibility issues and develops strategies to address them. The CENRAP is one of the five RPOs across the U.S. and includes the states and tribal areas of Nebraska, Kansas, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana.

III. What are the requirements for regional haze SIPs?

The following is a summary and basic explanation of the regulations covered under the RHR. *See,* 40 CFR 51.308 for a complete listing of the regulations under which this SIP is being evaluated.

A. The CAA and the Regional Haze Rule

RH SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and our implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific RH SIP requirements are discussed in further detail in this section.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. *See,* 70 FR 39104. This visibility metric expresses uniform changes in the degree of haze in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is sometimes expressed in terms of the visual range, which is the greatest distance, in kilometers or miles, at which a dark object can just be distinguished against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility of one deciview.[6]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The RH SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by man-made air pollution by reducing anthropogenic emissions that cause RH. The national goal is a return to natural conditions, i.e., man-made sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each RH SIP submittal and periodically review progress every five years, midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. We have provided guidance to states regarding how to calculate baseline, natural and current visibility conditions.[7]

For the first RH SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of

[5] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[6] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

[7] *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, EPA–454/B–03–005, *available* at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*, (hereinafter referred to as ''our 2003 Natural Visibility Guidance''); and *Guidance for Tracking Progress Under the Regional Haze Rule,* (EPA–454/B–03–004, September 2003, *available* at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*, (hereinafter referred to as our ''2003 Tracking Progress Guidance'').

visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000—2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of RH SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. *See,* 70 FR 3915; *See* also 64 FR 35714. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period. *Id.*

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in our RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in our Reasonable Progress Guidance.[8] In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (the URP) and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress, which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emission sources that may be affecting visibility impairment at the Class I State's areas. 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources with the potential to emit greater than 250 tons per year (tpy) or more of any visibility impairing pollutant in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the Act requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources[9] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'', as determined by the state or us in the case of a plan promulgated under section 110(c) of the CAA. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

We promulgated regulations addressing RH in 1999, 64 FR 35714 (July 1, 1999), codified at 40 CFR part 51, subpart P.[10] These regulations require all states to submit implementation plans that, among other measures, contain either emission limits representing BART for certain sources constructed between 1962 and 1977, or alternative measures that provide for greater reasonable progress than BART. 40 CFR 51.308(e).

On July 6, 2005, we published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. 70 FR 39104. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources; however, all subject to BART sources are required to comply with the five BART factors (or steps) (40 CFR 51.308(e)(1)(ii)(A)).

The process of establishing BART emission limitations can be logically broken down into three steps: First, states identify those sources that meet the definition of ''BART-eligible source'' set forth in 40 CFR 51.301;[11] second, states determine whether each identified source ''emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area'' (a source that fits this description is ''subject to BART,'') and; third, for each source subject to BART, states then identify the appropriate type and the level of control for reducing emissions.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. We have stated that states should use their best judgment in determining whether VOC or ammonia compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would

[8] *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* June 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1).

[9] The set of ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

[10] In *American Corn Growers Ass'n* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002), the U.S Court of Appeals for the District of Columbia Circuit issued a ruling vacating and remanding the BART provisions of the regional haze rule. In 2005, we issued BART guidelines to address the court's ruling in that case. *See* 70 FR 39104 (July 6, 2005).

[11] BART-eligible sources are those sources that have the potential to emit 250 tons or more of a visibility-impairing air pollutant, were put in place between August 7, 1962 and August 7, 1977, and whose operations fall within one or more of 26 specifically listed source categories.

not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. States have three options for exempting a BART-eligible source from the BART requirements, including dispersion modeling demonstrating that the source cannot reasonably be anticipated to cause or contribute to visibility impairment in a Class I area, use of model plants to exempt sources with common characteristics, and cumulative modeling to show that no sources in Louisiana are subject to BART. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 dv. *See also,* 40 CFR part 51, Appendix Y, section III.A.1.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. The term ''BART-eligible source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor. *See,* 40 CFR 51.308(e)(1)(ii).

A RH SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART (*See,* CAA section 169A(b)(2), 40 CFR 51.308(e), and 64 FR 35714, 35741). Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of our approval of the RH SIP. CAA section 169(g)(4) and 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. *See,* CAA section 110(a).

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the RH program, the EPA made just such a demonstration for the CAIR. *See,* 70 FR 39104 (July 6, 2005). The EPA's regulations provide that states participating in the CAIR cap-and-trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See,* 40 CFR 51.308(e)(4). Because the CAIR did not address direct emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. The CAIR required controls of both SO_2 and NO_X in Louisiana. Challenges to the CAIR, however, resulted in the remand of the rule to the EPA. *See, North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008). The EPA issued the Transport Rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See,* 76 FR 48208 (August 8, 2011). On December 30, 2011, the EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. 76 FR 82219. Based on this proposed finding, the EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. The transport rule requires control of NO_X during the ozone season in Louisiana. It does not, however, require control of SO_2. The EPA has not taken final action on that rule.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their RH SIP a 10- to 15-year strategy for making reasonable progress, 40 CFR 51.308(d)(3) of the RHR requires that states include a LTS in their RH SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). Also, a state with a Class I area impacted by emissions from another state must consult with such contributing state, (*id.*) and must also demonstrate that it has included in its SIP all measures necessary to obtain its share of emission reductions needed to meet the reasonable progress goals for the Class I area. *Id.* at (d)(3)(ii). The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)

As part of the RHR, we revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing RH visibility impairment, which was due December 17, 2007, in accordance with

40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and RH, and the state must submit the first such coordinated LTS with its first RH SIP. Future coordinated LTS and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and (g), respectively. The periodic review of a state's LTS must report on both RH and RAVI and must be submitted to us as a SIP revision.

G. Monitoring Strategy and Other SIP Requirements

40 CFR 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of RH visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first RH SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to RH visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to RH visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of 40 CFR 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to RH SIPs that address the first implementation period. *See,* 40 CFR 51.308(f). Facilities subject to BART must continue to comply with the BART provisions of 40 CFR 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Coordination With Federal Land Managers

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. Our Analysis of Louisiana's Regional Haze SIP

A. Identification of Affected Class I Areas

As required by 40 CFR 51.308(d) of the RHR, the State of Louisiana has identified one Class I area within its borders, Breton National Wilderness Area (Breton NWA, or Breton). Part of a long chain of barrier islands, the area comprises a small part of the Breton National Wildlife Refuge located in the Breton Sound off the southeast coast of Louisiana. Breton NWA was identified by the LDEQ in its SIP. The FLM for Breton NWA is the U.S. Fish and Wildlife Service (USFWS) a bureau within the U.S. Department of Interior. The Louisiana RH SIP establishes RPGs for Breton and a LTS to achieve these goals within the first RH implementation period ending in 2018.

In developing its SIP, the LDEQ also considered whether Louisiana emissions from Louisiana sources impact visibility at Class I areas outside of the state and determined that Louisiana emissions do not cause or contribute to visibility impairment at Class I areas outside the State. Class I areas outside of Louisiana that were considered by the LDEQ included the 14,460 acre Caney Creek Wilderness Area in southwest Arkansas. In other parts of its SIP, the LDEQ does examine the impact of Louisiana's emissions on the visibility at other Class I areas as well.

We propose to find that the LDEQ correctly identified the Breton Class I area in Louisiana, and other Class I areas outside of its borders that may be impacted by emissions from Louisiana sources.

B. Determination of Baseline, Natural and Current Visibility Conditions

As required by 40 CFR 51.308(d)(2)(i) of the RHR and in accordance with the EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* (''Visibility Guidance''),[12] the LDEQ calculated baseline/current[13] and natural visibility conditions for Breton NWA on the most impaired and least impaired days, as summarized below (and further described in the TSD).

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in the Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural

[12] Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule, EPA–454/B–03–005, September 2003.

[13] As this is the first RH SIP submittal, the calculated baseline visibility condition and the current visibility condition will be the same. We expect that subsequent RH SIP submittals will reflect different calculated numbers for baseline and current visibility conditions due to the change in conditions.

concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in the Visibility Guidance, the EPA allows states to use ''refined'' or alternative approaches to the Visibility Guidance to estimate the values that characterize the natural visibility conditions of Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[14] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction.

The LDEQ opted to use the new IMPROVE equation to calculate the ''refined'' natural visibility conditions. For Breton NWA, the LDEQ used the new IMPROVE equation to calculate the ''refined'' natural visibility value for the 20 percent worst days to be 11.93 deciviews and for the 20 percent best days to be 4.25 deciviews. We reviewed the LDEQ's estimates of the natural visibility conditions for Breton NWA and are proposing to find them acceptable using the new IMPROVE equation.

The new IMPROVE equation takes into account the most recent review of the science [15] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate (SO_4), nitrate (NO_3), and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Visibility Conditions

As required by 40 CFR 51.308(d)(2)(i) of the RHR and in accordance with the Visibility Guidance, the LDEQ calculated baseline visibility conditions for Breton NWA. The baseline condition calculation begins with the calculation of light extinction, using the IMPROVE equation. The IMPROVE equation sums the light extinction[16] resulting from individual pollutants, such as sulfates and nitrates. As with the natural visibility conditions calculation, the LDEQ chose to use the new IMPROVE equation.

The period for establishing baseline visibility conditions is 2000–2004, and baseline conditions must be calculated using available monitoring data. 40 CFR 51.308(d)(2). The Breton IMPROVE monitor did not meet the data capture requirements of the RHR for the 2000–2004 monitoring period; however, data from a nearby monitoring site, the Gulfport SEARCH site, was used to supplement the Breton monitoring data. We found the use of this data to be acceptable. The Breton monitor was subsequently destroyed in 2005 by Hurricane Katrina and since replaced and relocated. The LDEQ calculated the baseline conditions at the Breton Class I area as 25.73 deciviews on the 20 percent worst days, and 13.12 deciviews on the 20 percent best days. We have reviewed the LDEQ's estimation of baseline visibility conditions at Breton and are proposing to find these estimates acceptable.

3. Natural Visibility Impairment

To address 40 CFR 51.308(d)(2)(iv)(A), the LDEQ also calculated the number of deciviews by which baseline conditions exceed natural visibility conditions for the best and worst days at Breton NWA. For the 20 percent worst days, the LDEQ calculated the number of deciviews by which baseline conditions exceed natural visibility conditions to be 13.80 dv (baseline of 25.73 dv, minus natural conditions of 11.93 dv). For the 20 percent best days at Breton, the baseline conditions exceed natural visibility conditions by 8.87 dv (baseline of 13.12 dv, minus natural conditions of 4.25 dv). We have reviewed the LDEQ's estimates of the natural visibility impairment at Breton NWA and are proposing to find these estimates acceptable.

4. Uniform Rate of Progress

In setting the RPGs, the LDEQ analyzed and determined the URP needed to reach natural visibility conditions by the year 2064. In so doing, the LDEQ compared the baseline visibility conditions to the natural visibility conditions in Breton NWA and determined the URP needed in order to attain natural visibility conditions by 2064. The LDEQ constructed the URP consistent with the requirements of the RHR and our 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for Breton NWA.

Using a baseline visibility value of 25.73 dv and a ''refined'' natural visibility value of 11.93 dv for the 20 percent worst days for Breton, the LDEQ calculated the URP to be approximately 0.23 dv per year. This results in a total reduction of 13.80 dv that are necessary to reach the natural visibility condition of 11.93 dv in 2064 for Breton NWA. The URP results in a visibility improvement of 3.22 dv for Breton for the period covered by this SIP revision submittal (up to and including 2018).

TABLE 1—SUMMARY OF UNIFORM RATE OF PROGRESS

Visibility metric	Breton NWA
Baseline Conditions ..	25.73 dv.
Natural Visibility	11.93 dv.
Total Improvement by 2064.	13.80 dv.
Improvement for this SIP by 2018.	3.22 dv.

[14] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including the EPA and FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[15] The science behind the revised IMPROVE equation is discussed in Chapter 5 and Appendix B of the LDEQ's TSD for the Louisiana RH SIP and in numerous published papers. See for example: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado, available at *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm* and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006, available at *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[16] The amount of light lost as it travels over one million meters. The haze index, in units of deciviews (dv), is calculated directly from the total light extinction, b_{ext} expressed in inverse megameters (Mm^{-1}), as follows: $HI = 10 \ln(b_{ext}/10)$.

TABLE 1—SUMMARY OF UNIFORM RATE OF PROGRESS—Continued

Visibility metric	Breton NWA
Uniform Rate of Progress.	0.23 dv/yr.

We are proposing to find that LDEQ has appropriately calculated the URP and has satisfied the requirement in 40 CFR 51.308(d)(1)(i)(B).

C. Evaluation of Louisiana's Reasonable Progress Goals

We are proposing to find that Louisiana's RPGs meet some federal requirements, but also contain some deficiencies. This section discusses three RPG requirements as they relate to the LA RH SIP: (1) Establishment of the RPG; (2) reasonable progress four factor analysis; and (3) reasonable progress consultation. See the TSD for a more detailed discussion of RPG requirements and the LA RH SIP for RPGs. The establishment of RPGs and the reasonable progress four factor analysis for Louisiana are linked to the EPA's CAIR and the Transport Rule. As discussed in the Executive Summary above, in an earlier proposed action the EPA proposed a limited disapproval of the LA RH SIP (76 FR 82219). As discussed in that proposal, a number of states, including Louisiana, fully consistent with the EPA's regulations at the time, relied on the trading programs of the CAIR to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals. Louisiana also relied on the CAIR in assessing the need for emissions reductions from EGUs to ensure reasonable progress. As a result, Louisiana will have to consider whether EGUs previously covered by the CAIR, whether subject to BART or not, should be controlled to ensure reasonable progress.[17]

We are proposing to find that the State's RPGs are deficient given our proposed finding, discussed in section IV.D. below, that certain of Louisiana's BART determinations are not fully approvable. In general, the State followed the requirements of 40 CFR 51.308(d)(1), but these goals do not reflect appropriate emissions reductions from BART.

Establishment of the Reasonable Progress Goals

The LDEQ adopted the CENRAP modeled 2018 visibility conditions as the RPGs for Breton NWA Class I area. The LDEQ established a RPG of 22.51 dv for Breton for 2018 for the 20% worst days. This represents a 3.22 dv improvement over a baseline of 25.73 dv.

The CENRAP's projections for 2018 for the 20% worst and best days for Breton, which Louisiana used in developing its RPGs for Breton, are shown in the LA RH SIP Appendix B titled, ''Technical Support Document for CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation Plans.'' [18] A comparison of the LDEQ's predicted rate of progress to the glide path on the 20% worst days shows that, with projected control of Louisiana sources, Louisiana will be very close to the glide path throughout the first planning period.[19] The CENRAP modeling shows that for the 20% best days, there would be a 0.90 dv improvement in visibility from the baseline for Breton. See, 40 CFR 51.308(d)(1).

LDEQ's Reasonable Progress ''Four Factor'' Analysis

In establishing RPGs for a Class I area, the State is required by CAA § 169A(g)(1) and 40 CFR 51.308(d)(1)(i)(A) to ''[c]onsider the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources, and include a demonstration showing how these factors were taken into consideration in selecting the goal.'' In addition to this explicit statutory requirement, the RHR also establishes an analytical requirement to ensure that each state considers carefully the suite of emission reduction measures necessary to attain the URP. The RHR provides that the EPA will consider both the state's consideration of the four factors in 40 CFR 51.308(d)(1)(i)(A) and its analysis of the URP ''[i]n determining whether the State's goal for visibility improvement provides for reasonable progress.'' 40 CFR 51.308(d)(1)(iii). As explained in the preamble to the RHR, the URP analysis was adopted to ensure that states use a common analytical framework and to ensure an informed and equitable decision making process to ensure a transparent process that would, among other things, ensure that the public would be provided with the information necessary to understand the emission reductions needed, the costs of such measures, and other factors associated with improvements in visibility. 64 FR at 35733.

In establishing its RPGs for 2018 for the 20% worst days, the LDEQ relied on the improvements in visibility that were anticipated to result from federal, State, and local control programs that were either currently in effect or with mandated future-year emission reduction schedules that predate 2018, including BART emission limitations projected by the LDEQ. Based on the emissions reductions from these measures, the CENRAP modeled the projected visibility conditions anticipated at each Class I area in the region in 2018, and the LDEQ used these results to establish RPGs.

States do have discretion in setting RPGs, but are required to do more than establish RPGs that meet or exceed the URP. The LDEQ did provide an analysis that considered the four statutory factors under 40 CFR 51.308(d)(1)(i)(A) to evaluate the potential of controlling certain sources or source categories for addressing visibility impacts from man-made sources within its borders.

The LDEQ provides an analysis in Appendix H, CENRAP Regional Control Strategy Analysis Plan, showing that the URP goals are reasonable. In addition, the LDEQ provided a discussion of the four factors required for this analysis: costs of compliance, time for compliance, energy and non-air quality environmental impacts of compliance, and remaining useful life of any potentially affected sources in Chapter 10 of the RH SIP.

In identifying and prioritizing potential regional haze control strategies, the LDEQ referenced the Alpine Geophysics report for the CENRAP. Table 7–4 of this report outlines potential facilities that could be considered when developing a subregional SO_2 control strategy with the associated approximate costs (see the LA RH SIP Appendix H). TSD Table 4 shows the facilities in Louisiana identified in the Alpine report that potentially significantly impact visibility at Breton for which controls may be available. The LDEQ found that significant reductions would be achieved from consent decrees and the CAIR, and further examined the sources in Louisiana identified in the Alpine report for potential reductions. More information about the state's discussion

[17] Because the Transport Rule will result in greater emission reductions overall than the CAIR, the EPA did not include the RPGs set by affected states in its December 30, 2011 limited disapproval (*Transport Better than BART* proposal, December 30, 2011, 76 FR 82219).

[18] The TSD for CENRAP Emissions and Air Quality Modeling to Support RH State Implementation is found in Appendix B of the Louisiana RH SIP.

[19] See the LA RH SIP submittal, Chapter 8, Section 8.5, Figure 8.2.

is available in section IV.C of the TSD and in the LA RH SIP submittal.

Reasonable Progress Consultation

The LDEQ worked with the Visibility Improvement—States and Tribal Associations of the Southeast (VISTAS) and the CENRAP states to jointly develop the consultation strategy. The LDEQ used the CENRAP as the main vehicle for facilitating collaboration with FLMs and other states in developing its RH SIP. The LDEQ was able to use the CENRAP generated products, such as regional photochemical modeling results and visibility projections, and source apportionment modeling to assist in identifying neighboring states' contributions to the visibility impairment at Breton NWA.

The LDEQ determined that in addition to Louisiana, the following states make a contribution to decreased visibility in Louisiana's Class I area: Mississippi, Alabama, and Florida (see Table 5 of the TSD for this proposal). The LDEQ conducted consultations in the form of face-to-face meetings and conference calls. Participants in the consultation process included states and tribes, the CENRAP and other RPOs, the EPA, and FLMs. The participating states determined that regional modeling and other findings based on existing and proposed controls arising from local, state, and federal requirements indicated that the Class I area in Louisiana is expected to meet the rate of progress goals for the first implementation period ending in 2018. The LDEQ determined that additional emissions reductions from other states were not necessary to address visibility impairment at Breton for the first implementation period ending in 2018, and all states participating in its consultations agreed with this.

D. Evaluation of Louisiana's BART Analyses

BART is an element of Louisiana's LTS for the first implementation period. As discussed in more detail in section III.D of this proposal, the BART evaluation process consists of three components: (1) An identification of all the BART-eligible sources; (2) an assessment of whether those BART-eligible sources are subject to BART; and (3) a determination of any BART controls. The LDEQ addressed these steps as follows:

1. Identification of BART-Eligible Sources

An initial step of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. The LDEQ identified the BART-eligible sources in Louisiana by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and our regulations (40 CFR 51.301): (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emission unit(s) began operation on or after August 6, 1962, and was in existence on August 6, 1977; and (3) potential emissions of any visibility-impairing pollutant from subject units are 250 tpy or more.

The LDEQ determined that the visibility-impairing pollutants in Louisiana include SO_2, NO_X, and PM, using PM less than 10 microns in diameter (PM_{10}) as an indicator for PM (LA RH SIP, Chapter 9, p. 36). This is consistent with the RHR (40 CFR 51 Appendix Y, III.A.2). See the TSD for more information.

The LDEQ sent a letter and survey form, together with guidance materials, requesting information about BART eligibility to every reporter (1167 facilities) to the emissions inventory for the state requesting information about BART eligibility. Of the 1167 facilities contacted, 1165 facilities responded, and reported 76 BART-eligible facilities. Of the two non-responders, one was found to be out of business, and the other was determined to have minor emissions. See the TSD for more information. Each of the 76 BART-eligible facilities is identified in Table 6 of the TSD. We agree with the LDEQ's identification of BART-eligible sources.

2. Identification of Sources Subject to BART

The next step of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to any visibility impairment at any Class I area, i.e. those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Following the identification of those sources that were determined to be BART eligible, the LDEQ performed a combination approach to determine whether BART-eligible sources would cause or contribute to visibility impairment at Breton. The LDEQ used a combination of an individual source attribution approach (dispersion modeling), and, for sources with common characteristics, a model plant approach.[20] Please see the TSD and Appendix A of the TSD for more details regarding how sources were exempted from BART by the LDEQ and our analysis of this modeling.

Louisiana considered each of the 76 BART-eligible facilities described earlier using the modeling methodologies described below.

Modeling Methodology

The BART Guidelines direct states to address SO_2, NO_X, and PM emissions as visibility-impairing pollutants, and states must exercise their ''best judgment to determine whether ammonia or VOC emissions from a source are likely to have an impact on visibility in an area.'' See, 70 FR 39162. As noted above, the LDEQ determined that the visibility-impairing pollutants in Louisiana are SO_2, NO_X, and particulate matter. Louisiana decided to not consider VOCs and ammonia among visibility-impairing pollutants for several reasons, as discussed in the TSD. We propose to accept the State's decision to address only SO_2, NO_X, and PM as the visibility impairing pollutants.

Consistent with BART Guidelines, the LDEQ used the CALPUFF modeling system to determine whether individual sources identified as BART-eligible were subject to or exempt from BART. For this modeling, Louisiana considered 76 BART-eligible facilities, as discussed in section IV.D.1. Based on this analysis, Louisiana identified 27 facilities for further consideration due to visibility impact above a 0.5 dv contribution threshold. These facilities are discussed in the next section of this action and are identified in Table 7 of the TSD. We are proposing to find the LDEQ's chosen modeling methodology and screening approach are acceptable.

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that an important step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' 70 FR 39104, 39161. The BART Guidelines also state that ''the appropriate threshold for determining whether a source contributes to

[20] The ''model plant'' approach can be used to determine whether a category of sources that share specific characteristics should be exempted from BART because these sources are not anticipated to cause or contribute to visibility impairment at a Class I area. *See* 40 CFR 51 Appendix Y.III.

visibility impairment ''may reasonably differ across states,'' but ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' *Id.* Further, in setting a contribution threshold, states should ''consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts.'' The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach. Considering the number of sources affecting Louisiana's Class I area and the magnitude of each source's impact, the LDEQ used a contribution threshold of 0.5 dv for determining which sources are subject to BART. We propose to accept the State's selection of 0.5 dv as the threshold value.

For the 27 facilities referenced above, Louisiana requested that the facilities provide additional modeling: Screening Modeling and, for sources that failed the Screening Modeling, Refined Modeling. Those facilities that the LDEQ requested to conduct this additional modeling and the results of the individual Screening and Refined Modeling analyses for each of these sources are shown in Table 7 of the TSD.[21] Our evaluation of these modeling results showed that there was one facility, Mosaic Fertilizer Uncle Sam Plant (Mosaic), which had modeled visibility impacts that exceeded the 0.5 dv contribution threshold, but which the LDEQ determined was not subject to BART. At the time of the submittal, the LDEQ's modeling showed that, using then-current permit maximum hourly emission rates, Mosaic had an operating emissions rate of 2,250 lbs/hr (maximum) and a significant modeled visibility impact at Breton of over 0.5 dv. At that time, Mosaic was reviewing possibilities for future control strategies on the A-Train Sulfuric Acid Stack that could be expected to reduce SO_2 emissions for the facility. For purposes of performing a refined modeling analysis and exempting the source from BART requirements, Mosaic considered potential future emission rates based on future controls, and used a modeling data input of 258.3 lbs/hr (maximum). Although future controls were being considered, they were not yet in place. The RHR states that a source can be exempted if its visibility impacts at the time the SIP is developed are less than the screening value. See, 70 FR 39118. Because Mosaic's impacts were greater than the screening value, at that time, the LDEQ should have completed a full five factor analysis to assure the appropriate BART level of control was implemented (as discussed in section IV.D.3). Therefore, we propose to find that the LDEQ erred in exempting the Mosaic facility from BART. For those facilities for which Screening and Refined Modeling was provided, with the exception of Mosaic, we propose to approve the modeling in the LA RH SIP submittal that identifies which sources are exempt from BART.

Sources Subject to BART

The sources that were not exempt from the BART requirements via dispersion modeling analyses and/or the use of model plants are subject to BART. For sources subject to BART in Louisiana, the LDEQ must make a determination of BART. The LDEQ identified three sources as subject to BART and we identified one more, Mosaic, as discussed previously in this proposal. All four of these sources are shown in Table 2.

TABLE 2—NON-EGU SOURCES IN LOUISIANA SUBJECT TO BART

Facility name	BART emission units	Source category	Pollutants evaluated
ConocoPhillips Co. Alliance Refinery	Various emission points in facility	Petroleum Refinery	SO_2 NO_X PM_{10}
Rhodia, Inc	Sulfuric Acid Units 1 and 2	Sulfuric Acid	SO_2
Sid Richardson Carbon Company	Units 1, 2, and 3 flares and dryers 2, 3 and 4.	Carbon Black	SO_2
Mosaic Fertilizer Uncle Sam Plant*	Various emission points in facility*	Chemical Process Facility*	None*

*This facility was identified by EPA as subject to BART.

Louisiana did not submit source-specific BART evaluations for EGUs in its analysis because the state chose to meet BART requirements for EGUs for SO_2 and NO_X by participation in the CAIR, and because modeling results showed that the PM emissions from EGUs did not warrant further control. This is discussed further in the next section.

3. BART Determinations

The next component of a BART evaluation is to perform the BART analysis. BART is a source-specific control determination, based on consideration of several factors set out in section 169A(g)(2) of the CAA. These factors include the costs of compliance and the degree of improvement in visibility associated with the use of possible control technologies. The EPA issued BART Guidelines (Appendix Y to Part 51) in 2005 to clarify the BART provisions based on the statutory and regulatory BART requirements (70 FR 39164). The BART Guidelines describe the BART analysis as consisting of the following five basic steps:

- Step 1: Identify All Available Retrofit Control Technologies,
- Step 2: Eliminate Technically Infeasible Options,
- Step 3: Evaluate Control Effectiveness of Remaining Control Technologies,
- Step 4: Evaluate Impacts and Document the Results, and
- Step 5: Evaluate Visibility Impacts.

We note the BART Guidelines provide that states must follow the guidelines in making BART determinations on a source-by-source basis for 750 MW power plants but are not required to use the process in the guidelines when making BART determinations for other types of sources. States with subject-to-BART units with a generating capacity less than 750 MW are strongly encouraged to follow the BART Guidelines in making BART determinations, but they are not required to do so. However, the requirement to perform a BART analysis

[21] The LDEQ provided screening modeling results for all sources identified as BART-eligible; see Appendix E of the LA RH SIP submission.

that considers ''the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology,'' is found in 40 CFR 51.308(e)(1)(ii)(A) and the RHR, and applies to all subject-to-BART sources.

For three facilities, ConocoPhillips Co., Rhodia Inc., and Sid Richardson Carbon Company, the LDEQ submitted a BART analysis under 40 CFR 51.308(e)(1)(ii)(A). For each of these facilities, we propose to find that the BART analysis satisfies part of the requirements, but does not satisfy all of the requirements. A summary of our proposed findings for these facilities is provided below. For more details, please see our evaluation of the BART determination for each subject-to-BART unit, in the TSD.

As previously discussed, we are proposing to find that the state should have identified Mosaic as being subject to BART and made a BART determination for the source. This is discussed in more detail in section IV.D.2 of this action.

Also, as discussed in the Executive Summary above, in an earlier proposed action EPA proposed a limited disapproval of the LA RH SIP (76 FR 82219). EPA's proposed limited disapproval is based on deficiencies in the LA RH SIP submittal arising from the state's reliance on the CAIR to meet certain regional haze requirements. States such as Louisiana that are subject to the requirements of the Transport Rule trading program only for NO_X must still address BART for EGUs for SO_2 and other visibility impairing pollutants. *See,* 76 FR at 82224. While we proposed on December 30, 2011 to issue a FIP to address the deficiencies in Louisiana's SIP associated with the BART requirements for NO_X for EGUs, we did not propose a FIP to address the deficiencies associated with the BART requirements for SO_2. Louisiana also relied on the CAIR in assessing the need for emissions reductions for SO_2 from EGUs to satisfy BART requirements. Consequently, Louisiana will have to re-evaluate EGUs with respect to SO_2 BART requirements.

a. ConocoPhillips

The ConocoPhillips Alliance Refinery is a petroleum refinery near Belle Chasse Louisiana and is a subject-to-BART source. On December 5, 2005, ConocoPhillips and the EPA entered into a Consent Decree (CD).[22] The BART engineering analysis, provided by ConocoPhillips utilized emission reductions that are mandated per the CD for the fluidized catalytic cracker, the process refinery flares and the crude unit heater. Implementing these control projects per the CD emissions reductions will result in reducing the overall site visibility impacts. The visibility improvements resulting from this CD are discussed further in the TSD. However, the LDEQ did not provide a complete BART evaluation for these units. The submittal does not analyze controls for these units using the five steps as required by 40 CFR 51.308(e). Also, no emissions limits for BART for these units were included in the LA RH SIP. Therefore, for the units covered by the CD, the LDEQ must provide BART analyses for the units to meet BART requirements (40 CFR 51.308(e)(1)(ii)(A)).[23] Also, a unit's BART emissions limits must be a part of the RH SIP, and therefore the LDEQ must include the BART emissions limits in the RH SIP through a SIP revision.[24] We propose to find that the BART determination for ConocoPhillips Alliance Refinery is deficient at this time.

There are several other units subject to BART at the ConocoPhillips Alliance facility. These include the cooling water tower and gas-fired heaters. Louisiana provided a BART analysis for these as follows: cooling water tower for PM and PM_{10}, and process heaters for NO_X. For these units, ConocoPhillips determined, and the LDEQ agreed that there was not a cost effective control. We are proposing to accept the LDEQ's BART analysis that no additional controls are required to meet BART for these units.

For three other units, the emissions of PM, SO_2, and NO_X are minimal; so, the potential visibility improvement from controls on these units is also minimal. These units are the Product Dock No. 1 MVR Loading, the Product Dock No. 2 MVR Loading, and Coke Transfer and Storage. For detailed information, see the TSD section IV.D.3.a.iii and TSD Appendix A. The installation of any additional controls would likely achieve negligible emissions reductions, have almost no visibility impact on Breton, and would not be cost-effective.[25] We propose to find that the LDEQ's analysis for these units is adequate to meet BART requirements.

b. Rhodia

The Rhodia Sulfuric Acid plant is located in Baton Rouge. The Rhodia Sulfuric Acid plant produces sulfuric acid by using two sulfuric acid production trains, Unit 1 and Unit 2. Unit 1 was constructed in 1953, and at the time of the SIP submittal, had a production rate of 700 tons of sulfuric acid per day (700 tons sulfuric acid/day). Although Rhodia Unit 1 was constructed outside the dates for BART-eligibility, the LDEQ identified it as BART-eligible. Therefore, we treat it as BART-eligible and have included this unit in the subject-to-BART discussion in this section.[26] We request comments on whether this unit should be treated

[22] Civil Action No. H–05–0285. A copy of this CD is available in the docket for this rulemaking.

[23] The EPA recently finalized action approving New Jersey's BART determinations for the ConocoPhillips Bayway Refinery, which is subject to the same CD as the ConocoPhillips Alliance Refinery. *See http://www.epa.gov/compliance/resources/cases/civil/caa/conocophillips.html.* The proposal for that action explains that the EPA's approval is based on New Jersey's submittal of a complete BART evaluation for the subject-to BART units at the facility, and the fact that these units will be controlled ''based on maximum feasible controls or a multi-factor analysis.'' 76 FR 49711, at 49721; see also, 77 FR 19–01. The TSD for that action describes how New Jersey's submittal included the BART analysis for NO_X, SO_2, and PM for the subject-to-BART units at this source in compliance with 40 CFR 51.308(e)(1)(ii)(A). TSD, pages 27–29, *available at http://www.regulations.gov,* Docket number EPA–R02–OAR–2011–0607.

[24] The CAA requires RH SIPs to ''to contain such emission limits * * * necessary to make reasonable progress toward meeting the national goal. * * *'' CAA 169A(b)(2). The federal regulations further explain that the state must ''submit an implementation plan containing emission limits representing BART and schedules for compliance with BART for each BART-eligible source that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area.'' 40 CFR 51.308(e). Finally, the preamble to the RHR states that ''[t]he SIP revision must include the emission limitations determined to be BART for sources subject to BART. * * *'' 64 FR 35714, at 35741.

[25] ''Consistent with the CAA and the implementing regulations, States can adopt a more streamlined approach to making BART determinations where appropriate. Although BART determinations are based on the totality of circumstances in a given situation, such as the distance of the source from a Class I area, the type and amount of pollutant at issue, and the availability and cost of controls, it is clear that in some situations, one or more factors will clearly suggest an outcome. Thus, for example, a State need not undertake an exhaustive analysis of a source's impact on visibility resulting from relatively minor emissions of a pollutant where it is clear that controls would be costly and any improvements in visibility resulting from reductions in emissions of that pollutant would be negligible. In a scenario, for example, where a source emits thousands of tons of SO_2 but less than one hundred tons of NO_X, the State could easily conclude that requiring expensive controls to reduce NO_X would not be appropriate. In another situation, however, inexpensive NO_X controls might be available and a State might reasonably conclude that NO_X controls were justified as a means to improve visibility despite the fact that the source emits less than one hundred tons of the pollutant.'' 70 FR 39116.

[26] We note it is possible for a source to have been constructed prior to the BART eligibility timeframe of August 7, 1962 to August 7, 1977, but to have been reconstructed during that timeframe and thus still BART-eligible. 70 FR 39159–60.

as BART-eligible. Unit 2 was constructed in 1968, and has a production rate of 1500 tons sulfuric acid/day. Therefore, Unit 2 is an ''existing stationary facility'' for purposes of BART eligibility, as defined in 40 CFR 51.301.

Effective July 23, 2007, the EPA, LDEQ and other parties entered into a CD with Rhodia requiring a scrubber to be installed on each of the units to control SO_2 emissions.[27] The BART engineering analysis assumed emission reductions that have since been mandated per the CD for Units 1 and 2. As stated above, without controls, the BART screening modeling for Rhodia showed a visibility impact at Breton of greater than 0.5 dv. Implementing control projects per the CD emissions reductions will result in reducing the overall site visibility impacts, and based on modeling with controls the LDEQ expects the visibility impairment from Rhodia to be below 0.5 dv at Breton. The visibility improvements resulting from this CD are discussed in the TSD. However, the LDEQ did not submit a complete BART evaluation for these units. The submittal does not analyze controls for the units using the five steps as required by 40 CFR 51.308(e). In order to satisfy BART requirements for SO_2, Louisiana must provide a BART analysis. The LDEQ may be able to find that the controls required under the CD are among the most stringent, and therefore, no additional controls would be required for these units to meet BART. 40 CFR 51 Appendix Y.IV.D.1.9. Also, the emissions limits for Rhodia's subject-to-BART units were not included in the RH SIP revision, so the LDEQ must include the BART emission limits in the RH SIP through a SIP revision.[28] We propose to find that the BART determination for Rhodia is deficient at this time.

The visibility impact due to NO_X and PM emissions from Rhodia's two subject-to-BART units is minimal; so, the potential visibility improvement from controls on these units is also minimal. For detailed information, see the TSD section IV.D.3.b and TSD Appendix B. The installation of any additional controls would likely achieve negligible emissions reductions, have almost no visibility impact on Breton, and would not be cost-effective.[25] We propose to find the LDEQ's analysis for these pollutants is adequate to meet BART requirements.

c. Sid Richardson Carbon Company

The Sid Richardson Carbon Company is a subject-to-BART source located in West Baton Rouge Parish. For the subject-to-BART units at the Sid Richardson facility, Sid Richardson/LDEQ submitted a BART engineering analysis. For PM, the LDEQ determined that the high efficiency fabric filters already in use at the facility are BART. We propose to find that the state acted within its discretion in making this determination, and that the PM analyses provided by the LDEQ and Sid Richardson meet BART requirements.

For NO_X, the LA RH SIP Chapter 9 states that the Sid Richardson engineering analyses included the potential installation of NO_X add-on controls, but it determined that all were infeasible (there were no demonstrated NO_X scrubbing technologies at any carbon black plants). However, there is not sufficient information in the LA RH SIP submittal to support the BART analysis conclusion that no controls are feasible. We propose to find that the NO_X BART determination for Sid Richardson is deficient at this time.

For SO_2, the LA RH SIP Chapter 9 states that the Sid Richardson engineering analyses included the potential installation of SO_2 add-on controls, but it determined that all were infeasible (there were no demonstrated SO_2 scrubbing technologies at any carbon black plants). However, Appendix G of the LA RH SIP submittal reflects that the SO_2 evaluation for Sid Richardson considered four potential approaches and evaluated them for cost effectiveness: Three add-on controls—caustic scrubbing, wet limestone scrubbing, and Haldor Topsoe's SNOX process, which is a process that removes SO_2, NO_X and PM from flue gas; the fourth approach would be to limit the sulfur content of the feedstock oil.[29] The SIP documentation does not reconcile the cost analyses provided with the corresponding conclusion of the technical infeasibility for these same control options. Based on the cost analysis provided, the installation and use of scrubbers to control emissions may be well within a range that is cost effective. Also, the LDEQ indicated that no controls were technically feasible, but the record does not provide a sufficient basis for this conclusion. There is not sufficient information in the LA RH SIP submittal to support the BART analysis conclusion that a scrubber, or other technology, is not feasible. For these reasons, we propose to find that the SO_2 BART determination for Sid Richardson is deficient at this time.

E. Long-Term Strategy

As described in section III.E of this action, the LTS is a compilation of state-specific control measures relied on by the state for achieving its RPGs. Louisiana's LTS for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the state from the end of the baseline period starting in 2004 until 2018. The Louisiana LTS was developed by the LDEQ, in coordination with the CENRAP RPO, through an evaluation of the following components: (1) Construction of a CENRAP 2002 baseline emission inventory; (2) construction of a CENRAP 2018 emission inventory, including reductions from the CENRAP member state controls required or expected under federal and state regulations, (including BART); (3) modeling to determine visibility improvement and apportion individual state contributions; (4) state consultation; and (5) application of the LTS factors.

1. Emissions Inventories

40 CFR 51.308(d)(3)(iii) requires that Louisiana document the technical basis, including modeling, monitoring and emissions information, on which it relied upon to determine its apportionment of emission reduction obligations necessary for achieving reasonable progress in each mandatory Class I Federal area it affects. Louisiana must identify the baseline emissions inventory on which its strategies are based. 40 CFR 51.308(d)(3)(iv) requires that Louisiana identify all anthropogenic sources of visibility impairment considered by the state in developing its long-term strategy. This includes major and minor stationary sources, mobile sources, and area sources. Louisiana met these requirements by relying on technical analyses developed by its RPO, CENRAP, and approved by all state participants, as described below.

The emissions inventory used in the RH technical analyses was developed by the CENRAP with assistance from Louisiana. The LDEQ provided a statewide emissions inventory for 2002, representing the mid-point of the 2000–2004 baseline period, and a projected emissions inventory for 2018, the end of the first 10-year planning period. The 2018 inventory is based on visibility modeling conducted by the CENRAP. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from

[27] Civil Action No. 2:07CV134 WL. A copy of this CD is available in the docket for this rulemaking.

[28] CAA 169A(b)(2); 40 CFR 51.308(e); and 64 FR 35714, at 35741.

[29] LA RH SIP submittal TSD Appendix G, Environ Report, pg 14.

federal and state regulations affecting the emissions of the visibility-impairing pollutants NO_X, PM, SO_2, and VOCs.

a. Louisiana's 2002 Emission Inventory

The LDEQ and the CENRAP developed an emission inventory for four inventory source classifications: point, area, non-road and on-road mobile sources for the baseline year of 2002. Louisiana's 2002 emissions inventory provides estimates of annual emissions for haze producing pollutants by source category as summarized in Table 3, based on information in Chapter 7 of Louisiana's RH SIP.

TABLE 3—LOUISIANA 2002 EMISSIONS INVENTORY

[Tons/year]

	SO_2	NH_3	NO_X	VOCs	PM_{10}	$PM_{2.5}$
Point	286,050	9,237	312,634	89,025	73,333	60,899
Area	81,153	75,381	99,060	124,311	245,162	84,068
Non-road mobile	14,324	563	117,250	109,598	10,663	9,791
On-road mobile	4,653	3,748	15,137	64,643	3,563	2,689
Total	386,180	88,929	544,081	387,577	332,721	157,447

See the TSD for details on how the 2002 emissions inventory was constructed. The EPA approved the 2002 emissions inventory on September 3, 2009 (74 FR 45561). We are proposing to find that Louisiana's 2002 emission inventory is acceptable for the purpose of developing the LTS.

b. Louisiana's 2018 Emission Inventory

In constructing Louisiana's 2018 emission inventory, the LDEQ used a combination of our Economic Growth Analysis System (EGAS 6), our mobile emissions factor model (MOBILE 6), our off-road emissions factor model (NONROAD), and the Integrated Planning Model (IPM) for electric generating units. The CENRAP developed emissions for five inventory source classifications: Point, area, non-road and on-road mobile sources, and biogenic sources. The CENRAP used the 2002 emission inventory, described above, to estimate emissions in 2018. All control strategies expected to take effect prior to 2018 are included in the projected emission inventory. Louisiana's 2018 emissions inventory provides estimates of annual emissions for haze producing pollutants by source category as summarized in Table 4, based on information in Chapter 7 of the Louisiana RH SIP.

TABLE 4—LOUISIANA'S 2018 EMISSIONS INVENTORY

	SO_2	NH_3	NO_X	VOCs	PM_{10}	$PM_{2.5}$
Point	354,087	14,435	269,215	187,741	73,136	60,899
Area	87,538	36,896	114,374	117,600	16,936	14,536
Non-road mobile	11,584	72	106,685	64,294	8,670	7,955
On-road mobile	561	5,436	44,806	30,340	1,191	1,191
Total	453,770	56,839	535,080	399,975	99,933	84,581

See the TSD for details on how the 2018 emissions inventory was constructed. The CENRAP and LDEQ used this and other state's 2018 emission inventories to construct visibility projection modeling for 2018. We are proposing to find that Louisiana's 2018 emission inventory is acceptable.

2. Visibility Projection Modeling

The CENRAP performed modeling for the RH LTS for its member states, including Louisiana. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. The CENRAP used (1) the Mesoscale Meteorological Model (MM5) meteorological model, (2) the Sparse Matrix Operator Kernel Emissions (SMOKE) modeling system to generate hourly gridded speciated emission inputs, (3) the Community Multiscale Air Quality (CMAQ) photochemical grid model and (4) the Comprehensive Air Quality model with extensions (CAM_X), as a secondary corroborative model. The CAM_X was also utilized with its Particulate Source Apportionment Technology (PSAT) tool to provide source apportionment for both the baseline and future case visibility modeling.

The photochemical modeling of RH for the CENRAP states for 2002 and 2018 was conducted on the 36-km resolution national regional planning organization domain that covered the continental U.S., portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. The CENRAP states' modeling was developed consistent with our guidance.[30]

The CENRAP examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the RH assessment of the LTS and for use in the modeling assessment. The 2002 modeling efforts were used to evaluate air quality/visibility modeling for a historical episode—in this case, for calendar year 2002—to demonstrate the suitability of the modeling systems for subsequent planning, sensitivity, and emissions control strategy modeling. Model performance evaluation is performed by comparing output from

[30] Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, (EPA–454/B–07–002), April 2007, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*. Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations, August 2005, updated November 2005 (''our Modeling Guidance''), located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html*, EPA–454/R–05–001.

model simulations with ambient air quality data for the same time period to determine whether the model's performance is sufficiently accurate to justify using the model for simulating future conditions. Once the CENRAP determined the model performance to be acceptable, it used the model to determine the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the URP. The results of the CENRAP's visibility projection modeling are discussed in the section that follows. We are proposing to find that Louisiana's visibility projection modeling is acceptable.

3. Sources of Visibility Impairment

Where Louisiana causes or contributes to impairment in a mandatory Class I Federal area, it must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the area. If Louisiana has participated in a regional planning process, it must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.

40 CFR 51.308(d)(3)(ii) requires that, ''Where other states cause or contribute to impairment in a * * * Class I area, the state must demonstrate that it has included * * * all measures necessary to obtain its share of the emissions reductions needed to meet the progress goal for the area. If the state has participated in a regional planning process, the state must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.''

The CENRAP used CAM_X with its PSAT tool to provide source apportionment by geographic region and major source category. The pollutants causing the highest levels of light extinction are associated with the sources causing the most visibility impairment.

a. Sources of Visibility Impairment in the Breton Class I Area

Visibility impairment at Breton in 2002 on the worst 20% days is primarily (69%) due to point source emissions that contribute 77.7 inverse megameters [31] (Mm^{-1}) of the total extinction of 122.1 Mm^{-1}. The largest contributions come from inside the state. In 2018, point sources continue to contribute the most to visibility impairment at Breton, even though this contribution has decreased substantially. ''The top five contributing source groups to 2018 visibility impairment at [Breton] for the worst 20 percent days are: Louisiana Elevated Point Sources; Boundary Conditions; [32] East Elevated Point Sources; Gulf of Mexico Area Sources; and Louisiana Area Sources. Gulf of Mexico Area sources include off shore shipping and oil and gas development emissions.'' [33] We are proposing to find that Louisiana's identification of sources of visibility impairment for the Breton Class I area is acceptable.

b. Louisiana's Contribution to Visibility Impairment in Class I Areas Outside the State

Table 5 shows the CENRAP CAMx and PSAT modeled contributions (in percentage of visibility impacts) to total extinction at all Class I areas from Louisiana sources for 2002 and 2018, respectively. The CAMx PSAT results were utilized to evaluate the impact of Louisiana emission sources in 2002 and 2018 on visibility impairment at Class I areas outside of the state.

TABLE 5—PERCENT CONTRIBUTION FROM LOUISIANA EMISSIONS TO TOTAL VISIBILITY IMPAIRMENT AT CLASS I AREAS ON 20% WORST DAYS

Class I area	State	2002	2018
Breton (BRET1)	Louisiana	15.75	24.67
Wichita Mountains (WIMO1)	Oklahoma	3.47	4.83
Caney Creek (CACR1)	Arkansas	2.86	4.23
Big Bend NP (BIBE1)	Texas	2.79	3.32
Upper Buffalo Wilderness (UPBU1)	Arkansas	1.80	2.71
Hercules Glades Wilderness (HEGL1)	Missouri	1.71	2.43
Guadalupe Mountains NP (GUMO1)	Texas	1.32	1.57
White Mountain Wilderness (WHIT1)	New Mexico	1.28	1.44
Sipsey Wilderness (SIPS1)	Alabama	0.96	1.78
Salt Creek (SACR1)	New Mexico	0.93	1.07
Mammoth Cave NP (MACA1)	Kentucky	0.67	1.19
Seney (SENE1)	Michigan	0.54	0.77
Bosque del Apache (BOAP1)	New Mexico	0.42	0.48
Great Smoky Mountains NP (GRSM1)	Tennessee	0.40	0.83
Isle Royale NP (ISLE1)	Michigan	0.39	0.49
Badlands NP (BADL1)	South Dakota	0.36	0.41
Cadiz (CADI1)	Kentucky	0.34	0.59
Gila Wilderness (GICL1)	New Mexico	0.30	0.37
Bondville (BOND1)	Illinois	0.27	0.41
Mingo (MING1)	Missouri	0.22	0.33
Bandelier (BAND1)	New Mexico	0.21	0.24
San Pedro Parks (SAPE1)	New Mexico	0.20	0.22
Wind Cave NP (WICA1)	South Dakota	0.14	0.16
Wheeler Peak Wilderness (WHPE1)	New Mexico	0.14	0.16

As shown in the Table above, the largest contribution from Louisiana sources is at the Wichita Mountains Class I area in Oklahoma in both 2002 and 2018. Louisiana is also projected to contribute a small amount of visibility

[31] An inverse megameter is the direct measurement unit for visibility impairment data. It is the amount of light scattered and absorbed as it travels over a distance of one million meters. Deciviews (dv) can be calculated from extinction data as follows: $dv = 10 \times \ln (b_{ext}(Mm^{-1})/10)$.

[32] ''Boundary Conditions'' means ''the assumed concentrations along the later edges of the 36 km modeling domain.'' LA RH SIP submittal Appendix B, Environ Report, p. 1–16.

[33] LA RH SIP submittal Appendix B, Environ Report, p. 5–18.

degradation at Class I areas in other states as listed in Table 5. This table summarizes the projected contribution from Louisiana's emissions on visibility degradation to Class I areas for the 20 percent worst days in 2002 and 2018, as modeled by the CENRAP.[34] We are proposing to find that Louisiana's identification of sources of visibility impairment for Class I areas outside the state is acceptable.

4. Consultation for Other State's Class I Areas

The LDEQ used the CENRAP as its main vehicle for facilitating collaboration with FLMs and other states in the CENRAP, and the VISTAS for other states outside the CENRAP to satisfy its LTS consultation requirement. This helped the LDEQ and other state agencies analyze emission apportionments at Class I areas and develop coordinated RH SIP strategies.

40 CFR 51.308(d)(3)(i) requires that Louisiana consult with other states if its emissions are reasonably anticipated to contribute to visibility impairment at that state's Class I area(s), and that Louisiana consult with other states if those states' emissions are reasonably anticipated to contribute to visibility impairment at Breton NWA. The LDEQ's consultations with other states are described in section IV.C.3 of this action. The CENRAP visibility modeling demonstrates Louisiana sources are responsible for a visibility extinction of approximately 3.5 Mm^{-1} at Caney Creek on the worst 20% days for 2002.[26] The LDEQ consulted with Arkansas as well as Oklahoma, Texas, Mississippi, Alabama, and Florida whose emissions have a potential visibility impact at Breton. We are proposing to find that the LDEQ's consultations satisfy the requirements under 40 CFR 51.308(d)(3)(i).

5. Mandatory Long-Term Strategy Factors

40 CFR 51.308(d)(3)(v) requires that Louisiana consider certain factors in developing its long-term strategy (the LTS factors). These include: (a) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (b) measures to mitigate the impacts of construction activities; (c) emissions limitations and schedules for compliance to achieve the reasonable progress goal; (d) source retirement and replacement schedules; (e) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (f) enforceability of emissions limitations and control measures; and (g) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. For the reasons outlined below, we are proposing to find that Louisiana has satisfied some, but not all of the requirements of 40 CFR 51.308(d)(3)(v). Also, Louisiana will have to consider whether EGUs previously covered by the CAIR, whether subject to BART or not, should be controlled to ensure reasonable progress.

a. Reductions Due to Ongoing Air Pollution Programs

In addition to its BART determinations, Louisiana's LTS incorporates emission reductions due to a number of ongoing air pollution control programs.

The LDEQ considered the Tier 2 Vehicle Emission Standards in developing its LTS. Federal Tier 2 Vehicle Emission Standards for passenger cars and light trucks were fully implemented in 2009 and similar rules for heavy trucks were also implemented by 2009. These federal standards will result in reductions of emissions of PM, ozone precursors, and non-methane organic compounds. In developing its LTS, the LDEQ also considered the Highway Diesel and Nonroad Diesel Rules, which mandated the use of lower sulfur fuels in diesel engines beginning in 2006 for highway diesel fuel, and 2007 for non-road diesel fuel. These federal rules have resulted in more effective control of PM emissions from diesel engines by allowing the installation of control devices that were technically infeasible for fuels with higher sulfur content. In addition, the state will rely on federal consent decrees and implementation of the 2008 ozone standard.

As noted in the EPA's separate notice proposing revisions to the RHR (76 FR 82219) a number of states, including Louisiana, fully consistent with the EPA's regulations at the time, relied on the trading programs of the CAIR to satisfy the BART requirement and the requirement for a long-term strategy sufficient to achieve the state-adopted reasonable progress goals. In that notice, we proposed a limited disapproval of Louisiana's long-term strategy and, for that reason, we are not taking action on the long-term strategy in this proposal insofar as Louisiana's RH SIP relied on the CAIR. The docket for that rulemaking is available at Docket ID No. EPA–HQ–OAR–2011–0729. Louisiana's LTS is also deficient because it relied on deficient non-EGU BART determinations as discussed in section IV.D of this action.

b. Measures To Mitigate the Impacts of Construction Activities

40 CFR 51.308(d)(3)(v)(B) requires that Louisiana consider measures to mitigate the impacts of construction activities in developing its LTS. Construction-related activities are believed to be a small contributor to fine and coarse particulates in Louisiana. The LDEQ notes that Louisiana may require visibility monitoring in any Class I area where preconstruction and post-construction of any new source or major modification may have an adverse impact on visibility in any Class I area (LAC 33:III.504.E.3.b). In spite of a great deal of construction activity from the recovery from Hurricanes Katrina and Rita, no measurable impacts on visibility have been monitored from this activity. We are proposing to find that Louisiana satisfies this component of LTS.

c. Emissions Limitations and Schedules of Compliance

40 CFR 51.308(d)(3)(v)(C) requires that in developing its LTS, Louisiana consider emissions limitations and schedules of compliance to achieve the RPGs. As discussed in section IV.D.3 of this proposal, the SIP does not yet contain emission limits and schedules of compliance for those sources subject to BART. The BART emission limits established by the LDEQ are an element of the LTS, and because we are proposing to find that the relevant portion of the LDEQ's BART determinations are deficient, we propose to find that this element of the LTS does not satisfy the federal requirements.

d. Source Retirement and Replacement Schedules

40 CFR 51.308(d)(3)(v)(D) requires that Louisiana consider source retirement and replacement schedules in developing its LTS. The LDEQ adequately addressed how it considered source retirement and replacement schedules in the development of its LTS. Louisiana's LTS includes the promulgation of new rules for retrofit technology for existing equipment to meet requirements for new NAAQS, which will also provide visibility benefits. We are proposing to find that the LDEQ properly addressed the requirements of 40 CFR 51.308(d)(3)(v)(D) in the development of its LTS.

[34] See Appendix A of the TSD for this proposal for the CENRAP Emissions and Air Quality Modeling to Support Regional Haze State Implementation, as well as Appendix B of the LA RH SIP.

e. Agricultural and Forestry Smoke Management Techniques

40 CFR 51.308(d)(3)(v)(E) requires that Louisiana consider smoke management techniques for agricultural and forestry management purposes in developing its LTS. Where smoke impacts from fire are identified as an important contributor to regional haze, smoke management programs should be a key component of regional and State regional haze planning efforts and long-term strategies (64 FR 35736).

The EPA encourages the development of smoke management programs between air regulators and land managers as a means to manage the impacts of wildland and prescribed burning. The sources of information described above, as well as other developmental efforts currently underway, provide effective, flexible approaches to smoke management. The LDEQ considered smoke management techniques for the purposes of agricultural and forestry management in its LTS. Chapter 13 of Title 33 of the LAC contains a general prohibition on ''open burning of refuse, garbage, trade waste, or other waste material.'' Although the LDEQ does not have the jurisdiction or authority to make any rule, regulation, recommendations, or determination with respect to agricultural burning or controlled burns of pastureland, marshland, or timberland, the Louisiana Department of Agriculture and Forestry (LDAF) does have the authority. The LDAF, in consultation with the LDEQ, is working to develop a SMP that includes measures that can be taken to reduce residual smoke from burning activities as well as a process to evaluate potential smoke impacts at sensitive receptors and guidelines for scheduling fires such that exposure of sensitive populations is minimized and visibility impacts in Class I areas are reduced. Because visibility impacts from smoke are significant in Louisiana, we propose to find that Louisiana should finalize its SMP.

f. Enforceability of Emissions Limitations and Control Measures

40 CFR 51.308(d)(3)(v)(F) requires that Louisiana ensure the enforceability of emission limitations and control measures used to meet reasonable progress goals. The SIP does not yet contain emission limits and schedules of compliance for those EGU sources, if any, subject to SO_2 BART. Also, Louisiana's LTS is deficient because it relied on deficient non-EGU BART determinations as discussed in section IV.D of this action. The emissions limits for these subject-to-BART sources were not included in the LA RH SIP.[35] Therefore, we are proposing to find that the LDEQ has not fully satisfied the requirements of 40 CFR 51.308(d)(3)(v)(F) in the development of its LTS.

g. Anticipated Net Effect on Visibility Due to Projected Changes

40 CFR 51.308(d)(3)(v)(G) requires that in developing its LTS, Louisiana consider the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. In developing its RH SIP, the LDEQ relied on the CENRAP's 2018 modeling projections, which show that net visibility is expected to improve by 3.22 dv at Breton NWA. The CENRAP's 2018 modeling projections account for changes in point, area, and on-road and non-road mobile emissions. The results of the CENRAP's 2018 modeling projections are discussed in sections IV.E.2 and IV.E.3 of this proposed rulemaking. We are proposing to find that Louisiana satisfies this component of LTS.

F. Coordination of RAVI and Regional Haze Requirements

Our visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for RH, as explained in section III of this action. Under our RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. See, 40 CFR 51.302. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I Federal area includes any integral vista associated with that area. The FLMs for Breton have not identified any reasonably attributable visibility impairment (i.e., RAVI) from Louisiana or other U.S. sources. The FLMs for the Class I areas that Louisiana's emissions impact in other states have not identified any reasonably attributable visibility impairment caused by Louisiana sources. For these reasons, the Louisiana RH SIP does not have any measures in place or a requirement to address RAVI. We propose to find that this requirement is not applicable to the LA RH SIP at this time. This provision may be re-considered upon receipt of submittals from the LDEQ for subsequent implementation periods.

G. Monitoring Strategy and Other SIP Requirements

40 CFR 51.308(d)(4) requires the SIP contain a monitoring strategy for measuring, characterizing, and reporting of RH visibility impairment that is representative of all mandatory Class I Federal areas within the state. This monitoring strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for reasonably attributable visibility impairment. As 40 CFR 51.308(d)(4) notes, compliance with this requirement may be met through participation in the IMPROVE network. See the TSD for details concerning the IMPROVE network. We are proposing to find that the LDEQ has satisfied this requirement.

40 CFR 51.308(d)(4)(i) requires the establishment of any additional monitoring sites or equipment needed to assess whether reasonable progress goals to address RH for all mandatory Class I Federal areas within the state are being achieved. The CENRAP monitoring workgroup noted there was a visibility void in Southern Arkansas. An IMPROVE protocol monitor was located in north central Louisiana. $PM_{2.5}$ measurements from the Louisiana monitoring network help the LDEQ to characterize air pollution levels in areas across the state and therefore aid in the analysis of visibility improvement in and near the Class I areas. The LDEQ also commits in the Louisiana RH SIP to consider alternative approaches to evaluating visibility monitoring obligations if that becomes necessary. We are proposing to find that the LDEQ has satisfied this requirement.

40 CFR 51.308(d)(4)(ii) requires that the LDEQ establish procedures by which monitoring data and other information are used in determining the contribution of emissions from within Louisiana to RH visibility impairment at mandatory Class I Federal areas both within and outside the state. The monitor at Breton was owned and operated by the USFWS. After this monitor was destroyed by Hurricane Katrina in 2005, the monitor was replaced and relocated nearby, by the USFWS, at Lake Catherine in St. Bernard Parish. The IMPROVE monitoring program is national in scope, and other states have similar monitoring and data reporting procedures, ensuring a consistent and robust monitoring data collection system. As 40 CFR 51.308(d)(4) indicates, participation in the IMPROVE program constitutes compliance with

[35] CAA 169A(b)(2); 40 CFR 51.308(e); and 64 FR 35714, at 35741.

this requirement. We are therefore proposing that the LDEQ has satisfied this requirement.

40 CFR 51.308(d)(4)(iv) requires that the SIP must provide for the reporting of all visibility monitoring data to the Administrator at least annually for each mandatory Class I Federal area in the state. To the extent possible, Louisiana should report visibility monitoring data electronically. 40 CFR 51.308(d)(4)(vi) also requires that the LDEQ provide for other elements, including reporting, recordkeeping, and other measures, necessary to assess and report on visibility. We are proposing that Louisiana's participation in the IMPROVE network ensures the monitoring data is reported at least annually, is easily accessible, and therefore complies with this requirement.

40 CFR 51.308(d)(4)(v) requires that the LDEQ maintain a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any mandatory Class I Federal area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. The State must also include a commitment to update the inventory periodically. Please refer to section IV.E of this action, where we discuss the LDEQ's emission inventory. The LDEQ has stated that it intends to update the Louisiana statewide emissions inventories periodically. We are proposing to find that this satisfies the requirement in 40 CFR 51.308(d)(4)(v).

H. Coordination With Federal Land Managers

Breton NWA is a federally protected wilderness area for which the USFWS is the FLM. Although the FLMs are very active in participating in the RPOs, the RHR grants the FLMs a special role in the review of the RH SIPs, summarized in section III.H. of this action. We view both the FLMs and the state agencies as our partners in the RH process.

40 CFR 51.308(i)(1) requires that by November 29, 1999, Louisiana must have identified in writing to the FLMs the title of the official to which the FLM of Breton can submit any recommendations on the implementation of 40 CFR 51.308. We acknowledge this section has been satisfied by all states via communication prior to this SIP.

Under 40 CFR 51.308(i)(2), Louisiana was obligated to provide the USFWS with an opportunity for consultation, in person and at least 60 days prior to holding a public hearing on its RH SIP. In practice, state agencies have usually provided all FLMs—the Forest Service, the Park Service, and the USFWS, copies of their proposed RH SIP, as the FLMs collectively have reviewed these RH SIPs. The LDEQ followed this practice and proposed this implementation plan revision for public comment on November 20, 2007 and notified the federal land manager staff of the public hearing held on January 24, 2008.

40 CFR 51.308(i)(3) requires that the LDEQ provide in its RH SIP a description of how it addressed any comments provided by the FLMs. The LDEQ has provided that information in Appendix A of its RH SIP.

Lastly, 40 CFR 51.308(i)(4) specifies the RH SIP must provide procedures for continuing consultation between the state and FLM on the implementation of the visibility protection program required by 40 CFR 51.308, including development and review of implementation plan revisions and 5-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in the mandatory Class I Federal areas. The LDEQ has stipulated in its RH SIP it will continue to coordinate and consult with the FLMs as required by 40 CFR 51.308(i)(4). The LDEQ states it intends to consult the FLMs in the development of future progress reports and plan revisions, as well as during the implementation of programs having the potential to contribute to visibility impairment at Breton NWA. We are proposing to find that the LDEQ has satisfied 40 CFR 51.308(i).

I. Periodic SIP Revisions and Five-Year Progress Reports

The LDEQ affirmed its commitment to complete items required in the future under our RHR. The LDEQ acknowledged its requirement under 40 CFR 51.308(f), to submit periodic progress reports and RH SIP revisions, with the first report due by July 31, 2018 and every ten years thereafter.

The LDEQ also acknowledged its requirement under 40 CFR 51.308(g), to submit a progress report in the form of a SIP revision to us every five years following this initial submittal of the Louisiana RH SIP. The report will evaluate the progress made towards the RPGs for each mandatory Class I area located within Louisiana and in each mandatory Class I area located outside Louisiana which may be affected by emissions from within Louisiana. We are proposing to find that the LDEQ has satisfied 40 CFR 51.308(f) and (g).

J. Determination of the Adequacy of Existing Implementation Plan

40 CFR 51.308(h) requires that Louisiana take one of the listed actions, as appropriate, at the same time the State is required to submit any 5-year progress report to the EPA in accordance with 40 CFR 51.308(g). The LDEQ has committed in its SIP to take one of the actions listed under 40 CFR 51.308(h), depending on the findings of the 5-year progress report. We are proposing to find that the LDEQ has satisfied 40 CFR 51.308(h).

V. Proposed Action

We are proposing a partial disapproval and a partial limited approval of Louisiana's RH SIP revision submitted on June 13, 2008.

Specifically, we are proposing to find that the following portions of the LA RH SIP have satisfied the federal requirement and are addressed in our proposed partial limited approval, insofar as the elements do not rely on the SO_2 reductions from the CAIR: The State's

- Identification of affected Class I areas;
- Establishment of baseline, natural, and current visibility conditions, including the URP;
- Coordination of RAVI and RH Requirements;
- RH monitoring strategy and other SIP requirements under 40 CFR 51.308(d)(4);
- Commitment to submit periodic RH SIP revisions and periodic progress reports describing progress towards the RPGs;
- Commitment to make a determination of the adequacy of the existing SIP at the time a progress report is submitted; and
- Coordination with Federal Land Managers.

We are proposing to find that Louisiana's RPGs meet some federal requirements, but also contain some deficiencies. We are proposing to find that the State's RPGs are deficient given our proposed finding that certain of Louisiana's BART determinations are not fully approvable. In general, the State followed the requirements of 40 CFR 51.308(d)(1), but these goals do not reflect appropriate emissions reductions from BART. For LTS, we are proposing to find that the State's LTS satisfies many of the requirements under 40 CFR 51.308(d)(3); however, we are proposing to find that the submitted LTS is deficient because a portion of it relies on BART determinations that we are proposing to disapprove (see section IV.E for detailed information regarding

our proposed findings concerning LTS). Also, because visibility impacts from smoke are significant in Louisiana, we propose to find that that Louisiana should finalize its SMP. In addition, we are proposing to find that the following elements do not satisfy the federal requirements for the reasons discussed in section IV of this proposal: the State's

- Determination that the Mosaic Fertilizer Uncle Sam Plant is exempt from BART analysis; and
- BART analyses for ConocoPhillips, Rhodia, and Sid Richardson Carbon Black Plant. As discussed in section I of this proposal, the State must address BART for SO_2 for EGUs and the related element of LTS because it can no longer rely on the CAIR to address these requirements. In a separate action, the EPA proposed a limited disapproval of the Louisiana RH SIP because of deficiencies in the state's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (DC Circuit) to the EPA of the CAIR. 76 FR 82219. We are not taking action in this proposal to address the state's reliance on the CAIR to meet certain regional haze requirements related to NO_X and SO_2 emissions from EGUs.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to act on state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law.

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

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*, because this proposed action under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new information collection burdens but simply approves or disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This proposed rule does not impose any requirements or create impacts on small entities. This proposed rule under section 110 and subchapter I, part D of the CAA will not in-and-of itself create any new requirements but simply approves or disapproves certain State requirements for inclusion into the SIP. Accordingly, it affords no opportunity for the EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. The fact that the CAA prescribes that various consequences (e.g., higher offset requirements) may or will flow from this proposed rule does not mean that the EPA either can or must conduct a regulatory flexibility analysis for this action. Therefore, this action will not have a significant economic impact on a substantial number of small entities. We continue to be interested in the potential impacts of this proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, or tribal governments or the private sector. The EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This action proposes to approve or disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves or disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the action the EPA is proposing neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this rule. Consistent with the EPA policy, the EPA nonetheless is offering consultation to Tribes regarding this rulemaking action. The EPA will respond to relevant comments in the final rulemaking action.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This proposed action under section 110 and subchapter I, part D of the CAA will not in and of itself create any new regulations but simply approves or disapproves certain State requirements for inclusion into the SIP.

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

This proposed action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

The EPA believes that this proposed action is not subject to requirements of Section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

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

The EPA lacks the discretionary authority to address environmental justice in this proposed action. In reviewing SIP submissions, the EPA's role is to approve or disapprove state choices, based on the criteria of the CAA. Accordingly, this action merely proposes to approve or disapprove certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the CAA and will not in and of itself create any new requirements. Accordingly, it does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxides, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

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

Dated: February 15, 2012.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2012–4676 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2010–0219–201148; FRL–9639–2]

Approval and Promulgation of Air Quality Implementation Plans; State of North Carolina; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval of a revision to the North Carolina state implementation plan (SIP) submitted by the State of North Carolina through the North Carolina Department of Environment and Natural Resources, Division of Air Quality (NCDAQ), on December 17, 2007, that addresses regional haze for the first implementation period. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of this SIP revision to implement the regional haze requirements for North Carolina on the basis that the revision, as a whole, strengthens the North Carolina SIP. In a separate action, EPA has proposed a limited disapproval of the North Carolina regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) to EPA of the Clean Air Interstate Rule (CAIR). Consequently, EPA is not proposing to take action in this rulemaking to address the State's reliance on CAIR to meet certain regional haze requirements.

DATES: Comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2010–0219, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2010–0219, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2010–0219.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Waterson or Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Sara Waterson can be reached at telephone number (404) 562–9061 and by electronic mail at *waterson.sara@epa.gov.* Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov.*

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I. What action is EPA proposing?

EPA is proposing a limited approval of North Carolina's December 17, 2007, SIP revision addressing regional haze under CAA sections 301(a) and 110(k)(3) because the revision as a whole strengthens the North Carolina SIP. This proposed rulemaking and the accompanying Technical Support Document [1] (TSD) explain the basis for EPA's proposed limited approval action.[2]

In a separate action, EPA has proposed a limited disapproval of the North Carolina regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. *See* 76 FR 82219 (December 30, 2011). EPA is not proposing to take action in today's rulemaking on issues associated with North Carolina's reliance on CAIR in its regional haze SIP. Comments on EPA's proposed limited disapproval of North Carolina's regional haze SIP are accepted at the docket for EPA's December 30, 2011, proposed rulemaking (see Docket ID No. EPA–HQ–OAR–2011–0729). The comment period for EPA's December 30, 2011, proposed rulemaking is scheduled to end on February 28, 2012.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates,

[1] EPA's TSD to this action, entitled ''*Technical Support Document for North Carolina Regional Haze SIP Submittal,*'' is included in the public docket for this action.

[2] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at: *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.,* sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [3] in many Class I areas [4] (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *See* 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[5] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

III. What are the requirements for regional haze SIPs?

A. The CAA and the RHR

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to

[3] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[4] Areas designated as mandatory Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See* 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. *See* 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' *See* 42 U.S.C. 7602(i). When the term ''Class I area'' is used in this action, it means a ''mandatory Class I Federal area.''

[5] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[6]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emissions reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' *i.e.,* other nearby states with emissions sources that may be affecting visibility impairment at the Class I state's areas. *See* 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources[7] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific

[6] The preamble to the RHR provides additional details about the deciview. *See* 64 FR 35714, 35725 (July 1, 1999).

[7] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emissions limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169(g)(4); *see* 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. *See* 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR cap-and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan in 40 CFR part 97 need not require affected BART-eligible electrical generating (EGUs) to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. Challenges to CAIR, however, resulted in the remand of the rule to EPA. *See North Carolina* v. *EPA,* 550F.3d 1175 (DC Cir. 2008).

EPA issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. *See* 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not yet taken final action on that rule. Also on December 30, 2011, the DC Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the DC Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. *See* 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. *See* 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into

account in developing their LTS: (1) Emissions reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. *See* 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. *See* 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of North Carolina's regional haze submittal?

On December 17, 2007, NCDAQ submitted revisions to the North Carolina SIP to address regional haze in the State's Class I areas as required by EPA's RHR.

A. Affected Class I Areas

North Carolina has five Class I areas within its borders: Great Smoky Mountains National Park, Joyce Kilmer-Slickrock Wilderness Area, Linville Gorge Wilderness Area, Shining Rock Wilderness Area, and Swanquarter Wilderness Area. Two of these Class I areas (Great Smoky Mountains and Joyce Kilmer) also fall within the geographic boundaries of Tennessee. Therefore, both North Carolina and Tennessee are responsible for developing their own regional haze SIPs that address these two Class I areas and for consulting with other states that impact the areas. The two states worked together to determine appropriate RPGs, including consulting with other states that impact these two Class I areas, as discussed in section IV.F.1 of this rulemaking. In addition, both North Carolina and Tennessee are responsible for describing their own long-term emissions strategies, their role in the consultation processes, and how their particular state SIP meets the other requirements in EPA's regional haze regulations.

The North Carolina regional haze SIP establishes RPGs for visibility improvement at each of these Class I areas and a LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the LTS for each area, North Carolina considered both emissions sources inside and outside of North Carolina that may cause or

contribute to visibility impairment in North Carolina's Class I areas. The State also identified and considered emissions sources within North Carolina that may cause or contribute to visibility impairment in Class I areas in neighboring states as required by 40 CFR 51.308(d)(3). The VISTAS RPO worked with the State in developing the technical analyses used to make these determinations, including state-by-state contributions to visibility impairment in specific Class I areas, which included the five areas in North Carolina and those areas affected by emissions from North Carolina.

B. Determination of Baseline, Natural, and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, North Carolina calculated baseline/current and natural visibility conditions for each of its Class I areas, as summarized below (and as further described in sections III.B.1 and III.B.2 of EPA's TSD to this **Federal Register** action).

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in EPA's 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to the 2003 EPA guidance to estimate the values that characterize the natural visibility conditions of the Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[8] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction. North Carolina opted to use the default estimates for the natural concentrations combined with the ''new IMPROVE equation'' for all of its Class I areas. Using this approach, natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by VISTAS.

The new IMPROVE equation takes into account the most recent review of the science[9] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Conditions

NCDAQ estimated baseline visibility conditions at the State's five Class I areas using available monitoring data from four IMPROVE monitoring sites. The Joyce Kilmer-Slickrock Wilderness Area does not contain an IMPROVE monitor. In cases where onsite monitoring is not available, 40 CFR 51.308(d)(2)(i) requires states to use the most representative monitoring available for the 2000–2004 period to establish baseline visibility conditions, in consultation with EPA. North Carolina used, and EPA is proposing to find adequate North Carolina's use of, 2000–2004 data from the IMPROVE monitor at Great Smoky Mountains National Park for the Joyce Kilmer-Slickrock Wilderness Area. The IMPROVE Steering Committee considers the IMPROVE monitor at the Great Smoky Mountains to be representative of visibility in Joyce Kilmer. The Great Smoky Mountains National Park is the nearest Class I area and contiguous to Joyce Kilmer and they possess similar characteristics, such as meteorology and topography.

As explained in section III.B, for the first regional haze SIP, baseline visibility conditions are the same as current conditions. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days at each North Carolina Class I area. IMPROVE data records for Great Smoky Mountains National Park and the Linville Gorge Wilderness Area for the period 2000 to 2004 meet the EPA requirements for data completeness. See page 2–8 of EPA's 2003 Tracking Progress Guidance. Shining Rock and Swanquarter Class I areas had missing data in more than one year between the years 2000 to 2004. Data records for these sites were filled using data substitution procedures. Tables 3.3–1, 3.3–2, 3.3–3, and 3.3–4 from Appendix G of the North Carolina regional haze SIP, also provided in section III.B.3 of EPA's TSD to this action, list the 20 percent best and worst days for the baseline period of 2000–2004 for the Great Smoky Mountains, Linville Gorge, Shining Rock, and Swanquarter areas, respectively. These data are also provided at the following Web site: *http://www.metro4-sesarm.org/vistas/SesarmBext_20BW.htm.*

3. Summary of Baseline and Natural Conditions

For the North Carolina Class I areas, baseline visibility conditions on the 20 percent worst days range between approximately 24.5 and 30.5 deciviews. Natural visibility in these areas is predicted to be between approximately 11 and 12 deciviews on the 20 percent worst days. The natural and baseline conditions for North Carolina's Class I areas for both the 20 percent worst and

[8] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emissions sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[9] The science behind the revised IMPROVE equation is summarized in numerous published papers. See, e.g., Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado. *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm*; and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006. *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

best days are presented in Table 1 below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR NORTH CAROLINA'S CLASS I AREAS

Class I area	Average for 20% worst days (dv [10])	Average for 20% best days (dv)
Natural Background Conditions:		
Great Smoky Mountains National Park	11.05	4.54
Joyce Kilmer-Slickrock Wilderness Area	11.05	4.54
Linville Gorge Wilderness Area	11.19	4.08
Shining Rock Wilderness Area	11.47	2.51
Swanquarter Wilderness Area	11.55	5.46
Baseline Visibility Conditions (2000–2004):		
Great Smoky Mountains National Park	30.28	13.58
Joyce Kilmer-Slickrock Wilderness Area	30.28	13.58
Linville Gorge Wilderness Area	28.77	11.11
Shining Rock Wilderness Area	28.46	7.69
Swanquarter Wilderness Area	24.74	11.99

4. Uniform Rate of Progress

In setting the RPGs, North Carolina considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glidepath'') and the emissions reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater than, less than, or equivalent to the glidepath.

The State's implementation plan presents two sets of graphs, one for the 20 percent best days, and one for the 20 percent worst days, for its five Class I areas. North Carolina constructed the graph for the worst days (i.e., the glidepath) in accordance with EPA's 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for its areas. For the best days, the graph includes a horizontal, straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. North Carolina's SIP shows that the State's RPGs for its areas provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best days over the same period, in accordance with 40 CFR 51.308(d)(1).

For the Great Smoky Mountain and Joyce Kilmer Class I areas, the overall visibility improvement necessary to reach natural conditions is the difference between baseline visibility of 30.28 deciviews for the 20 percent worst days and natural conditions of 11.05 deciviews, i.e., 19.23 deciviews. Over the 60-year period from 2004 to 2064, this would require an approximate improvement of 0.321 deciview per year (i.e., 19.23 deciviews/60 years) to reach natural conditions. Hence, for the 14-year period from 2004 to 2018, in order to achieve visibility improvement at least equivalent to the uniform rate of progress for the 20 percent worst days at the Great Smoky Mountain and Joyce Kilmer areas, North Carolina would need to project at least 4.49 deciviews over the first implementation period (i.e., 0.321 deciview x 14 years = 4.49 deciviews) of visibility improvement from the 30.28 deciviews baseline in 2004, resulting in visibility levels at or below 25.79 deciviews in 2018. As discussed below in section IV.C.7, for the Great Smoky Mountain and Joyce Kilmer areas, North Carolina projects a 6.78 deciview improvement to visibility from the 30.28 deciview baseline to 23.50 deciviews in 2018 for the 20 percent most impaired days, and a 1.47 deciview improvement to 12.11 deciviews from the baseline visibility of 13.58 deciviews for the 20 percent least impaired days. Similar computations can be made for the other three North Carolina Class I areas.

C. Long-Term Strategy/Strategies

As described in section III.E of this action, the LTS is a compilation of state-specific control measures relied on by a state for achieving its RPGs. North Carolina's LTS for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the State from the end of the baseline period starting in 2004 until 2018. The North Carolina LTS was developed by the State, in coordination with the VISTAS RPO, through an evaluation of the following components: (1) Identification of the emissions units within North Carolina and in surrounding states that likely have the largest impacts currently on visibility at the State's Class I areas; (2) estimation of emissions reductions for 2018 based on all controls required or expected under federal and state regulations for the 2004–2018 period (including BART); (3) comparison of projected visibility improvement with the uniform rate of progress for the State's Class I areas; and (4) application of the four statutory factors in the reasonable progress analysis for the identified emissions units to determine if additional reasonable controls were required.

In a separate action proposing limited disapproval of the regional haze SIPs of a number of states, EPA noted that these states relied on the trading programs of CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the state-adopted RPGs. *See* 76 FR 82219 (December 30, 2011). In that action, EPA proposed a limited disapproval of North Carolina's regional haze SIP submittal insofar as the SIP relied on CAIR. For that reason, EPA is not taking action on that aspect of North Carolina's regional haze SIP in this action. Comments on the December 30, 2011, proposed determination are accepted at Docket ID No. EPA–HQ–OAR–2011–0729. The comment period for EPA's December 30, 2011, proposed rulemaking is scheduled to end on February 28, 2012.

[10] The term, ''dv,'' is the abbreviation for ''deciview.''

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by VISTAS with assistance from North Carolina. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM, and SO_2. The BART Guidelines direct states to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in section IV.C.3, VISTAS performed modeling sensitivity analyses, which demonstrated that anthropogenic emissions of VOC and NH_3 do not significantly impair visibility in the VISTAS region. Thus, while emissions inventories were also developed for NH_3 and VOC, and applicable federal VOC reductions were incorporated into North Carolina's regional haze analyses, North Carolina did not further evaluate NH_3 and VOC emissions sources for potential controls under BART or reasonable progress.

VISTAS developed emissions for five inventory source classifications: stationary point and area sources, off-road and on-road mobile sources, and biogenic sources. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. VISTAS estimated emissions on a countywide level for the inventory categories of: (a) Stationary area sources; (b) off-road (or non-road) mobile sources (*i.e.,* equipment that can move but does not use roadways); and (c) biogenic sources (which are natural sources of emissions, such as trees). On-road mobile source emissions are estimated by vehicle type and road type, and are summed to the countywide level.

There are many federal and state control programs being implemented that VISTAS and North Carolina anticipate will reduce emissions between the end of the baseline period and 2018. Emissions reductions from these control programs are projected to achieve substantial visibility improvement by 2018 in the North Carolina Class I areas. The control programs relied upon by North Carolina include CAIR; EPA's NO_X SIP Call; North Carolina's Clean Smokestacks Act (CSA); Georgia Rule 391–3–1–.02(2)(sss), ''Multipollutant Control for Electric Utility Steam Generating Units;'' consent decrees for Tampa Electric, Virginia Electric and Power Company, Gulf Power-Plant Crist, and American Electric Power; NO_X and/or VOC reductions from the control rules in 1-hour ozone SIPs for Atlanta, Birmingham, and Northern Kentucky; North Carolina's NO_X Reasonably Available Control Technology state rule for Philip Morris USA and Norandal USA in the Charlotte/Gastonia/Rock Hill 1997 8-hour ozone nonattainment area; federal 2007 heavy duty diesel engine standards for on-road trucks and buses; federal Tier 2 tailpipe controls for on-road vehicles; federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules. Controls from various federal Maximum Achievable Control Technology (MACT) rules were also utilized in the development of the 2018 emissions inventory projections. These MACT rules include the industrial boiler/process heater MACT (referred to as ''Industrial Boiler MACT''), the combustion turbine and reciprocating internal combustion engines MACTs, and the VOC 2-, 4-, 7-, and 10-year MACT standards.

Effective July 30, 2007, the D.C. Circuit mandated the vacatur and remand of the Industrial Boiler MACT Rule.[11] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010, (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). The VISTAS modeling included emissions reductions from the vacated Industrial Boiler MACT rule, and North Carolina did not redo its modeling analysis when the rule was re-issued. Even though North Carolina's modeling is based on the vacated Industrial Boiler MACT limits, the State's modeling conclusions are unlikely to be affected because the expected reductions due to the vacated rule were relatively small compared to the State's total SO_2, $PM_{2.5}$, and coarse particulate matter (PM_{10}) emissions in 2018 (*i.e.,* 0.1 to 0.4 percent, depending on the pollutant, of the projected 2018 SO_2, $PM_{2.5}$, and PM_{10} inventory). Thus, EPA does not expect that differences between the vacated and final Industrial Boiler MACT emissions limits would affect the adequacy of the existing North Carolina regional haze SIP. If there is a need to address discrepancies between projected emissions reductions from the vacated Industrial Boiler MACT and the Industrial Boiler MACT issued March 21, 2011 (76 FR 15608), EPA expects North Carolina to do so in the State's five-year progress report.

Below in Tables 2 and 3 are summaries of the 2002 baseline and 2018 estimated emissions inventories for North Carolina.

TABLE 2—2002 EMISSIONS INVENTORY SUMMARY FOR NORTH CAROLINA

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	61,484	196,731	26,953	36,539	1,233	522,093
Area	250,044	41,517	83,520	300,838	162,183	5,815
On-Road Mobile	263,766	327,329	4,623	6,579	9,702	12,420
Off-Road Mobile	94,480	84,284	7,348	7,348	65	7,693
Total	669,774	649,861	122,444	351,304	173,183	548,021

[11] *See NRDC* v. *EPA,* 489 F.3d 1250 (D.C. Cir. 2007).

TABLE 3—2018 EMISSIONS INVENTORY SUMMARY FOR NORTH CAROLINA

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	71,247	94,276	37,789	48,354	2,073	148,972
Area	203,132	49,514	93,406	338,872	181,333	6,674
On-Road Mobile	101,099	87,791	2,123	4,392	14,065	1,481
Off-road Mobile	61,327	49,046	4,069	4,298	83	905
Total	436,805	280,627	137,387	395,916	197,554	158,032

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

VISTAS performed modeling for the regional haze LTS for the 10 southeastern states, including North Carolina. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. VISTAS used the following modeling system:

• Meteorological Model: The Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.

• Emissions Model: The Sparse Matrix Operator Kernel Emissions modeling system is an emissions modeling system that generates hourly gridded speciated emissions inputs of mobile, non-road mobile, area, point, fire and biogenic emissions sources for photochemical grid models.

• Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ version 4.5. It was modified through VISTAS with a module for Secondary Organics Aerosols in an open and transparent manner that was also subjected to outside peer review.

CMAQ modeling of regional haze in the VISTAS region for 2002 and 2018 was carried out on a grid of 12x12 kilometer cells that covers the 10 VISTAS states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia) and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 kilometer cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. VISTAS conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The VISTAS states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze, located at http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*, (EPA–454/B–07–002), April 2007, and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html*, EPA–454/R–05–001, August 2005, updated November 2005 (''EPA's Modeling Guidance'').

VISTAS examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. VISTAS used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once VISTAS determined the model performance to be acceptable, VISTAS used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the State of North Carolina provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glidepath and to support the LTS are consistent with EPA's RHR and interim and final EPA Modeling Guidance. EPA proposes to accept the VISTAS technical modeling to support the LTS and to determine visibility improvement for the uniform rate of progress because the modeling system was chosen and simulated according to EPA Modeling Guidance. EPA proposes to concur with the VISTAS model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the North Carolina LTS and regional haze SIP.

3. Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, source sectors, and geographic areas, VISTAS developed emissions sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the VISTAS region, VISTAS' contribution assessment, based on IMPROVE monitoring data, demonstrated that ammonium sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the VISTAS and neighboring states. On the 20 percent worst visibility days in 2000–2004, ammonium sulfate

accounted for 75 to 87 percent of the calculated light extinction at the inland Class I areas in VISTAS, and 69 to 74 percent of the calculated light extinction for all but one of the coastal Class I areas in the VISTAS states. In particular, sulfate particles resulting from SO_2 emissions contribute to the calculated light extinction on the haziest days roughly 74 percent for the Swanquarter area, and 84 to 87 percent for the Great Smoky Mountains, Linville Gorge, and Shining Rock areas, depending on the area. In contrast, ammonium nitrate contributed less than five percent of the calculated light extinction at the VISTAS Class I areas on the 20 percent worst visibility days. Particulate organic matter (organic carbon) accounted for 20 percent or less of the light extinction on the 20 percent worst visibility days at the VISTAS Class I areas.

VISTAS grouped its 18 Class I areas into two types, either ''coastal'' or ''inland'' (sometimes referred to as ''mountain'') sites, based on common/similar characteristics (e.g. terrain, geography, meteorology), to better represent variations in model sensitivity and performance within the VISTAS region and to describe the common factors influencing visibility conditions in the two types of Class I areas. All of North Carolina's Class I areas, except for Swanquarter, are ''inland'' areas. Swanquarter is considered a ''coastal'' area.

Results from VISTAS' emissions sensitivity analyses indicate that sulfate particles resulting from SO_2 emissions are the dominant contributor to visibility impairment on the 20 percent worst days at all Class I areas in VISTAS. North Carolina concluded that reducing SO_2 emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits for the North Carolina Class I areas.

Because ammonium nitrate is a small contributor to $PM_{2.5}$ mass and visibility impairment on the 20 percent worst days at the inland Class I areas in VISTAS, which include all of the North Carolina Class I areas except for the Swanquarter area, the benefits of reducing NO_X and NH_3 emissions at these sites are small. Some of the worst days at Swanquarter, and other coastal sites within the VISTAS region, occur in the winter when ammonium nitrate has a somewhat larger contribution to visibility impairment. North Carolina concluded that reducing ammonia emissions would be more beneficial for reducing ammonium nitrate contributions to visibility impairment in wintertime than further reducing NO_X emissions from either ground-level or point (elevated) sources. NCDAQ notes that for Swanquarter, the numerous hog farms in eastern North Carolina are the likely primary emissions sources for ammonia.

The VISTAS sensitivity analyses show that VOC emissions from biogenic sources such as vegetation also contribute to visibility impairment. However, control of these biogenic sources of VOC would be extremely difficult, if not impossible. The anthropogenic sources of VOC emissions are minor compared to the biogenic sources. Therefore, controlling anthropogenic sources of VOC emissions would have little, if any, visibility benefits at the Class I areas in the VISTAS region, including North Carolina. The sensitivity analyses also show that reducing primary carbon from point sources, ground level sources, or fires is projected to have small to no visibility benefit at the VISTAS Class I areas.

North Carolina considered the factors listed under 40 CFR 51.308(d)(3)(v) and in section III.E. of this action to develop its LTS as described below. North Carolina, in conjunction with VISTAS, demonstrated in its SIP that elemental carbon (a product of highway and non-road diesel engines, agricultural burning, prescribed fires, and wildfires), fine soils (a product of construction activities and activities that generate fugitive dust), and ammonia are relatively minor contributors to visibility impairment at the Class I areas in North Carolina. North Carolina considered agricultural and forestry smoke management techniques to address visibility impacts from elemental carbon. NCDAQ stated in its SIP that it is working with the North Carolina Division of Forest Resources to develop a smoke management program that utilizes basic smoke management practices and addresses the issues laid out in the EPA's 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* available at: *http://www.epa.gov/ttncaaa1/t1/memoranda/firefnl.pdf.* Additionally, NCDAQ is working with the North Carolina Department of Agriculture to develop a Memorandum of Understanding regarding agricultural burning.

With regard to fine soils, the State considered those activities that generate fugitive dust, including construction activities. With regard to construction activities, the North Carolina Department of Transportation's Division of Highways has issued regulations addressing control of erosion, siltation, and pollution from construction activities. In addition, NCDAQ promulgated state rule 15A NCAC 02D.0540, ''Particulates From Fugitive Dust Emission Sources,'' effective on September 1, 2007, to control particulates from fugitive dust emissions sources generated within plant boundaries from activities such as ''unloading and loading areas, process areas, stockpiles, stock pile working, plant parking lots, and plant roads (including access roads and haul roads).'' The State has chosen not to develop controls for fine soils in this first implementation period because of their relatively minor contribution to visibility impairment.

With regard to ammonia emissions from agricultural sources, NCDAQ, as a continuation of the State's CSA, initiated the Climate Action Planning Advisory Group to develop options for the reduction of greenhouse gas emissions in North Carolina, including the emissions from agriculture and agricultural waste in North Carolina. The Group issued a report that supports expanded research, regulatory actions, and grant guarantees as key implementation tools to accomplish the expanded utilization of methane (a greenhouse gas) from hog/cattle waste for energy. The report also highlights improved waste management practices as important. A co-benefit of any resulting measures will be the reduction of ammonia emissions from animal waste. In addition, the North Carolina Legislature approved a bill on July 26, 2007, that permanently bans new lagoons at hog farms and orders state regulators to set environmental standards for new hog farm waste systems. The new legislation phases-out the use of waste lagoons by hog farmers, replacing them with more environmentally friendly systems.

EPA preliminarily concurs with the State's technical demonstration showing that elemental carbon, fine soils, and ammonia are not significant contributors to visibility in the State's Class I areas, and therefore, proposes to find that North Carolina has adequately satisfied 40 CFR 51.308(d)(3)(v). EPA's TSD to this Federal Register action and North Carolina's SIP provide more details on the State's consideration of these factors for North Carolina's LTS.

The emissions sensitivity analyses conducted by VISTAS predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the VISTAS region, more than any other visibility-impairing pollutant. Specific to North Carolina, the VISTAS sensitivity analysis projects visibility benefits on the 20 percent worst days at the State's four inland Class I areas from

SO_2 reductions from EGUs in eight of the 10 VISTAS states: Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. For the Swanquarter area, reductions from EGUs in North Carolina and South Carolina would have the greatest benefits; the contributions from other VISTAS states are comparatively small. Additional, smaller benefits are projected for North Carolina's Class I areas from SO_2 emissions reductions from non-utility industrial point sources in the VISTAS states. SO_2 emissions contributions to visibility impairment from other RPO regions are comparatively small in contrast to the VISTAS states' contributions, and thus, controlling sources outside of the VISTAS region is predicted to provide less significant improvements in visibility in the Class I areas in VISTAS.

Taking the VISTAS sensitivity analyses results into consideration, North Carolina concluded that reducing SO_2 emissions from EGU and non-EGU point sources in certain VISTAS states would have the greatest visibility benefits for the North Carolina Class I areas. The State chose to focus solely on evaluating certain SO_2 sources contributing to visibility impairment to the State's Class I areas for additional emissions reductions for reasonable progress in this first implementation period (described in sections IV.C.4 and IV.C.5 of this action). EPA proposes to agree with the State's analyses and conclusions used to determine the pollutants and source categories that most contribute to visibility impairment in the North Carolina Class I areas, and proposes to find the State's approach to focus on developing a LTS that includes largely additional measures for point sources of SO_2 emissions to be appropriate.

SO_2 sources for which it is demonstrated that no additional controls are reasonable in this current implementation period will not be exempted from future assessments for controls in subsequent implementation periods or, when appropriate, from the five-year periodic SIP reviews. In future implementation periods, additional controls on these SO_2 sources evaluated in the first implementation period may be determined to be reasonable, based on a reasonable progress control evaluation, for continued progress toward natural visibility conditions for the 20 percent worst days and to avoid further degradation of the 20 percent best days. Similarly, in subsequent implementation periods, the State may use different criteria for identifying sources for evaluation and may consider other pollutants as visibility conditions change over time.

4. Procedure for Identifying Sources To Evaluate for Reasonable Progress Controls in North Carolina and Surrounding Areas

As discussed in section IV.C.3 of this action, through comprehensive evaluations by VISTAS and the Southern Appalachian Mountains Initiative (SAMI),[12] the VISTAS states concluded that sulfate particles resulting from SO_2 emissions account for the greatest portion of the regional haze affecting the Class I areas in VISTAS states, including those areas in North Carolina. Utility and non-utility boilers are the main sources of SO_2 emissions within the southeastern United States. VISTAS developed a methodology for North Carolina that enables the State to focus its reasonable progress analysis on those geographic regions and source categories that impact visibility at its Class I areas. Recognizing that there was neither sufficient time nor adequate resources available to evaluate all emissions units within a given area of influence (AOI) around each of the Class I areas that North Carolina's sources impact, the State established a threshold to determine which emissions units would be evaluated for reasonable progress control. In applying this methodology, NCDAQ first calculated the fractional contribution to visibility impairment from all emissions units within the SO_2 AOI for its Class I areas, and from those units within the SO_2 AOIs surrounding Class I areas in other states potentially impacted by emissions from emissions units in North Carolina. The State then identified those emissions units with a contribution of one percent or more to the visibility impairment at that particular Class I area, and evaluated each of these units for control measures for reasonable progress using the following four ''reasonable progress factors'' required under 40 CFR 51.308(d)(1)(i)(A): (i) Cost of compliance; (ii) time necessary for compliance; (iii) energy and non-air quality environmental impacts of compliance; and (iv) remaining useful life of the emissions unit.

North Carolina's SO_2 AOI methodology captured greater than 60 percent of the total point source SO_2 contribution to visibility impairment in four of the five Class I areas in North Carolina, and required an evaluation of 21 emissions units at seven facilities in North Carolina. At the remaining Class I area, Swanquarter, the one percent threshold represents 47 percent of the total point source SO_2 contribution, while requiring an evaluation of 12 additional units at six facilities in North Carolina. The NCDAQ also looked at what sources in North Carolina may be impacting Class I areas located outside of the State, as well as what sources located outside of North Carolina may be impacting the North Carolina Class I areas. By applying the State's AOI SO_2 methodology, the only North Carolina source that was identified as potentially impacting visibility in a Class I area outside the State was the Duke Power-Dan River facility, which may impact the James River Face Wilderness Area in Virginia. To capture a higher percentage of emissions units contributing to the total sulfate visibility impairment would involve an evaluation of many more units that have substantially less impact.

NCDAQ believes that the one percent threshold is appropriate given the contribution to the total sulfate visibility impairment at each Class I area and the limited resources available to conduct a unit-by-unit evaluation for reasonable progress. EPA believes the approach developed by VISTAS and implemented for the Class I areas in North Carolina is a reasonable methodology to prioritize the most significant contributors to regional haze and to identify sources to assess for reasonable progress control. The approach is consistent with EPA's Reasonable Progress Guidance. The technical approach of VISTAS and North Carolina was objective and based on several analyses, including the evaluation of a large universe of emissions units within and surrounding the State of North Carolina and all of the 18 VISTAS Class I areas. It also included an analysis of the VISTAS emissions units affecting nearby Class I areas surrounding the VISTAS states that are located in other RPOs' Class I areas.

5. Application of the Four CAA Factors in the Reasonable Progress Analysis

NCDAQ identified 34 emissions units at 14 facilities in North Carolina (see Table 4) with SO_2 emissions that were above the State's minimum threshold for reasonable progress evaluation

[12] Prior to VISTAS, the southern states cooperated in a voluntary regional partnership ''to identify and recommend reasonable measures to remedy existing and prevent future adverse effects from human-induced air pollution on the air quality related values of the Southern Appalachian Mountains.'' States cooperated with FLMs, EPA, industry, environmental organizations, and academia to complete a technical assessment of the impacts of acid deposition, ozone, and fine particles on sensitive resources in the Southern Appalachians. The SAMI Final Report was delivered in August 2002.

because they were modeled to fall within the SO_2 AOI of any Class I area and have a one percent or greater contribution to the sulfate visibility impairment in at least one Class I area.[13] Of these 34 units, seven emissions units were not subject to a reasonable progress analysis because they were already subject to BART or had shut down. In addition, as discussed in section IV.C.5.B, 16 units are subject to CAIR, and NCDAQ concluded that no additional controls for SO_2 beyond CAIR for subject EGUs are reasonable for this first implementation period. NCDAQ evaluated 11 units at five facilities.

TABLE 4—NORTH CAROLINA FACILITIES WITH EMISSIONS UNIT(S) SUBJECT TO REASONABLE PROGRESS ANALYSIS:

Facilities With Emissions Unit(s) Subject to Reasonable Progress Analysis
Blue Ridge Paper Products—Canton Mill G–24, G–25, G–65, G–66
Cogentrix Kenansville—Gen1
PCS Phosphate Company Inc.—Aurora G–1034, G–1035
Weyerhaeuser Company—New Bern G–42
Weyerhaeuser Company—Plymouth G–140, G–143, G–148
Facilities With Unit(s) Found Not Subject to Reasonable Progress Analysis:
EGUs Subject to CAIR Within AOI of Any Class I Area:
Carolina Power & Light Asheville Steam E1, E2
Duke Energy Corporation—Buck Steam Station G–4, G–5
Duke Energy Corporation—Dan River Station G–21
Duke Energy Corporation—Cliffside Steam G–86, G–87, G–88
Duke Energy Corporation—Marshall Steam G–1, G–2
Duke Energy Corporation—Riverbend Steam G–17, G–19, G–20
L V Sutton Steam Electric Plant G–188
Progress Energy—F Lee Plant G–2, G–3
Emissions Units Subject to BART:
Blue Ridge Paper Products—Canton Mill G–26, G–31, G–32
Emissions Units that Shut Down:
PCS Phosphate Company Inc.—Aurora G–1032, G–1033
Ecusta Business Development Center LLC—G–28, G–29

A. Facilities With Emissions Unit(s) Subject to Reasonable Progress Analysis

NCDAQ analyzed whether SO_2 controls should be required for 11 emissions units at five facilities based on a consideration of the four factors set out in the CAA and EPA's regulations. For the limited purpose of evaluating the cost of compliance for the reasonable progress assessment in this first regional haze SIP, NCDAQ believed that it was not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy. The facility-by-facility costs for EGUs under CSA ranged from 912 to 1,922 dollars per ton of SO_2 removed ($/ton SO_2), and the average costs per utility system ranged from $1,231 to $1,375/ton SO_2. These costs were estimated using the capital costs from the CSA 2006 compliance plans and the projected operating costs provided by Duke Energy and Progress Energy. These costs were used as a guide in determining cost effectiveness.

During the current reasonable progress assessment, no emissions units in North Carolina were identified for additional control since no measures were found to be below the cost threshold discussed above. NCDAQ did not perform an exhaustive review of the remaining three statutory factors for reasonable progress since it did not identify any cost-effective control measures for the specific sources with contributions to Class I areas in North Carolina or neighboring states. Neither the time necessary for compliance nor the energy and non-air quality environmental impacts of compliance appear to be out of the ordinary for the control measures identified for these facilities. A likely short remaining useful life for two units was noted in one case, but a longer remaining useful life would not alter the reasonable progress determination for those units.

North Carolina also noted that, in order to show continued progress past 2018, the criteria will likely be different in the next reasonable progress assessment in order to maintain continuous visibility improvement toward natural background conditions by 2064. The facilities in North Carolina that have units that contribute at least one percent to visibility impairment at any Class I area in the State, or in neighboring states, were sent letters from NCDAQ indicating that while no additional controls were identified during this reasonable progress assessment, these sources will evaluate possible SO_2 reduction strategies for the next regional haze SIP due July 31, 2018.

1. Blue Ridge Paper Products

Four coal-fired Power Boilers at Blue Ridge Paper Products were evaluated for reasonable progress: No. 4 Power Boiler (G–66) with a capacity of 535 million British thermal units per hour (MMBtu/hr) and boilers G–24, G–25, and G–65, each with a capacity of 364–399 MMBtu/hr. Boilers G–24, G–25, and G–65 burn a washed and blended coal from different portions of the coal seam at the Apollo mine to meet Blue Ridge Paper's specifications for heat, ash and sulfur content. Coal from the Apollo mine has high heat content, low to moderate ash, and low to moderate sulfur, and it averages from 1.4 to 1.5 pounds SO_2 per million British Thermal Units (lbs SO_2/MMBtu). The electrostatic precipitators (ESPs) on these boilers perform well on this moderate sulfur coal and test well below applicable PM standards. They are not designed, however, to burn low sulfur coal. Ash from low sulfur coal has a higher resistivity than ash from the moderate sulfur coal that Blue Ridge Paper burns in these boilers. The No. 4 Power Boiler burns washed, low sulfur coal subject to new source performance standards (NSPS) with a sulfur limit of 1.2 lbs SO_2/MMBtu.

Based on information from the company, this lower sulfur coal is $75–$90/ton SO_2, and the other coal used at

[13] See also EPA's TSD, section III.C.2, fractional contribution analysis tables for each Class I area, excerpted from the North Carolina SIP, Appendix H.

the facility is $65/ton SO_2. The cost difference is $10–25/ton SO_2. The company burned 277,214 tons of higher sulfur coal in 2005; switching to lower sulfur coal would cost approximately $2,772,140–$6,930,350 extra per year. If 1,400 tons of SO_2 were reduced by switching from the current higher sulfur coal (one percent sulfur or approximately 1.6 lb SO_2/MMBtu) to lower sulfur coal (0.75 percent sulfur or approximately 1.2 lb SO_2/MMBtu) at the 2005 rate of coal consumption, associated costs would range from $1,980–$4,950/ton SO_2 with an average cost of $3,465/ton SO_2. NCDAQ determined that the cost for add-on control technology for these units ranges from $12,055 to $100,961/ton SO_2. NCDAQ concluded that there are no cost-effective controls available for these units at this time within the cost threshold established for this reasonable progress assessment. Although NCDAQ has concluded that there are no cost-effective controls for this reasonable progress period, the State acknowledges that the emissions from Blue Ridge Paper Products impact North Carolina's inland Class I areas. NCDAQ notified the company that although additional controls are not required during this implementation period, the State may require the installation and operation of controls for future implementation periods. NCDAQ is committed to working with this company over the next review period and encouraging the company to modernize some of its processes with more efficient equipment with lower emissions.

2. PCS Phosphate

Two of the four sulfuric acid units at PCS Phosphate identified for further analysis under reasonable progress remain in operation (units 1034 and 1035). On February 7, 2011, NCDAQ provided a technical supplement to the December 17, 2007, regional haze SIP for these units. The two PCS Phosphate units currently utilize dual absorption systems with a vanadium catalyst. The four technologies reviewed included sodium bisulfite scrubbing, molecular sieve, ammonia scrubbing, and dual absorption process with cesium-promoted catalyst.

The first three technologies were rejected because they have not been commercially demonstrated to reliably meet current NSPS and state permit limits. The use of cesium-promoted catalyst was further evaluated, looking at three scenarios. The first scenario evaluated, changing to a cesium-promoted catalyst without making other major capital investments, was estimated to cost $2,879/ton SO_2 and reduce SO_2 emissions by only 165 tons per year. This estimate was based on reducing SO_2 emissions from 3.8 to 3.5 lbs SO_2/ton of sulfuric acid produced. The other two scenarios evaluated meeting a 2.0 lbs SO_2/ton of sulfuric acid produced limit by either making operational changes or by modifying the reactor vessel. The operational changes could be made without significant capital expenditures but would significantly reduce production capacity. Modifying the unit to increase the amount of catalyst available required significant capital investment. NCDAQ estimated that these options would reduce SO_2 emissions by 2,073 tons/year with a cost effectiveness of approximately $11,347/ton of SO_2 reduced for the operational change and a cost effectiveness of approximately $12,816 to $13,651/ton SO_2 for the unit modification. NCDAQ also cited modeling analyses which concluded that the visibility improvement at the Swanquarter Wilderness Area resulting from reducing the SO_2 emissions rate by 1.0 lb SO_2/ton sulfuric acid produced (i.e., a change in emissions rate from 4.0 to 3.0 lbs SO_2/ton sulfuric acid produced) would only be 0.16 deciview. Therefore, NCDAQ concluded that there are no cost-effective controls available for these units at this time within the cost threshold established for this reasonable progress assessment. NCDAQ notified the company that although additional controls are not being required during this planning period, the State may require the installation and operation of controls for future-planning periods.

3. Weyerhaeuser—Plymouth

Weyerhaeuser—Plymouth has three power boilers subject to analysis: Riley No. 1 Combination Boiler, No. 1 Hog Fuel Boiler, and No. 2 Hog Fuel Boiler. The Riley No. 1 Combination Boiler burns coal, No. 6 fuel oil, Low Volume High Concentration (LVHC) gases, and Stripper Off Gas (SOG) gases and is fired at 624 MMBtu/hr maximum heat input. The No. 1 Hog Fuel Boiler burns hog fuel (wood waste), No. 6 fuel oil, coal, used oil, sludge, and High Volume Low Concentration (HVLC) gases. This boiler is fired at 835 MMBtu/hr maximum heat input from hog fuel, 617 MMBtu/hr maximum heat input from No. 6 fuel oil, or for combination firing, 701.2 and 319.8 MMBtu/hr maximum heat input from hog fuel and coal, respectively. The No. 2 Hog Fuel Boiler burns hog fuel, No. 6 fuel oil, coal, used oil, sludge, HVLC, LVHC, and SOG gases. It is fired at 889 MMBtu/hr maximum heat input from combined fuels or 800 MMBtu/hr maximum heat input from No. 6 fuel oil.

NCDAQ did not identify any available controls for the Hog Boiler 1 or 2. For the Riley Boiler, the only available control that NCDAQ identified is a flue gas desulfurization (FGD) scrubber at a cost of $20,460/ton SO_2. Therefore, NCDAQ concluded that there are no cost-effective controls for these units at this time within the cost threshold established for this reasonable progress assessment.

4. Weyerhaeuser—New Bern

Weyerhaeuser—New Bern has one power boiler which burns residual oil. It is fired at 579 MMBtu/hr maximum heat input rate. The only available control identified by NCDAQ is an FGD at a cost of $17,317/ton SO_2. Therefore, the NCDAQ concluded that there are no cost-effective controls available for this unit at this time within the cost threshold established for this reasonable progress assessment.

5. Cogentrix Kenansville

The affected emissions unit at Cogentrix Kenansville is Gen1, a 215 MMBtu/hr heat input mixed fuel-fired EGU capable of burning coal, natural gas, No. 2 and No. 4 fuel oil, tire-derived fuel, pelletized paper fuel, flyash briquette, and wood. Although the company retains coal as a permitted fuel on the permit, it is currently burning unadulterated wood (pure wood with up to five percent impurities), and its new business plan is to continue burning only wood as part of the ''green power'' movement in North Carolina.

The 2005 actual SO_2 emissions for this unit were 23.25 tons, whereas the projected 2018 SO_2 emissions were 1,833.8 tons based on using coal. In the final SIP submittal, the NCDAQ stated that it is sending the company a letter indicating that they are currently on the list of sources contributing greater than one percent to the total sulfate visibility impairment at the Swanquarter Wilderness Area based on the estimated emissions from burning coal. The SIP submittal indicated that the letter will suggest that the facility change its permit to remove coal as a possible fuel source for this unit.

6. EPA Assessment

As noted in EPA's Reasonable Progress Guidance, the states have wide latitude to determine appropriate additional control requirements for ensuring reasonable progress, and there are many ways for a state to approach identification of additional reasonable measures. States must consider, at a minimum, the four statutory factors in

determining reasonable progress, but states have flexibility in how to take these factors into consideration.

NCDAQ applied the methodology developed by VISTAS for identifying appropriate sources to be considered for additional controls under reasonable progress for the implementation period ending in 2018 that is addressed by this SIP. Using this methodology, NCDAQ first identified those emissions and emissions units most likely to have an impact on visibility in the State's and neighboring Class I areas. Units with emissions of SO_2 with a relative contribution to visibility impairment of at least a one percent contribution at any Class I area were then subject to a reasonable progress control analysis except for utilities subject to CAIR.

After reviewing NCDAQ's methodology and analyses and the record prepared by NCDAQ, EPA proposes to find North Carolina's conclusion that no further controls are necessary at this time acceptable. EPA proposes to find that North Carolina adequately evaluated the control technologies available at the time of its analysis and applicable to this type of facility and consistently applied its criteria for reasonable compliance costs. The State also included appropriate documentation in its SIP of the technical analysis it used to assess the need for and implementation of reasonable progress controls. Although the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement, EPA believes that the North Carolina SIP still ensures reasonable progress. In proposing to approve North Carolina's reasonable progress analysis, EPA is placing great weight on the fact that there is no indication in the SIP submittal that North Carolina, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I areas. EPA notes that given the emissions reductions resulting from CAIR and the measures in nearby states, the visibility improvements projected for the affected Class I areas are in excess of that needed to be on the uniform rate of progress.

B. Facilities With Emissions Units Subject to CAIR Within AOI of Any Class I Area

NCDAQ identified 16 EGUs at eight facilities which met the State's minimum threshold for reasonable progress evaluation because they were modeled to fall within the SO_2 AOI of any Class I area and have a one percent or greater contribution to the sulfate visibility impairment to at least one Class I area. North Carolina determined that no additional controls for the State's EGUs for SO_2 were reasonable during the first implementation period. In reaching this decision, NCDAQ evaluated the amount of SO_2 emissions reductions from the EGU sector expected from the implementation of North Carolina's CSA and CAIR. The EGUs in North Carolina are expected to reduce their SO_2 emissions by greater than 80 percent between 2002 and 2018.

Additionally, NCDAQ considered the four reasonable progress factors set forth in EPA's RHR as they apply to the State's entire EGU sector in sections 7.7 and 7.8 of the North Carolina SIP. In particular, the State took into account the factors of cost and time necessary for compliance in view of EPA's analysis supporting CAIR.

Based on this analysis, NCDAQ concluded that the emissions reductions required by CAIR constitute reasonable measures for North Carolina EGUs during this first assessment period. This conclusion is bolstered by the fact that, as discussed in section IV.C.7, visibility improvement at the State's Class I areas is projected to exceed the uniform rate of progress in this first implementation period. NCDAQ intends to re-evaluate EPA's Integrated Planning Model (IPM) predictions of SO_2 emissions reductions for CAIR at the time of the next periodic progress report to ensure that the reductions are in fact taking place where they were predicted. Based on the controls required by CSA, and predicted by IPM under CAIR, NCDAQ has concluded that, at this time, these existing regulatory programs constitute reasonable control measures for these 16 EGUs during the first implementation period (between the baseline and 2018). EPA proposes a limited approval of North Carolina's methodology and determination that no additional controls beyond CAIR and CSA are reasonable for SO_2 for affected North Carolina EGUs for the first implementation period.

C. Facilities With Unit(s) Found Not Subject to Reasonable Progress Analysis

1. Non-EGUs Subject to BART

Three emissions units at Blue Ridge Paper that met the State's minimum threshold for a reasonable progress control evaluation are emissions units that NCDAQ also found to be subject to BART. NCDAQ concluded that the application of BART constitutes reasonable progress for these three units for this implementation period, and thus, it is not requiring any additional controls for reasonable progress at this time. As discussed in EPA's Reasonable Progress Guidance, since the BART analysis is based, in part, on an assessment of many of the same factors that must be addressed in establishing the RPGs, EPA believes that it is reasonable to conclude that any control requirements imposed in the BART determination also satisfy the RPG-related requirements for source review in the first implementation period.[14] Thus, EPA proposes to concur with the State's conclusions that BART satisfies reasonable progress for the first implementation period for these three emissions units at Blue Ridge Paper.

2. Other Units Exempted from Preparing a Reasonable Progress Control Analysis

NCDAQ did not evaluate the two emissions units at Ecusta Business Development Center since they ceased operation prior to the regional haze SIP submittal date. Two of the four units at PCS Phosphate in Aurora that were identified for assessment for reasonable progress have since permanently ceased operation and therefore were not evaluated further.

6. BART

BART is an element of North Carolina's LTS for the first implementation period. The BART evaluation process consists of three components: (a) An identification of all the BART-eligible sources, (b) an assessment of whether the BART-eligible sources are subject to BART and (c) a determination of the BART controls. These components, as addressed by NCDAQ and NCDAQ's findings, are discussed as follows.

A. BART-Eligible Sources

The first phase of a BART evaluation is to identify all the BART-eligible sources within the State's boundaries. NCDAQ identified the BART-eligible sources in North Carolina by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and EPA's regulations (40 CFR 51.301): (1) One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emissions units were not in operation prior to August 7, 1962, and were in existence on August 7, 1977; and (3) these units have the potential to emit 250 tons or more per year of any visibility-impairing pollutant.

[14] EPA's Reasonable Progress Guidance, pages 4.2–4–3.

The BART Guidelines also direct states to address SO_2, NO_X, and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairment pollutants and to exercise judgment in determining whether VOC or ammonia emissions from a source impair visibility in a Class I area. See 70 FR 39160. VISTAS modeling demonstrated that VOC from anthropogenic sources and ammonia from point sources, except for potentially one ammonia source, are not significant visibility-impairing pollutants in North Carolina, as discussed in section IV.C.3 of this action. Based on the VISTAS modeling, NCDAQ has determined that ammonia emissions from the State's point sources are not anticipated to cause or contribute significantly to any impairment of visibility in Class I areas and should be exempt for BART purposes. No ammonia source in North Carolina was identified by VISTAS as a possible contributor to visibility impairment.

B. BART-Subject Sources

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, *i.e.,* those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, North Carolina required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at Class I areas in surrounding states.

1. Modeling Methodology

The BART Guidelines allow states to use the CALPUFF [15] modeling system (CALPUFF) or another appropriate model to predict the visibility impacts from a single source on a Class I area and therefore, to determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, i.e., ''is subject to BART.'' EPA believes that CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162). North Carolina, in coordination with VISTAS, used the CALPUFF modeling system to determine whether individual sources in North Carolina were subject to BART.

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. The VISTAS states, including North Carolina, developed a ''Protocol for the Application of CALPUFF for BART Analyses.'' Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the VISTAS protocol.

VISTAS developed a post-processing approach to use the new IMPROVE equation with the CALPUFF model results so that the BART analyses could consider the old and new IMPROVE equations. North Carolina's justification included a method to process the CALPUFF output and a rationale on the benefits of using the new IMPROVE equation.

2. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' The BART Guidelines also state that ''the appropriate threshold for determining whether a source 'contributes to visibility impairment' may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach.

North Carolina used a contribution threshold of 0.5 deciview for determining which sources are subject to BART. NCDAQ concluded that, considering the results of the visibility impacts modeling conducted, a 0.5 deciview threshold was appropriate in this situation and a lower threshold was not warranted for the following reasons. The State demonstrated that there are a limited number of in and out of state sources that impact the Class I areas in the State, and that there are a limited number of sources in close proximity to each of the affected Class I areas. Additionally, the majority of the visibility impacts were well below 0.5 deciview. Also, even though several sources impacted each Class I area, the overall impacts were low from the sources. EPA is proposing to agree with North Carolina that the overall impacts of these sources are not sufficient to warrant a lower contribution threshold and that a 0.5 deciview threshold was appropriate in this instance.

3. Identification of Sources Subject to BART

North Carolina identified 17 facilities with BART-eligible sources. All of North Carolina's 17 BART-eligible sources were required by the State to submit exemption-modeling demonstrations. North Carolina found that two of its BART-eligible sources (Blue Ridge Paper and PCS Phosphate) had modeled visibility impacts of more than the State's 0.5 deciview threshold. Therefore, these two facilities are subject to BART and submitted State permit applications including their proposed BART determinations. PCS Phosphate subsequently shut down its two sulfuric acid units subject to BART and these units were not further evaluated.

The 15 remaining sources were able to demonstrate that they are not subject to BART by modeling less than a 0.5 deciview visibility impact at the affected Class I areas. This modeling involved emissions of NO_X, SO_2, and PM_{10} as applicable to individual facilities.

Six of North Carolina's BART-eligible sources are facilities with EGUs that are subject to CAIR. As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. See 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR cap-and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which

[15] Note that EPA's reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (e.g., the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer on the following Web site: *http://www.src.com/verio/download/download.htm.*

remain subject to the CAIR Federal Implementation Plan in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. See 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. Thus, North Carolina's EGUs were allowed to submit BART exemption modeling demonstrations for PM emissions only. All of the BART-eligible EGUs demonstrated that their PM emissions do not contribute to visibility impairment in any Class I area. Table 5 identifies the 17 BART-eligible sources located in North Carolina.

TABLE 5—NORTH CAROLINA BART—ELIGIBLE AND SUBJECT-TO-BART SOURCES

Facilities With Unit(s) Subject to BART:
Blue Ridge Paper
Facilities With Unit(s) Not Subject to BART:
EGU CAIR and BART Modeling (PM only) Exempt Sources [16]:
Duke Energy—Belews Creek Steam Station
Duke Energy—Cliffside Steam Station
Duke Energy—Marshall Steam Station
Progress Energy—Asheville Plant
Progress Energy—Roxboro Steam Electric Plant
Progress Energy—Sutton Plant
Non-EGU BART Modeling Exempt:
Alcoa, Inc.-Badin Works
DAK Americas—Cape Fear
DAK Americas—Cedar Creek
Elementis Chromium
International Paper—Riegelwood Mill
International Paper—Roanoke Rapids
Invista, S.A.R.L.
Weyerhaeuser Company—Plymouth
Weyerhaeuser Company—New Bern
Shut Down:
PCS Phosphate

Prior to the CAIR remand, the State's reliance on CAIR to satisfy BART for NO_X and SO_2 for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). However, the BART assessments for CAIR EGUs for NO_X and SO_2 and other provisions in this SIP revision are based on CAIR. In a separate action, EPA has proposed a limited disapproval of the North Carolina regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the D.C. Circuit to EPA of CAIR. See 76 FR 82219. Consequently, EPA is not taking action in this proposed rulemaking to address the State's reliance on CAIR to meet certain regional haze requirements.

C. BART Determination

The five BART-eligible units at Blue Ridge Paper modeled visibility impacts of more than the 0.5 deciview threshold and are therefore subject to BART. Consequently, Blue Ridge Paper submitted to the State a permit application that included their proposed BART determination.

In accordance with the BART Guidelines, to determine the level of control that represents BART for each source, the State first reviewed existing controls on these units to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. The State's evaluations and conclusions, and EPA's assessment, are summarized below. The units subject to the BART requirements at Blue Ridge Paper include the two recovery furnaces, their associated smelt dissolving tanks, and the black liquor oxidation system (BLOX). NCDAQ concluded that BART for all of these emissions sources is the existing emissions control systems currently in place.

The recovery furnaces emit PM, SO_2, and NO_X. For the recovery furnaces, potential retrofit control technologies for PM emissions were not further evaluated since the units are already equipped with the most stringent controls and since the operation of these controls is required by the facility's title V operating permit. For NO_X, several potential control alternatives were evaluated; however, NCDAQ believes that the installation of NO_X reduction controls for the recovery furnaces is not economically feasible. For SO_2, installation of a wet scrubber following the ESP was identified as technically feasible; however, it was not considered economically feasible and would result in only a marginal visibility improvement at one Class I area (Great Smoky Mountains) and degradation in visibility at another (Shining Rock). Therefore, the State determined that retrofit controls are not warranted as BART for SO_2 emissions from the recovery furnaces.

The smelt dissolving tanks emit PM, SO_2, and NO_X. No NO_X controls are available for this source type. For PM and SO_2, the number of technically feasible controls is limited due to the fact that the emissions are minimal and of low velocity. Although several options were evaluated, they would only minimally reduce the number of days above 0.5 deciview at Shining Rock and Great Smoky Mountains, and NCDAQ believes that the installation of retrofit controls on the smelt dissolving tanks as BART is not economically feasible (in excess of $13,000/ton for less than 44 tons/year of particulate reduction).

The BLOX system emits PM, SO_2 and NO_X. Blue Ridge is complying with MACT Subpart S through alternative requirements approved by the EPA under an equivalency by permit

[16] EGUs were only evaluated for PM emissions. North Carolina relied on CAIR to satisfy BART for SO_2 and NO_X for its EGUs in CAIR, in accordance with 40 CFR 51.308(e)(4). Thus, SO_2 and NO_X were not analyzed.

approach. Under these alternative requirements, Blue Ridge is controlling the BLOX system to achieve a greater level of hazardous air pollutant (HAP) reduction by controlling emissions from the BLOX system in a new Regenerative Thermal Oxidizer (RTO) equipped with a wet scrubber for SO_2 control. Proper operation of the RTO and combustion of natural gas as auxiliary fuel minimize PM and NO_X emissions.

Because the unit is already equipped with the most stringent controls as required by the MACT standards, and permit limits are in place to ensure these controls are operated properly, the NCDAQ has determined that BART for the BLOX is existing controls.

EPA proposes to agree with North Carolina's analyses and conclusions for the BART emissions units located at the Blue Ridge Paper facility. EPA has reviewed the North Carolina analyses and proposes to conclude that they were conducted in a manner that is consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* (*http://www.epa.gov/ttncatc1/products.html#cccinfo*). Therefore, the conclusions reflect a reasonable application of EPA's guidance to these sources.

7. RPGs

The RHR at 40 CFR 51.308(d)(1) requires states to establish RPGs for each Class I area within the state (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility. VISTAS modeled visibility improvements under existing federal and state regulations for the period 2004–2018 and additional control measures which the VISTAS states planned to implement in the first implementation period. At the time of VISTAS modeling, some of the other states with sources potentially impacting visibility at the North Carolina Class I areas had not yet made final control determinations for BART and/or reasonable progress, and thus, these controls were not included in the modeling submitted by North Carolina. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, which give further assurances that North Carolina will achieve its RPGs. This modeling demonstrates that the 2018 base control scenario provides for an improvement in visibility better than the uniform rate of progress for both of the North Carolina Class I areas for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

On February 16, 2010, NCDAQ sent a letter to EPA Region 4 clarifying the reason for the differences in the RPGs for Great Smoky Mountains and Joyce Kilmer presented in the North Carolina and Tennessee regional haze SIP submittals. For the 20 percent worst days, the April 4, 2008, Tennessee submittal used 23.50 deciviews while the North Carolina submittal states the RPG as 23.7 (or 23.66) deciviews. (Similarly, for the 20 percent best days, the RPG differences between the two states' submittals were 12.2 (or 12.15) deciviews in the North Carolina submittal vs 12.11 deciviews in the Tennessee submittal.) NCDAQ explained that the differences are due to different modeling runs used by each state. At the time of SIP development, only the earlier version of the VISTAS modeling run was available to NCDAQ. NCDAQ acknowledges that the RPGs in the Tennessee regional haze SIP represent the most current information and commits to revise the RPGs for Great Smoky Mountains and Joyce Kilmer in the periodic progress report SIP. In accordance with this letter of clarification, Table 6 below reflects the updated RPGs of 12.11 (approximated to 12.1) and 23.50 for both the best and worst days, respectively, for these two Class I areas.

As shown in Table 6 below, North Carolina's RPGs for the 20 percent worst days provide greater visibility improvement by 2018 than the uniform rate of progress for the State's Class I areas. Also, the RPGs for the 20 percent best days provide greater visibility improvement by 2018 than current best day conditions. The regional haze provisions specify that a state may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. 40 CFR 51.308(d)(1)(vi). Therefore, the CAIR states with Class I areas, like North Carolina, took into account emissions reductions anticipated from CAIR in determining their 2018 RPGs.[17] The modeling supporting the analysis of these RPGs is consistent with EPA guidance at the time.

TABLE 6—NORTH CAROLINA 2018 RPGS

[In deciviews]

Class I area	Baseline visibility—20% worst days	2018 RPG—20% worst days (improvement from baseline)	Uniform rate of progress at 2018—20% worst days	Baseline visibility—20% best days	2018 RPG—20% best days (improvement from baseline)
Great Smoky Mountains National Park	30.3	23.5 (6.8)	25.79	13.6	12.1 (1.5)
Joyce Kilmer-Slickrock Wilderness Area	30.3	23.5 (6.8)	25.79	13.6	12.1 (1.5)
Linville Gorge Wilderness Area	28.8	22.0 (6.8)	24.67	11.1	9.6 (1.5)
Shining Rock Wilderness Area	28.5	22.1 (6.4)	24.50	7.7	6.9 (0.8)
Swanquarter Wilderness Area	24.7	20.4 (4.3)	21.66	12.0	11.0 (1.0)

The RPGs for the Class I areas in North Carolina are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. These projections can be expected to change as additional information regarding future conditions becomes available. For example, new sources may be built, existing sources may shut down or modify production in response to changed economic circumstances, and facilities may change their emissions characteristics as they install control equipment to comply with new rules. It would be both impractical and resource-intensive to require a state to continually adjust its RPGs every time an event affecting these future projections changed.

EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions and

[17] Many of the CAIR states without Class I areas similarly relied on CAIR emissions reductions within the state to address some or all of their contribution to visibility impairment in other states' Class I areas, which the impacted Class I area state(s) used to set the RPGs for their Class I area(s). Certain surrounding non-CAIR states also relied on reductions due to CAIR in nearby states to develop their regional haze SIP submittals.

addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a mandatory standard which must be achieved by a particular date. See 64 FR 35733. At the same time, EPA established a requirement for a midcourse review and, if necessary, correction of the states' regional haze plans. See 40 CFR 52.308(g). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emissions management strategies in meeting the RPGs and to provide an assessment of whether current implementation strategies are sufficient for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. See 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the state's conclusion that the current strategies are insufficient to meet the RPGs. North Carolina specifically committed to follow this process in its submittal. Accordingly, EPA proposes to approve North Carolina's RPGs for Great Smoky Mountains, Joyce Kilmer, Linville Gorge, Shining Rock, and Swanquarter.

D. Coordination of RAVI and Regional Haze Requirements

EPA's visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in sections III.F and III.G of this action. Under EPA's RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. See 40 CFR 51.302. An integral vista is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in North Carolina. In addition, the Class I areas in North Carolina are neither experiencing RAVI nor are any of its sources affected by the RAVI provisions. Thus, the December 17, 2007, North Carolina regional haze SIP submittal does not explicitly address the two requirements regarding coordination of the regional haze with the RAVI LTS and monitoring provisions. North Carolina has, however, previously made a commitment to address RAVI should the FLMs certify visibility impairment from an individual source.[18] EPA finds that this regional haze submittal appropriately supplements and augments North Carolina's RAVI visibility provisions to address regional haze by updating the monitoring and LTS provisions as summarized below in this section.

In its December 17, 2007, submittal, NCDAQ updated its visibility monitoring program and developed a LTS to address regional haze. Also in this submittal, NCDAQ affirmed its commitment to complete items required in the future under EPA's RHR. Specifically, NCDAQ made a commitment to review and revise its regional haze implementation plan and submit a plan revision to EPA by July 31, 2018, and every 10 years thereafter. See 40 CFR 51.308(f). In accordance with the requirements listed in 40 CFR 51.308(g) of EPA's regional haze regulations and 40 CFR 51.306(c) of the RAVI LTS regulations, NCDAQ committed to submitting a report to EPA on progress towards the RPGs for each mandatory Class I area located within North Carolina and for each mandatory Class I area located outside North Carolina that may be affected by emissions from within North Carolina. The progress report is required to be in the form of a SIP revision and is due every five years following the initial submittal of the regional haze SIP. *See* 40 CFR 51.308(g). Consistent with EPA's monitoring regulations for RAVI and regional haze, North Carolina will rely on the IMPROVE network for compliance purposes, in addition to any RAVI monitoring that may be needed in the future. *See* 40 CFR 51.305, 40 CFR 51.308(d)(4). Also, the North Carolina new source review (NSR) rules, previously approved in the State's SIP, continue to provide a framework for review and coordination with the FLMs on new sources and major modifications to existing sources subject to the NSR regulations which may have an adverse impact on visibility in either form (i.e., RAVI and/or regional haze) in any Class I area.

E. Monitoring Strategy and Other Implementation Plan Requirements

The primary monitoring network for regional haze in North Carolina is the IMPROVE network. As discussed in section IV.B.2 of this notice, the following Class I areas in North Carolina have IMPROVE monitoring sites: Linville Gorge, Shining Rock, and Swanquarter. There is also one IMPROVE site in Tennessee that serves as the monitoring site for both Great Smoky Mountains and Joyce Kilmer, both of which lie partly in Tennessee and partly in North Carolina.

IMPROVE monitoring data from 2000–2004 serves as the baseline for the regional haze program, and is relied upon in the December 17, 2007, regional haze submittal. Data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the five-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data. The Visibility Information Exchange Web System (VIEWS) Web site has been maintained by VISTAS and the other RPOs to provide ready access to the IMPROVE data and data analysis tools. North Carolina is encouraging VISTAS and the other RPOs to maintain the VIEWS or a similar data management system to facilitate analysis of the IMPROVE data.

In addition to the IMPROVE measurements, there is long-term limited monitoring by FLMs which provides additional insight into progress toward regional haze goals. Such measurements include:

- Web cameras operated by the National Park Service at Look Rock, Tennessee, and Purchase Knob, North Carolina, in Great Smoky Mountains, and by the U.S. Forest Service at Frying Pan Mountain in Shining Rock.
- An integrating nephelometer for continuously measuring light scattering, operated by the National Park Service at Look Rock, Tennessee.
- A Tapered Element Oscillating Microbalance for continuously measuring $PM_{2.5}$ mass concentration, operated by the National Park Service at Look Rock, Tennessee.

Additional haze-related measurements were made in North Carolina in 2002–2005 to better understand source contributions to $PM_{2.5}$ mass and visibility. These studies included continuous monitoring of sulfate, nitrate, and carbon to better understand daily trends in $PM_{2.5}$, detailed analyses of carbon collected on filters to identify source contributions to carbon, and additional analyses of sodium and ammonium on IMPROVE filter samples. While funding no longer exists to continue these special studies, VISTAS transferred the monitoring equipment to NCDAQ.

In the regional haze submittal, the State notes that NCDAQ will continue to operate the following monitors to further the understanding of both $PM_{2.5}$ as well as visibility formation and

[18] North Carolina submitted its visibility SIP revisions addressing RAVI on April 15, 1985, which EPA approved on January 21, 1986 (51 FR 2695).

trends in North Carolina for as long as funds allow:

- Continuous nitrate monitor and continuous sulfate monitor at the Millbrook monitoring site in Raleigh, North Carolina;
- Continuous nitrate monitor at the Rockwell monitoring site in Rowan County, North Carolina, with a continuous sulfate monitor planned for this site as of January 2008;
- 5400 R&P monitor for organic, total, and elemental carbon at the Millbrook site; and
- Aethalometer (whose final location was yet to be determined at time of SIP development).

In addition, NCDAQ and the local air agencies in the State operate a comprehensive $PM_{2.5}$ network of the filter-based federal reference method monitors, continuous mass monitors, filter-based speciated monitors, and the continuous speciated monitors described above.

F. Consultation With States and FLMs

1. Consultation With Other States

In December 2006 and May 2007, the State Air Directors from the VISTAS states held formal interstate consultation meetings. The purpose of these meetings was to discuss the methodology proposed by VISTAS for identifying sources to evaluate for reasonable progress. The states invited FLM and EPA representatives to participate and to provide additional feedback. The Directors discussed the results of analyses showing contributions to visibility impairment from states to each of the Class I areas in the VISTAS region.

NCDAQ evaluated the impact of North Carolina sources on Class I areas in neighboring states. The state in which a Class I area is located is responsible for determining which sources, both inside and outside of that state, to evaluate for reasonable progress controls. Because many of these states had not yet defined their criteria for identifying sources to evaluate for reasonable progress, North Carolina applied its AOI methodology to identify sources in the State that have emissions units with impacts large enough to potentially warrant further evaluation and analysis. The State identified one emissions unit in North Carolina with a contribution of one percent or more to the visibility impairment at the following Class I area in a neighboring state: James River Face Wilderness Area, Virginia. North Carolina also identified two emissions units that impact the shared Class I areas located in both North Carolina and Tennessee (Great Smoky Mountains and Joyce Kilmer). Based on an evaluation of the four reasonable progress statutory factors, North Carolina determined that there are no additional control measures for these North Carolina emissions units that would be reasonable to implement to mitigate visibility impacts in the Class I areas in these neighboring states. NCDAQ consulted with these states regarding its reasonable progress control evaluations showing no cost-effective controls available for those emissions units in North Carolina contributing at least one percent to visibility impairment at Class I areas in the states. Additionally, NCDAQ sent letters to other states in the VISTAS region, specifically Alabama, Georgia, and South Carolina, documenting its analysis using the State's AOI methodology that no SO_2 emissions units in North Carolina contribute at least one percent to the visibility impairment at the Class I areas in those states. No adverse comments were received from the other VISTAS states. The documentation for these formal consultations is provided in Appendix J of North Carolina's SIP.

Regarding the impact of sources outside of the State on Class I areas in North Carolina, NCDAQ sent letters to Alabama, Delaware, Georgia, South Carolina, Tennessee, and Virginia pertaining to emissions units within these states that the State believes contributed one percent or higher to visibility impairment in the North Carolina Class I areas. At that time, these neighboring states were still in the process of evaluating BART and reasonable progress for their sources. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, which give further assurances that North Carolina will achieve its RPGs. Therefore, to be conservative, North Carolina opted not to rely on any additional emissions reductions from sources located outside the State's boundaries beyond those already identified in the State's regional haze SIP submittal and as discussed in section IV.C.1 of this action.

North Carolina also received letters from the Mid-Atlantic/Northeast Visibility Union (MANE–VU) RPO states of Maine, New Jersey, and New Hampshire in early 2007 stating that based on MANE–VU's analysis of 2002 emissions data, North Carolina contributed to visibility impairment at Class I areas in those states. These letters invited North Carolina to participate in future consultation meetings. North Carolina sent response letters to these states providing information on the State's CSA and copies of the compliance plans for two utilities in the State showing which emissions units are expected to install controls to meet CSA NO_X and SO_2 emissions caps. North Carolina emphasized in its response letters that it is important to also evaluate visibility impairment contributions for the year 2018 to reflect implementation of programs such as CAIR and CSA. NCDAQ noted that based upon VISTAS' analyses using 2018 emissions projections, no emissions units in North Carolina meet NCDAQ's minimum threshold for a reasonable progress control evaluation for the Class I areas in these states. Thus, NCDAQ stated that it does not believe any of its emissions units provide significant contributions from sulfate-derived visibility impacts to these MANE–VU states' Class I areas, and expressed the State's willingness to participate in future consultations through VISTAS.

In their consultation discussions, the MANE–VU states identified twelve EGUs in North Carolina that they would like to see controlled to 90 percent efficiency. They also requested a control strategy to provide a 28 percent reduction in SO_2 emissions from sources other than EGUs that would be equivalent to their low sulfur fuel oil strategy. North Carolina has controlled or is expecting to control under the North Carolina CSA eleven of the twelve identified EGUs. Additionally, scrubbers are expected on three EGUs that were not identified by MANE–VU. NCDAQ believes that these reductions satisfy MANE–VU's request.

EPA proposes to find that North Carolina has adequately addressed the consultation requirements in the RHR and appropriately documented its consultation with other states in its SIP submittal.

2. Consultation With the FLMs

Through the VISTAS RPO, North Carolina and the nine other member states worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the VISTAS states. The proposed regional haze plan for North Carolina was out for FLM and EPA discussions from August to September 2007. North Carolina subsequently modified the plan to address comments received on this initial version and reissued it for public comment from October to November 2007.

Regarding North Carolina's initial August 2, 2007, draft regional haze SIP and the proposed regional haze SIP

released for public comment on October 12, 2007, the FLMs requested that the State provide more information in the SIP revision regarding two facilities, Blue Ridge Paper and PCS Phosphate-Aurora. Based on the Blue Ridge Paper's visibility impacts at multiple Class I areas, the FLMs asked the State to describe a plan to consult with the company on potential control actions prior to 2018 that may warrant a higher cost of control for reasonable progress. For PCS Phosphate, the FLMs expressed concern that the facility's BART determination for this facility did not fully evaluate the effectiveness and associated cost of controls. Other comments asked for clarification of items and for more discussion with specific source information for the AOI reasonable progress evaluations in the main body of the SIP, in addition to the appendices. North Carolina provided responses to the FLMs regarding their comments on the draft SIP. The State included more of the detailed reasonable progress control evaluation information in the main body of the SIP. Regarding Blue Ridge Paper, the State described that it acknowledged in the SIP that the company has visibility impacts on multiple Class I areas and has notified the company that although additional controls are not being required this implementation period, future periods may require controls. NCDAQ stated in the SIP that it is committed to work with the company over the next implementation period and encourage the company to modernize some of its processes with more efficient, less polluting equipment. For the two BART-eligible units at PCS Phosphate, the State noted that the facility is planning to shut down these units, and thus, it would not be prudent to install controls on them. For the two units subject to a reasonable progress control analysis, NCDAQ included additional language in the SIP stating that it has notified the company that although additional controls are not being required this period, future implementation periods may require controls to be installed.

To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), NCDAQ made a commitment in the SIP to ongoing consultation with the FLMs on regional haze issues throughout implementation of its plan, including annual discussions of the implementation process and the most recent data from IMPROVE monitoring and VIEWS. NCDAQ also affirms in the SIP that FLM consultation is required for those sources subject to the State's NSR regulations.

G. Periodic SIP Revisions and Five-Year Progress Reports

As also summarized in section IV.D of this notice, consistent with 40 CFR 51.308(g), NCDAQ affirmed its commitment to submitting a progress report in the form of a SIP revision to EPA every five years following this initial submittal of the North Carolina regional haze SIP. The report will evaluate the progress made towards the RPGs for each mandatory Class I area located within North Carolina and for each mandatory Class I area located outside North Carolina that may be affected by emissions from within North Carolina. North Carolina also offered recommendations for several technical improvements that, as funding allows, can support the State's next LTS. These recommendations are discussed in detail in the North Carolina submittal in Appendix K.

If another state's regional haze SIP identifies that North Carolina's SIP needs to be supplemented or modified, and if after appropriate consultation North Carolina agrees, today's action may be revisited, or additional information and/or changes will be addressed in the five-year progress report SIP revision.

V. What Action is EPA Proposing?

EPA is proposing a limited approval of a revision to the North Carolina SIP submitted by the State of North Carolina on December 17, 2007, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, as described previously in this action.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act (UMRA)

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's proposal does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve pre-existing requirements under state or local law, and imposes no new

requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: February 15, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–4711 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0784, FRL–9638–4]

Approval and Promulgation of Air Quality Implementation Plans; State of Mississippi; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval of two revisions to the Mississippi state implementation plan (SIP) submitted by the State of Mississippi through the Mississippi Department of Environmental Quality (MDEQ) on September 22, 2008, and May 9, 2011, that address regional haze for the first implementation period. These revisions address the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of these SIP revisions to implement the regional haze requirements for Mississippi on the basis that the revisions, as a whole, strengthen the Mississippi SIP. EPA has previously proposed a limited disapproval of the Mississippi regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR). Consequently, EPA is not proposing to take action in this rulemaking to address the State's reliance on CAIR to meet certain regional haze requirements.

DATES: Comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0784, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2009–0784, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2009–0784.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Waterson or Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Sara Waterson can be reached at telephone number (404) 562–9061 and by electronic mail at *waterson.sara@epa.gov.* Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov.*

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I. What action is EPA proposing to take?

EPA is proposing a limited approval of Mississippi's September 22, 2008, and May 9, 2011, SIP revisions addressing regional haze under CAA sections 301(a) and 110(k)(3) because the revisions as a whole strengthen the Mississippi SIP. Throughout this document, references to Mississippi's (or MDEQ's or the State's) ''regional haze SIP'' refer to Mississippi's original September 22, 2008, regional haze SIP submittal, as later amended in a SIP revision submitted May 9, 2011. This proposed rulemaking explains the basis for EPA's proposed limited approval action.[1]

In a separate action, EPA has previously proposed a limited disapproval of the Mississippi regional haze SIP because of deficiencies in the State's regional haze SIP submittal

[1] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

arising from the State's reliance on CAIR to meet certain regional haze requirements. *See* 76 FR 82219 (December 30, 2011). EPA is not proposing to take action in today's rulemaking on issues associated with Mississippi's reliance on CAIR in its regional haze SIP.[2] Comments on EPA's proposed limited disapproval of Mississippi's regional haze SIP are accepted at the docket for EPA's December 20, 2011 rulemaking (*see* Docket ID No. EPA–HQ–OAR–2011–0729). The comment period for EPA's December 30, 2011, rulemaking is scheduled to end on February 28, 2012.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [3] in many Class I areas [4] (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *See* 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[5] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various Federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of

[2] Mississippi's SIP revisions rely on CAIR to address BART requirements related to both nitrogen oxides (NO_X) and sulfur dioxide (SO_2). However, EPA's replacement rule for CAIR (i.e., the ''Transport Rule,'' also known as the Cross-State Air Pollution Rule) includes Mississippi only in the trading program to cover NO_X. States such as Mississippi that are subject to the requirements of the Transport Rule trading program only for NO_X must still address BART for SO_2 and other visibility impairing pollutants. On December 30, 2011, EPA proposed a limited disapproval of the Mississippi regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. In that action, EPA also proposed to issue a Federal Implementation Plan (FIP) to address the deficiencies in Mississippi's SIP associated with the BART requirements for NO_X for electrical generating units (EGUs) based on EPA's proposed revisions to the RHR allowing states to substitute participation in the trading programs under the Transport Rule for source-specific BART. However, EPA did not propose a plan to address the deficiencies associated with the BART requirements for SO_2 since the Transport Rule does not cover SO_2 emissions from Mississippi EGUs. Because Mississippi also relied on CAIR in assessing the need for emissions reductions for SO_2 from EGUs to satisfy BART requirements, the State will have to re-evaluate EGUs with respect to SO_2 BART requirements.

[3] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[4] Areas designated as mandatory Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See* 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. *See* 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I area is the responsibility of a ''Federal Land Manager.'' *See* 42 U.S.C. 7602(i). When the term ''Class I area'' is used in this action, it means a ''mandatory Class I Federal area.''

[5] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO is a collaborative effort of state governments, tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

III. What are the requirements for Regional haze SIPs?

A. The CAA and the RHR

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[6]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years, i.e., midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA

[6] The preamble to the RHR provides additional details about the deciview. *See* 64 FR 35714, 35725 (July 1, 1999).

Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emissions reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emissions sources that may be affecting visibility impairment at the Class I state's areas. *See* 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [7] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emissions limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emissions limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169(g)(4); *see* 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. *See* 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR cap-and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR FIP in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. Challenges to CAIR, however, resulted in the remand of the rule to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008).

EPA issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. *See* 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not yet taken final action on that rule. Also on December 30, 2011, the DC Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the DC Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

[7] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. *See* 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. *See* 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emissions reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. *See* 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTSs, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. *See* 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs

having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of Mississippi's regional haze submittal?

On September 22, 2008, and May 9, 2011, MDEQ submitted revisions to the Mississippi SIP to address regional haze as required by EPA's RHR.

A. No Affected Class I Areas in Mississippi

Mississippi has no Class I area within its borders. The following Class I areas are the closest to the State's boundaries: the Breton National Wildlife Refuge (Breton) in Louisiana, Sipsey Wilderness Area (Sipsey) in Alabama, and Caney Creek Wilderness Area (Caney Creek) in Arkansas. Mississippi is responsible for developing a regional haze SIP that addresses sources within its borders that affect Class I areas in other states and for consulting with these other states. The September 22, 2008, Mississippi regional haze SIP, as later amended on May 9, 2011, identified and considered emissions sources within Mississippi that may cause or contribute to visibility impairment in Class I areas in neighboring states as required by 40 CFR 51.308(d)(3). The VISTAS RPO worked with the State in developing the technical analyses used to make these determinations, including state-by-state contributions to visibility impairment in specific Class I areas, which included the Class I areas affected by emissions from Mississippi.

B. Long-Term Strategy/Strategies

As described in section III.E of this action, the LTS is a compilation of state-specific control measures relied on by a state for achieving RPGs in Class I areas affected by emissions sources in the state. Mississippi's LTS for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the State from the end of the baseline period starting in 2004 until 2018. The Mississippi LTS was developed by the State, in coordination with the VISTAS RPO, through an evaluation of the following components: (1) Identification of the emissions units within Mississippi and in surrounding states that likely have the largest impacts currently on visibility at Class I areas in nearby states, and (2) estimation of emissions reductions for 2018 based on all controls required or expected under federal and state regulations for the 2004–2018 period (including BART).

In a separate action proposing limited disapproval of the regional haze SIPs of a number of states, EPA noted that these states relied on the trading programs of CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the state-adopted RPGs. *See* 76 FR 82219 (December 30, 2011). In that action, EPA proposed a limited disapproval of Mississippi's regional haze SIP submittal insofar as the SIP relied on CAIR. For that reason, EPA is not taking action on that aspect of Mississippi's regional haze SIP in this action. Comments on the December 30, 2011, proposed determination are accepted at Docket ID No. EPA–HQ–OAR–2011–0729. The comment period for EPA's December 30, 2011, proposed rulemaking is scheduled to end on February 28, 2012.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by VISTAS with assistance from Mississippi. The 2018 emissions inventory was developed by projecting 2002 emissions and applying emissions reductions expected from federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM, and SO_2. The BART Guidelines direct states to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in section IV.B.3, VISTAS performed modeling sensitivity analyses, which demonstrated that anthropogenic emissions of VOC and NH_3 do not significantly impair visibility in the VISTAS region. Thus, while emissions inventories were also developed for NH_3 and VOC, and applicable Federal VOC reductions were incorporated into Mississippi's regional haze analyses, Mississippi did not further evaluate NH_3 and VOC emissions sources for potential controls under BART or reasonable progress.

VISTAS developed emissions for five inventory source classifications: stationary point and area sources, off-road and on-road mobile sources, and biogenic sources. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. VISTAS estimated emissions on a countywide level for the inventory categories of: (a) Stationary area sources; (b) off-road (or non-road) mobile sources (i.e., equipment that can move but does not use the roadways); and (c) biogenic sources (which are natural sources of emissions, such as trees). On-road mobile source emissions are estimated by vehicle type and road type, and are summed to the countywide level.

There are many federal and state control programs being implemented that VISTAS and Mississippi anticipate will reduce emissions between the end of the baseline period and 2018. Emissions reductions from these control programs are projected to achieve substantial visibility improvement by 2018 in the Class I areas in surrounding states. The control programs relied upon by Mississippi include CAIR; EPA's NO_X SIP Call; North Carolina's Clean Smokestacks Act; Georgia multi-pollutant rule; consent decrees for Tampa Electric, Virginia Electric and Power Company, Gulf Power-Plant Crist, East Kentucky Power Cooperative—Cooper and Spurlock stations, and American Electric Power; NO_X and/or VOC reductions from the control rules in 1-hour ozone SIPs for Atlanta, Birmingham, and Northern Kentucky; North Carolina's NO_X Reasonably Available Control Technology; state rule for Philip Morris USA and Norandal USA in the Charlotte/Gastonia/Rock Hill 1997 8-hour ozone nonattainment area; federal 2007 heavy duty diesel engine standards for on-road trucks and buses; federal Tier 2 tailpipe controls for on-road vehicles; federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules. Controls from various federal Maximum Achievable Control Technology (MACT) rules were also utilized in the development of the 2018 emissions inventory projections. These MACT rules include the industrial boiler/process heater MACT (referred to as ''Industrial Boiler MACT''), the combustion turbine and reciprocating internal combustion engines MACTs, and the VOC 2-, 4-, 7-, and 10-year MACT standards.

Effective July 30, 2007, the DC Circuit mandated the vacatur and remand of the Industrial Boiler MACT Rule.[8] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010 (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). The VISTAS modeling included emissions reductions from the vacated Industrial Boiler MACT rule, and

[8] *See NRDC* v. *EPA,* 489 F.3d 1250 (D.C. Cir. 2007).

Mississippi did not redo its modeling analysis when the rule was re-issued. Even though Mississippi's modeling is based on the vacated Industrial Boiler MACT limits, the State's modeling conclusions are unlikely to be affected because the expected reductions due to the vacated rule were relatively small compared to the State's total SO_2, $PM_{2.5}$, and coarse particulate matter (PM_{10}) emissions in 2018 (i.e., 0.1 to 0.2 percent, depending on the pollutant, of the projected 2018 SO_2, $PM_{2.5}$, and PM_{10} inventory). Thus, EPA does not expect that differences between the vacated and final Industrial Boiler MACT emissions limits would affect the adequacy of the existing Mississippi regional haze SIP. If there is a need to address discrepancies between projected emissions reductions from the vacated Industrial Boiler MACT and the Industrial Boiler MACT issued March 21, 2011 (76 FR 15608), EPA expects Mississippi to do so in the State's five-year progress report.

Below in Tables 2 and 3 are summaries of the 2002 baseline and 2018 estimated emissions inventories for Mississippi (based on the data in the State's September 22, 2008, submittal).

TABLE 2—2002 EMISSIONS INVENTORY SUMMARY FOR MISSISSIPPI

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	43,852	104,661	11,044	21,106	1,359	103,389
Area	131,808	4,200	50,401	343,377	58,721	771
On-Road Mobile	86,811	110,672	2,089	2,828	3,549	4,566
Non-Road Mobile	41,081	88,787	4,690	5,010	23	11,315
Total	303,552	308,320	68,224	372,321	63,652	120,041

TABLE 3—2018 EMISSIONS INVENTORY SUMMARY FOR MISSISSIPPI

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	46,452	71,804	17,172	30,046	1,591	54,367
Area	140,134	4,483	53,222	375,495	69,910	746
On-Road Mobile	31,306	30,259	810	1,607	4,520	435
Non-Road Mobile	28,842	68,252	3,203	3,452	29	6,638
Total	246,734	174,798	74,407	410,600	76,050	62,186

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

VISTAS performed modeling for the regional haze LTS for the 10 southeastern states, including Mississippi. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. VISTAS used the following modeling system:

- Meteorological Model: The Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model is a nonhydrostatic, prognostic, meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.
- Emissions Model: The Sparse Matrix Operator Kernel Emissions modeling system is an emissions modeling system that generates hourly gridded speciated emissions inputs of mobile, non-road mobile, area, point, fire, and biogenic emissions sources for photochemical grid models.
- Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, PM, visibility, and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ version 4.5. It was modified through VISTAS with a module for Secondary Organics Aerosols in an open and transparent manner that was also subjected to outside peer review.

CMAQ modeling of regional haze in the VISTAS region for 2002 and 2018 was carried out on a grid of 12x12 kilometer cells that covers the 10 VISTAS states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia) and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 kilometer grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. VISTAS conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The VISTAS states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf,* (EPA–454/B–07–002), April 2007, and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html,* EPA–454/R–05–001, August 2005, updated November 2005 (''EPA's Modeling Guidance'').

VISTAS examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS

and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. VISTAS used a diverse set of statistical parameters from EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once VISTAS determined the model performance to be acceptable, VISTAS used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress for Class I areas in the states neighboring Mississippi.

In accordance with 40 CFR 51.308(d)(3), the State of Mississippi provided the appropriate supporting documentation to VISTAS and coordinated with other affected states for all required analyses since there are no Class I areas in Mississippi.

3. Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, source sectors, and geographic areas, VISTAS developed emissions sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the VISTAS region, VISTAS' contribution assessment, based on IMPROVE monitoring data, demonstrated that ammonium sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the VISTAS and neighboring states. On the 20 percent worst visibility days in 2000–2004, ammonium sulfate accounted for 75 to 87 percent of the calculated light extinction at the inland Class I areas in VISTAS, and 69 to 74 percent of the calculated light extinction for all but one of the coastal Class I areas in the VISTAS states. In contrast, ammonium nitrate contributed less than five percent of the calculated light extinction at the VISTAS Class I areas on the 20 percent worst visibility days. Particulate organic matter (organic carbon) accounted for 20 percent or less of the light extinction on the 20 percent worst visibility days at the VISTAS Class I areas.

VISTAS grouped its 18 Class I areas into two types, either ''coastal'' or ''inland'' (sometimes referred to as ''mountain'') sites, based on common/similar characteristics (e.g., terrain, geography, meteorology), to better represent variations in model sensitivity and performance within the VISTAS region, and to describe the common factors influencing visibility conditions in the two types of Class I areas.

Results from VISTAS' emissions sensitivity analyses indicate that sulfate particles resulting from SO_2 emissions are the dominant contributor to visibility impairment on the 20 percent worst days at all Class I areas in VISTAS. Mississippi concluded that reducing SO_2 emissions from EGU and non-EGU point sources would have the greatest visibility benefits for the Class I areas impacted by Mississippi sources. Because ammonium nitrate is a small contributor to $PM_{2.5}$ mass and visibility impairment on the 20 percent worst days at the inland Class I areas in VISTAS, the benefits of reducing NO_X and NH_3 emissions at these sites are small.

The VISTAS sensitivity analyses show that VOC emissions from biogenic sources such as vegetation also contribute to visibility impairment. However, control of these biogenic sources of VOC would be extremely difficult, if not impossible. The anthropogenic sources of VOC emissions are minor compared to the biogenic sources. Therefore, controlling anthropogenic sources of VOC emissions would have little if any visibility benefits at the Class I areas in and adjacent to the VISTAS region. The sensitivity analyses also show that reducing primary carbon from point sources, ground level sources, or fires is projected to have small to no visibility benefit at the VISTAS Class I areas.

Mississippi considered the factors listed in under 40 CFR 51.308(d)(3)(v) and in section III.E of this action to develop its LTS as described below. Mississippi, in conjunction with VISTAS, demonstrated in its SIP that elemental carbon (a product of highway and non-road diesel engines, agricultural burning, prescribed fires, and wildfires), fine soils (a product of construction activities and activities that generate fugitive dust), and ammonia are relatively minor contributors to visibility impairment at the Class I areas in states near to Mississippi. Mississippi considered agricultural and forestry smoke management techniques to address visibility impacts from elemental carbon. Mississippi has drafted but not finalized a Smoke Management Plan that addresses the issues laid out in the EPA's 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* available at: *http://www.epa.gov/ttncaaa1/t1/memoranda/firefnl.pdf.* Under current smoke management practices, the Mississippi Forestry Commission, in conjunction with MDEQ, issues burning permits based on daily weather forecasts. A permit is required for any fire set for a recognized agricultural or forestry purpose. With regard to fine soils, the State considered those activities that generate fugitive dust, including construction activities. Mississippi has no specific provisions to mitigate dust emissions from construction activities. However, there are nuisance provisions in State regulations that would apply if construction or other activities were generating significant emissions. Given the distance of the closest Class I area (Breton) to Mississippi, the nuisance provisions may provide adequate control from these activities. With regard to ammonia, the State has chosen not to develop controls for ammonia emissions from Mississippi sources in this first implementation period because of their relatively minor contribution to visibility impairment.

EPA preliminarily concurs with the State's technical demonstration showing that elemental carbon, fine soils, and ammonia are not significant contributors to visibility in any Class I area, and therefore, proposes to find that Mississippi has adequately satisfied 40 CFR 51.308(d)(3)(v).

The emissions sensitivity analyses conducted by VISTAS predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the VISTAS region, more than any other visibility-impairing pollutant. Additional, smaller benefits are projected from SO_2 emissions reductions from non-utility industrial point sources. SO_2 emissions contributions to visibility impairment from other RPO regions are comparatively small in contrast to the VISTAS states' contributions and, thus, controlling sources outside of the VISTAS region is predicted to provide less significant improvements in visibility in the Class I areas in VISTAS.

SO_2 sources for which it is demonstrated that no additional controls are reasonable in this current implementation period will not be exempted from future assessments for

controls in subsequent implementation periods or, when appropriate, from the five-year periodic SIP reviews. In future implementation periods, additional controls on these SO_2 sources evaluated in the first implementation period may be determined to be reasonable, based on a reasonable progress control evaluation, for continued progress toward natural conditions for the 20 percent worst days and to avoid further degradation of the 20 percent best days. Similarly, in subsequent implementation periods, the State may use different criteria for identifying sources for evaluation and may consider other pollutants as visibility conditions change over time.

4. Procedure for Identifying Sources to Evaluate for Reasonable Progress Controls in Mississippi and Surrounding Areas

As discussed in section IV.B.3. of this action, through comprehensive evaluations by VISTAS and the Southern Appalachian Mountains Initiative (SAMI),[9] the VISTAS states concluded that sulfate particles resulting from SO_2 emissions account for the greatest portion of the regional haze affecting the Class I areas in VISTAS region and surrounding states. Utility and non-utility boilers are the main sources of SO_2 emissions within the southeastern United States. VISTAS developed a methodology for the VISTAS states, which enables the states to focus their reasonable progress analyses on those geographic regions and source categories that impact visibility at these states' Class I areas. The state in which a Class I area is located is responsible for determining which sources, both inside and outside of that state, to evaluate for reasonable progress controls. Although Mississippi has no Class I areas, at the time VISTAS was performing this analysis, many of the surrounding states had not finalized what methodology they would use to prioritize and identify potential sources for reasonable progress evaluation. To assist the State to identify potential emissions units that might be raised during the consultation process with these other states, MDEQ applied the VISTAS methodology to identify emissions units that could potentially warrant further analysis based on their impacts on nearby Class I areas in neighboring states.

The State established a threshold to determine which emissions units may be identified by neighboring states with Class I areas to be evaluated for potential reasonable progress control depending on those states' criteria for evaluation. In applying this methodology, MDEQ first calculated the fractional contribution to visibility impairment from all emissions units within the SO_2 AOI for those surrounding Class I areas in other states potentially impacted by emissions from emissions units in Mississippi. The State then identified those emissions units with a contribution of one percent or more to the visibility impairment at that particular Class I area, and evaluated each of these units for control measures for reasonable progress, using the following four ''reasonable progress factors'' as required under 40 CFR 51.308(d)(1)(i)(A): (1) Cost of compliance; (2) time necessary for compliance; (3) energy and non-air quality environmental impacts of compliance; and (4) remaining useful life of the emissions unit.

Mississippi's SO_2 AOI methodology identified two sources that might potentially impact the Breton Class I area: Mississippi Power Company—Plant Watson and the DuPont Delisle facility, both in Harrison County. Since the time of Mississippi's original 2008 SIP submittal, Louisiana completed and submitted a regional haze SIP to address visibility at Breton. Neither Plant Watson nor the DuPont DeLisle facility were identified by Louisiana in consultations with Mississippi or in the Louisiana regional haze SIP as sources identified for reasonable progress control evaluation as sources potentially impacting Breton. Consequently, Mississippi determined that no further control analysis was necessary at these facilities at this time and no controls were adopted for reasonable progress for Mississippi Power Company—Plant Watson or the DuPont DeLisle facility during this implementation period. Mississippi will continue to consult with Louisiana to assess the potential impact of facilities in Mississippi to help meet the visibility goals for Breton for future implementation periods.

Consistent with EPA's Reasonable Progress Guidance, since the Breton Class I area is in Louisiana, EPA is proposing to find that Mississippi appropriately relied on Louisiana's determination of which sources to prioritize for reasonable progress control evaluation during this implementation period.

5. BART

BART is an element of Mississippi's LTS for the first implementation period. The BART evaluation process consists of three components: (a) An identification of all the BART-eligible sources, (b) an assessment of whether the BART-eligible sources are subject to BART and (c) a determination of the BART controls. These components, as addressed by MDEQ and MDEQ's findings, are discussed as follows.

A. BART-Eligible Sources

The first phase of a BART evaluation is to identify all the BART-eligible sources within the State's boundaries. MDEQ identified the BART-eligible sources in Mississippi by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and EPA's regulations (40 CFR 51.301): (1) One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emissions units were not in operation prior to August 7, 1962, and were in existence on August 7, 1977; and (3) these units have the potential to emit 250 tons or more per year of any visibility-impairing pollutant.

The BART Guidelines also direct states to address SO_2, NO_X, and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairment pollutants, and to exercise judgment in determining whether VOC or ammonia emissions from a source impair visibility in an area. *See* 70 FR 39160. VISTAS modeling demonstrated that VOC from anthropogenic sources and ammonia from point sources are not significant visibility-impairing pollutants in Mississippi, as discussed in section IV.B.3. of this action. MDEQ has determined, based on the VISTAS modeling, that ammonia emissions from the State's point sources are not anticipated to cause or contribute significantly to any impairment of visibility in Class I areas and should be exempt for BART purposes.

B. BART-Subject Sources

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, i.e., those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment

[9] Prior to VISTAS, the southern states cooperated in a voluntary regional partnership ''to identify and recommend reasonable measures to remedy existing and prevent future adverse effects from human-induced air pollution on the air quality related values of the Southern Appalachian Mountains.'' States cooperated with FLMs, the EPA, industry, environmental organizations, and academia to complete a technical assessment of the impacts of acid deposition, ozone, and fine particles on sensitive resources in the Southern Appalachians. The SAMI Final Report was delivered in August 2002.

in a Class I area. Consistent with the BART Guidelines, Mississippi required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

1. Modeling Methodology

The BART Guidelines allow states to use the CALPUFF [10] modeling system (CALPUFF) or another appropriate model to predict the visibility impacts from a single source on a Class I area, and therefore, to determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, i.e., ''is subject to BART.'' The Guidelines state that EPA believes that CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162). Mississippi, in coordination with VISTAS, used the CALPUFF modeling system to determine whether individual sources in Mississippi were subject to or exempt from BART.

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. The VISTAS states, including Mississippi, developed a ''Protocol for the Application of CALPUFF for BART Analyses.'' Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the VISTAS protocol.

VISTAS developed a post-processing approach to use the new IMPROVE equation with the CALPUFF model results so that the BART analyses could consider both the old and new IMPROVE equations. The choice between use of the old or the new equation for calculating the visibility metrics for each Class I area is made by the state in which the Class I area is located. Mississippi allowed the use of the new IMPROVE equation in performing the screening analysis. The States of Alabama, Arkansas, and Louisiana, whose Class I areas were potentially impacted by Mississippi's BART sources, also allowed the use of the new IMPROVE equation for BART analyses.

2. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' The BART Guidelines also state that ''the appropriate threshold for determining whether a source 'contributes to visibility impairment' may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach.

Mississippi used a contribution threshold of 0.5 deciview for determining which sources are subject to BART. The State concluded that the threshold of 0.5 deciview, which is the highest level allowed by the BART Guidelines, was appropriate in this situation. This threshold of 0.5 deciview was also used by the surrounding states with Class I areas that sources in Mississippi could impact. MDEQ concluded that a 0.5 deciview threshold was appropriate in this instance. EPA is proposing to agree with Mississippi that the overall impacts of its BART-eligible sources are not sufficient to warrant a lower contribution threshold and that a 0.5 deciview threshold was appropriate in this instance.

3. Identification of Sources Subject to BART

Mississippi initially identified 15 facilities with BART-eligible sources. The State subsequently determined that 13 of these sources are exempt from being considered subject to BART. Table 5 identifies the 15 BART-eligible sources located in Mississippi and, of these, lists the two sources subject to BART.

TABLE 5—MISSISSIPPI BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES

Facilities With Unit(s) Subject to BART:
Chevron Products Company, Pascagoula Refinery
Mississippi Phosphates Corporation (MPC)
Facilities With Unit(s) Found Not Subject to BART:
EGU CAIR and BART Modeling (PM only) Exempt Sources: [11]
Entergy Mississippi Inc, Baxter Wilson Plant
Entergy Mississippi Inc, Gerald Andrus Plant
Mississippi Power Company, Chevron Cogenerating Plant
Mississippi Power Company, Plant Jack Watson
Mississippi Power Company, Plant Victor J Daniel
South Mississippi Electric Power Association, Moselle Plant: [12]
South Mississippi Electric Power Association, R D Morrow Plant: [13]
Non-EGU BART Modeling Exempt Sources
Georgia Pacific Corp, Monticello Mill
Greenwood Utilities, Henderson Station
Holcim US Inc.

[10] Note that EPA's reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (e.g., the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer on the following Web site: *http://www.src.com/verio/download/download.htm.*

[11] EGUs were only evaluated for PM emissions. The State relied on CAIR to satisfy BART for SO_2 and NO_X for its EGUs subject to CAIR, in accordance with 40 CFR 51.308(e)(4). Thus, SO_2 and NO_X were not analyzed.

[12] The facility met model plant criteria as provided for in the BART Guidelines for PM emissions only. No further modeling was performed.

[13] Ibid.

[14] The facility met the model plant criteria as provided for in the BART Guidelines for PM emissions only. No further modeling was performed.

TABLE 5—MISSISSIPPI BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES—Continued

International Paper Company, Vicksburg Mill
Pursue Energy Corp, Thomasville Gas Plant
Terra Mississippi Nitrogen Inc, Yazoo City: [14]

Two of the eight non-EGU facilities, Chevron Products Company—Pascagoula Refinery and MPC, were determined to be ''subject to BART'' and were required to perform an engineering analysis, which included an analysis of the five CAA BART factors, their evaluation of potential BART options, and proposed BART determinations. Six of the non-EGU sources demonstrated that they are exempt from being subject to BART. Three of these facilities, Georgia Pacific Corp—Monticello Mill, Holcim US Inc., and International Paper Company—Vicksburg Mill, modeled visibility impacts of less than 0.5 deciview at the affected Class I areas. This modeling involved assessing the visibility impact of emissions of NO_X, SO_2, and PM_{10} as applicable to individual facilities. The remaining facility, Terra Mississippi Nitrogen Inc. in Yazoo City, met the model plant criteria for exempting out of BART certain BART-eligible sources that share specific characteristics as allowed by EPA's BART Guidelines (70 FR 39163) and no further modeling was required.

All seven BART-eligible EGUs relied on Mississippi's decision to rely upon CAIR emissions limits for SO_2 and NO_X to satisfy their obligation to comply with BART requirements in accordance with 40 CFR 51.308(e)(4). Therefore, these EGU sources only modeled PM_{10} emissions. Five of the seven EGUs provided modeling demonstrating that their PM_{10} emissions do not contribute to visibility impairment in any Class I area. Two of the facilities, South Mississippi Electric Power Association—Moselle Plant and South Mississippi Electric Power Association—R D Morrow Plant, met the model plant criteria in EPA's BART Guidelines (70 FR 39163) based on PM emissions only and no further modeling was required.

Prior to the CAIR remand, the State's reliance on CAIR to satisfy BART for NO_X and SO_2 for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). However, the BART assessments for CAIR EGUs for NO_X and SO_2 and other provisions in this SIP revision are based on CAIR. In a separate action, EPA has proposed a limited disapproval of the Mississippi regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the D.C. Circuit to EPA of CAIR. *See* 76 FR 82219. Consequently, EPA is not taking action in this notice to address the state's reliance on CAIR to meet certain regional haze requirements, including BART for SO_2 and NO_X emissions from EGUs.

States such as Mississippi that are subject to the requirements of the Transport Rule trading program only for NO_X must still address BART for SO_2 and other visibility impairing pollutants. *See* 76 FR at 82224. While EPA proposed on December 30, 2011, to issue a FIP to address the deficiencies in Mississippi's SIP associated with the BART requirements for NO_X for EGUs based on EPA's proposed revisions to the RHR allowing states to substitute participation in the trading programs under the Transport Rule for source-specific BART, EPA did not propose a plan to address the deficiencies associated with the BART requirements for SO_2 since the Transport Rule does not cover SO_2 emissions from Mississippi EGUs. Because Mississippi also relied on CAIR in assessing the need for emissions reductions for SO_2 from EGUs to satisfy BART, the State will have to re-evaluate EGUs with respect to SO_2 BART requirements. If EPA finalizes the limited disapproval for Mississippi's reliance on CAIR to satisfy the regional haze SIP requirements for SO_2, that action will trigger a 24-month clock for EPA to either implement a FIP to address those requirements or approve a revised SIP from the State that addresses SO_2 BART for its EGUs.

C. BART Determinations

Two BART-eligible non-EGU sources (i.e., Chevron Products Company—Pascagoula Refinery and MPC) had modeled visibility impacts of more than the 0.5 deciview threshold for BART exemption. These two facilities are therefore considered to be subject to BART and, consequently, were required to perform an engineering analysis, which included an analysis of the five CAA BART factors, their evaluation of potential BART options, and proposed BART determinations.

In accordance with the BART Guidelines, to determine the level of control that represents BART for each source, the State first reviewed existing controls on these units to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. The State's evaluations and conclusions, and EPA's assessment, are summarized below.

1. Chevron Products Company—Pascagoula Refinery

The modeled visibility impact resulting from Chevron Refinery's emissions was 3.89 deciview at Breton. As stated in the State's submittal, Chevron has significant emissions reductions planned due to permitted projects that are currently or will soon be underway and to an enforcement consent decree issued June 7, 2005. As a result of ongoing and planned projects, emissions of NO_X from BART eligible sources will be reduced from 1,480 pounds per hour (lb/hr) to 521 lb/hr, SO_2 emissions will be reduced from 3,154 lb/hr to 248 lb/hr, and PM_{10} emissions will be reduced from 187 lb/hr to 146 lb/hr.

For SO_2, the units affected by the 2005 consent decree emitted 3,032.7 lb/hr daily maximum average from 2001–2003, which will be reduced by 2,884.3 lb/hr of SO_2. The units involved in Chevron's consent decree contribute 96 percent of the SO_2 emissions for the refinery's BART-eligible sources. The consent decree will reduce NO_X by 960 lb/hr and PM_{10} by 41 lb/hr with a modeled visibility improvement of 2.99 deciview at Breton.

Mississippi evaluated three additional control options, two affecting specific NO_X generating units and one for additional SO_2 control. The first option (Option 1) was to install ultra-low NO_X burners (ULNB) on three of the largest emissions units. These units are the Crude Unit 1 Vacuum Furnace (F–1102), the Crude Unit 1 Atmospheric Furnace (F–1101), and the Rheniformer I Reactor Furnaces (F–1501/2/3). This option could reduce NO_X emissions from these sources from 139 lb/hr to 38 lb/hr, a reduction of 101 lb/hr, and total refinery BART-eligible source NO_X emissions would be reduced by 17 percent from the currently planned future emissions.

The second option (Option 2) was to also install ULNB in the Hydrogen Plant No. 2 (F–6410) process heater. This source has a relatively high NO_X emissions rate before control on a lb/hr basis. However, the combustion air for

this process heater is the flue gas from the associated gas turbine. The ULNBs would only control NO_X formed in the furnace. Therefore, the estimated NO_X emissions reduction is 50 percent. This option would reduce NO_X emissions from this source from 148 lb/hr to 74 lb/hr, a reduction of 74 lb/hr. By installing ULNB in the two crude units, Rhenformer I and the hydrogen plant, total refinery BART-eligible source NO_X emissions could be reduced by 31 percent from the currently planned future emissions. All the other NO_X sources have relatively small emissions.

A third option (Option 3) considered to reduce SO_2 emissions is to decrease the sulfur content of the refinery fuel gas. Currently, the hydrogen sulfide (H_2S) content of the refinery fuel gas is controlled to approximately 50 part per million by volume (ppmv), which is well below the New Source Performance Standard emissions limit of 162 ppmv of H_2S. However, the refinery fuel gas also contains approximately 100 ppmv of non-H_2S sulfur compounds such as various mercaptans. The Merox process could be used to reduce the mercaptan content of the refinery fuel gas. In this process, the mercaptans are removed with caustic-containing Merox catalyst. Mercaptans in the rich caustic are oxidized with air to disulfides that are decanted. The regenerated caustic is recycled. For this analysis, 90 percent control of mercaptans was assumed. This option would reduce SO_2 emissions from 248 lb/hr to 189 lb/hr.

For PM_{10}, MDEQ determined that there are no available additional controls for refinery fuel gas combustion. Most of the other remaining BART PM_{10} emissions are refinery fuel gas combustion emissions, which comprise a small fraction of the facility's total BART PM_{10} emissions.

Capital costs range from $8.6 million for Option 1 to $40.6 million for Option 3. Annual operating costs range from $1.3 million per year (yr) to $5.9 million/yr. Future emissions controls already planned will reduce the number of days greater than 1.0 deciview at Breton from 58 days to 71 days to only one to five days, depending upon the year modeled. Similar results for the eighth highest delta deciview show a reduction from a range of 2.9 deciviews to 3.9 deciviews for the baseline case to only 0.7 deciview to 0.9 deciview for the future planned case. The additional emissions reductions from the three control options beyond the already planned emissions reductions will provide only very small additional visibility improvements, ranging from 0.043 deciview for Option 1 to 0.16 deciview for Option 3. For each option, the total cost effectiveness and incremental cost effectiveness exceed $29 million/deciview. Mississippi determined that these further reductions would be very costly without significant visibility improvement. Therefore, MDEQ determined that these options are not BART due to the high cost for small visibility gains. Mississippi has determined that the emissions controls and resulting reductions from the consent decree constitute BART.

2. MPC

On November 9, 2010, MPC was issued a Permit to Construct Air Emissions Equipment that included Best Available Control Technology (BACT) emissions limits for SO_2 and sulfuric acid mist (H_2SO_4). With this project, MPC is making many upgrades, including replacing the absorption towers, installing new economizers and new superheaters, replacing duct work and piping, relocating new or refurbished acid coolers (i.e., heat exchangers), repairing the cooling tower, and replacing the vanadium catalyst with cesium catalyst in the third and fourth converter passes. These upgrades will not result in increased sulfuric acid production capacity, which is currently permitted at 1,800 tons per day per sulfuric acid plant, but should allow for significant decreases in down-time due to more reliable operation of the plants. This will result in an actual-to-potential increase in tons per year (tpy) of SO_2; however, the project will result in greater emissions controls and lower permitted short-term and annual emissions for both pollutants.

BACT for SO_2 was determined to be the replacement of vanadium catalyst with cesium catalyst in the third and fourth converter passes. The permitted SO_2 limit is 3.0 pounds (lb) of SO_2 per ton of sulfuric acid produced, not to exceed 225 lb/hr SO_2 and 1,700 tpy SO_2. MDEQ considers this emissions limit appropriate as meeting BART for this source.

BACT for H_2SO_4 was determined to be the installation of vertical tube mist eliminators in the interpass absorption tower. The final absorption tower already has these mist eliminators installed. MPC is also replacing the economizer prior to the final absorption tower with a larger one which will have the effect of lowering the exhaust gas temperature and thus, reducing H_2SO_4 emissions. The permitted H_2SO_4 limit is 0.10 lb H_2SO_4 per ton of sulfuric acid produced, not to exceed 7.5 lb/hr H_2SO_4 and 32.85 tpy H_2SO_4. MDEQ considers this emissions limit appropriate as meeting BART for this source.

3. EPA Assessment

EPA proposes to agree with Mississippi's analyses and conclusions for the two BART-subject EGU sources described above. EPA has reviewed the State's analyses and proposes to conclude that they were conducted in a manner that is consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* (*http://www.epa.gov/ttncatc1/products.html#cccinfo*). While lower emissions limits have been determined to be BACT for sulfuric acid plants at other facilities, both BACT and BART are case-by-case determinations. The BACT analysis appropriately documented that the limited additional capacities and configuration of catalyst beds for MPC's facility limited its ability to achieve reductions similar to those achieved at other facilities.

4. Enforceability of Emissions Limits

The BART determinations for each of the facilities discussed above and the resulting emissions limits are adopted by Mississippi into the State's regional haze SIP submittal. The limits are also in consent decrees and will be included in the facilities' title V permits. A copy of the consent decree for Chevron Products Company—Pascagoula Refinery was included in Appendix L of the Mississippi regional haze submittal for informational purposes. A copy of the construction permit issued for MPC on November 9, 2010, was included in Mississippi's supplemental submittal of May 9, 2011, for informational purposes.

C. Coordination of RAVI and Regional Haze Requirements

EPA's visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in sections III.F and III.G of this action. Under EPA's RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I area includes any integral vista associated with that area. Since there are no Class I areas in Mississippi, no integral vistas in Mississippi have been identified. In addition, none of its sources are affected by the RAVI provisions. Thus, the Mississippi regional haze SIP submittal does not explicitly address the two

requirements regarding coordination of the regional haze with the RAVI LTS and monitoring provisions.

In the State's submittal, MDEQ updated its visibility monitoring program and developed a LTS to address regional haze. Also in this submittal, MDEQ affirmed its commitment to complete items required in the future under EPA's RHR. Specifically, MDEQ made a commitment to review and revise its regional haze implementation plan and submit a plan revision to EPA by July 31, 2018, and every 10 years thereafter. *See* 40 CFR 51.308(f). In accordance with the requirements listed in 40 CFR 51.308(g) of EPA's regional haze regulations and 40 CFR 51.306(c) of the RAVI LTS regulations, MDEQ made a commitment to submit a report to EPA on progress towards the RPGs for each mandatory Class I area located outside Mississippi which may be affected by emissions from within Mississippi. The progress report is required to be in the form of a SIP revision and is due every five years following the initial submittal of the regional haze SIP. Consistent with EPA's monitoring regulations for RAVI and regional haze, Mississippi will rely on the IMPROVE network for compliance purposes, in addition to any RAVI monitoring that may be needed in the future. *See* 40 CFR 51.305, 40 CFR 51.308(d)(4). Since there are no Class I areas in Mississippi, the State also commits to ongoing consultation with the FLMs throughout the implementation process, including annual discussion of the implementation process and the most recent IMPROVE monitoring data and VIEWS data.

D. Monitoring Strategy and Other Implementation Plan Requirements

The primary monitoring network for regional haze in Mississippi is the IMPROVE network. There are currently no IMPROVE sites in Mississippi, since it has no Class I areas. In the submittal, Mississippi states its intention to continue to consult with the FLM annually on monitoring data from the IMPROVE network for Class I areas in adjacent states that might be affected by Mississippi sources.

Data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the five-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data. The Visibility Information Exchange Web System (VIEWS) Web site has been maintained by VISTAS and the other RPOs to provide ready access to the IMPROVE data and data analysis tools. Mississippi is encouraging VISTAS and the other RPOs to maintain the VIEWS or a similar data management system to facilitate analysis of the IMPROVE data.

E. Consultation With States and FLMs

1. Consultation With Other States

In December 2006 and in May 2007, the State Air Directors from the VISTAS states held formal interstate consultation meetings. The purpose of the meetings was to discuss the methodology proposed by VISTAS for identifying sources to evaluate for reasonable progress. The states invited FLM and EPA representatives to participate and to provide additional feedback. The Directors discussed the results of analyses showing contributions to visibility impairment from states to each of the Class I areas in the VISTAS region.

Mississippi received letters from Louisiana and Alabama transmitting prehearing drafts of their regional haze SIPs. MDEQ concurred on the RPGs for the Breton and Sipsey Class I areas, and committed to continue collaboration with these states in the preparation of future VISTAS studies and analyses and in addressing regional haze issues in future implementation periods. EPA proposes to find that Mississippi has adequately addressed the consultation requirements in the RHR and appropriately documented its consultation with other states in its SIP submittal.

2. Consultation With the FLMs

Through the VISTAS RPO, Mississippi and the nine other member states worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the VISTAS states.

MDEQ received comments from the U.S. Forestry Service (USFS) and the U.S. Fish and Wildlife Service (USFWS) on the State's draft regional haze SIP dated January 10, 2008. Appendix O of the September 22, 2008, Mississippi regional haze SIP submittal includes a summary of the comments from the FLMs. Most of the comments were requesting additional information or discussion on various topics which were taken into consideration and, for the most part, included in the final September 2008 SIP submittal. The FLMs provided comments about including in the SIP submittal discussions on natural background, uniform rate of progress, and RPGs for nearby Class I areas in other states. This information was not included because Mississippi believes that is not necessary or appropriate to present this information as part of the Mississippi regional haze SIP.

On March 3, 2011, the USFWS also provided comments on the draft supplemental SIP submittal, including USFWS' views on BART for MPC and its concerns that Louisiana's methodology for prioritizing sources for potential reasonable progress control evaluation did not include Mississippi's DuPont DeLisle facility. MDEQ considered these comments in making its final determinations.

F. Periodic SIP revisions and Five-Year Progress Reports

As also summarized in section IV.C of this action, consistent with 40 CFR 51.308(g), MDEQ affirmed its commitment to submitting a progress report in the form of a SIP revision to EPA every five years following this initial submittal of the Mississippi regional haze SIP. The report will evaluate the progress made towards the RPGs for the mandatory Class I areas located outside Mississippi which may be affected by emissions from within Mississippi. Mississippi also offered recommendations for several technical improvements that, as funding allows, can support the State's next LTS.

If another state's regional haze SIP identifies that Mississippi's SIP needs to be supplemented or modified, and if, after appropriate consultation Mississippi agrees, today's action may be revisited, or additional information and/or changes will be addressed in the five-year progress report SIP revision.

V. What action is EPA taking?

EPA is proposing a limited approval of revisions to the Mississippi SIP submitted by the State of Mississippi on September 22, 2008, and May 9, 2011, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, as described previously in this action.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all ''collections of information''

by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's proposal does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

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

EPA believes that VCS are inapplicable to this action. Today's action does not require the public to

perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxide, Volatile organic compounds.

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

Dated: February 15, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–4661 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0785–201041; FRL–9637–8]

Approval and Promulgation of Air Quality Implementation Plans; South Carolina; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval of a revision to the South Carolina state implementation plan (SIP) submitted by the State of South Carolina, through the South Carolina Department of Health and Environmental Control (SC DHEC), on December 17, 2007, that addresses regional haze for the first implementation period. This revision addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of this SIP revision to implement the regional haze requirements for South Carolina on the basis that the revision, as a whole, strengthens the South Carolina SIP. Additionally, EPA is proposing to rescind the Federal regulations previously approved into the South Carolina SIP on July 12, 1985, and November 24, 1987, and to rely on the provisions in South Carolina's December 17, 2007, SIP submittal to meet the monitoring and long-term strategy (LTS) requirements for reasonably attributable visibility impairment (RAVI). EPA has previously proposed a limited disapproval of the South Carolina regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) to EPA of the Clean Air Interstate Rule (CAIR). Consequently, EPA is not proposing to take action in this rulemaking to address the State's reliance on CAIR to meet certain regional haze requirements.

DATES: Comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2009–0785, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2009–0785, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2009–0785.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni or Sara Waterson, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov*. Sara Waterson can be reached at telephone number (404) 562–9061 and by

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I. What action is EPA proposing to take?

EPA is proposing a limited approval of South Carolina's December 17, 2007, SIP revision addressing regional haze under CAA sections 301(a) and 110(k)(3) because the revision as a whole strengthens the South Carolina SIP. This proposed rulemaking and the accompanying Technical Support Document [1] (TSD) explain the basis for EPA's proposed limited approval action.[2]

In a separate action, EPA has proposed a limited disapproval of the South Carolina regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. *See* 76 FR 82219 (December 30, 2011). EPA is not proposing to take action in today's rulemaking on issues associated with South Carolina's reliance on CAIR in its regional haze SIP. Comments on EPA's proposed limited disapproval of South Carolina's regional haze SIP are accepted at the docket for EPA's December 30, 2011, proposed rulemaking (*see* Docket ID No. EPA–HQ–OAR–2011–0729). The comment period for EPA's December 30, 2011, proposed rulemaking is scheduled to end on February 28, 2012.

In this action, EPA is also proposing to rescind the Federal regulations in 40 CFR 52.2132 that were approved into the South Carolina SIP. *See* 50 FR 28544 (July 12, 1985) and 52 FR 45132 (November 24, 1987). In summary, EPA is proposing to rely on the provisions in South Carolina's December 17, 2007, SIP submittal to meet the monitoring and LTS requirements for RAVI at 40 CFR 51.305 and 40 CFR 51.306.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [3] in many Class I areas [4] (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *See* 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to

[1] EPA's TSD to this action, entitled, ''*Technical Support Document for South Carolina Regional Haze SIP Submittal,*'' is included in the public docket for this action.

[2] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at: *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf*.

[3] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[4] Areas designated as mandatory Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See* 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. *See* 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I federal areas.'' Each mandatory Class I area is the responsibility of a ''Federal Land Manager.'' *See* 42 U.S.C. 7602(i). When the term ''Class I area'' is used in this action, it means a ''mandatory Class I federal area.''

address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment.'' *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[5] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various Federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

III. What are the requirements for regional haze SIPs?

A. The CAA and the RHR

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[6]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years, i.e., midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional*

[5] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[6] The preamble to the RHR provides additional details about the deciview. *See* 64 FR 35714, 35725 (July 1, 1999).

Haze Rule, September 2003, (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emissions reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emissions sources that may be affecting visibility impairment at the Class I state's areas. *See* 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [7] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emissions limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may

[7] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emissions limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169(g)(4); *see* 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. *See* 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR cap-and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal implementation plan in 40 CFR part 97 need not require affected BART-eligible electrical generating units (EGUs) to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. Challenges to CAIR, however, resulted in the remand of the rule to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008).

EPA issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. *See* 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not yet taken final action on that rule. Also on December 30, 2011, the D.C. Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the D.C. Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

E. LTS

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. *See* 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. *See* 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emissions reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. *See* 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and RAVI LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the

IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. *See* 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of South Carolina's regional haze submittal?

On December 17, 2007, SC DHEC's Bureau of Air Quality submitted a revision to the South Carolina SIP to address regional haze in the State's Class I area as required by EPA's RHR.

A. Affected Class I Areas

South Carolina has one Class I area within its borders: the Cape Romain Wilderness Area (Cape Romain). South Carolina is responsible for developing a regional haze SIP that addresses this Class I area and for consulting with other states that impact South Carolina's Class I area. The State determined appropriate RPGs, including consulting with other states that impact the Class I area, as discussed in section IV.F.1. In addition, South Carolina is responsible for describing its long-term emissions strategies, its role in the consultation processes, and how its particular state SIP meets the other requirements in EPA's regional haze regulations.

The South Carolina regional haze SIP establishes RPGs for visibility improvement at this Class I area and an LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the LTS, South Carolina considered both emissions sources inside and outside of South Carolina that may cause or contribute to visibility impairment in South Carolina's Class I area. The State also identified and considered emissions sources within South Carolina that may cause or contribute to visibility impairment in Class I areas in neighboring states as required by 40 CFR 51.308(d)(3). The VISTAS RPO worked with the State in developing the technical analyses used to make these determinations, including state-by-state contributions to visibility impairment in specific Class I areas, which included the one area in South Carolina and those areas affected by emissions from South Carolina.

B. Determination of Baseline, Natural and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, South Carolina calculated baseline/current and natural visibility conditions for its Class I area, as summarized below (and as further described in sections III.B.1 and III.B.2 of EPA's TSD to this **Federal Register** action).

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in EPA's 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to the 2003 EPA guidance to estimate the values that characterize the natural visibility conditions of the Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[8] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction. South Carolina opted to use the default estimates for the natural concentrations combined with the ''new IMPROVE equation'' for its Class I area. Using this approach, natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by VISTAS.

[8] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emissions sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

The new IMPROVE equation takes into account the most recent review of the science [9] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Conditions

SC DHEC estimated baseline visibility conditions at Cape Romain using available monitoring data from a single IMPROVE monitoring site. As explained in section III.B, baseline visibility conditions are the same as current conditions for the first regional haze SIP. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days at the South Carolina Class I area. IMPROVE data records for Cape Romain for the period 2000 to 2004 meet EPA requirements for data completeness. See page 2–8 of EPA's 2003 Tracking Progress Guidance. Table 3.3–1 from Appendix G of the South Carolina regional haze SIP, also provided in section III.B.3 of EPA's TSD to this action, lists the 20 percent best and worst days for the baseline period of 2000–2004 for Cape Romain. These data are also provided at the following Web site: *http://www.metro4-sesarm.org/vistas/SesarmBext_20BW.htm.*

3. Summary of Baseline and Natural Conditions

For the South Carolina Class I area, baseline visibility conditions on the 20 percent worst days are generally between 25 and 30 deciviews. Natural visibility in this area is predicted to be between approximately 12 and 13 deciviews on the 20 percent worst days. The natural and baseline conditions for South Carolina's Class I area for both the 20 percent worst and best days are presented in Table 1 below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR THE CAPE ROMAIN CLASS I AREA

Condition	Average for 20% worst days (dv [10])	Average for 20% best days (dv)
Baseline Visibility Conditions 2000–2004	26.5	14.3
Natural Background Visibility Conditions	12.2	5.9

4. Uniform Rate of Progress

In setting the RPGs, South Carolina considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glidepath'') and the emissions reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glidepath.

The State's implementation plan presents two sets of graphs, one for the 20 percent best days, and one for the 20 percent worst days, for its Class I area. South Carolina constructed the graph for the worst days (i.e., the glidepath) in accordance with EPA's 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for the Cape Romain area. For the best days, the graph includes a horizontal, straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. South Carolina's SIP shows that the State's RPGs for its area provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best days over the same period, in accordance with 40 CFR 51.308(d)(1).

For Cape Romain, the overall visibility improvement necessary to reach natural conditions is the difference between baseline visibility of 26.48 deciviews for the 20 percent worst days and natural conditions of 12.21 deciviews, i.e., 14.27 deciviews. Over the 60-year period from 2004 to 2064, this would require an approximate average improvement of 0.24 deciview per year (i.e., 14.27 deciviews/60 years) to reach natural conditions. Hence, for the 14-year period from 2004 to 2018, in order to achieve visibility improvement at least equivalent to the uniform rate of progress for the 20 percent worst days at Cape Romain, a visibility improvement of at least 3.36 deciviews would be needed over the first implementation period (i.e., 0.24 deciview × 14 years = 3.36 deciviews) from the baseline visibility of 26.48 deciviews, resulting in visibility levels at or below 23.12 deciviews in 2018. As discussed below in section IV.C.7, South Carolina projects a 3.8 deciview improvement to visibility from the 2004 baseline of 26.5 deciviews to 22.7 deciviews in 2018 for the 20 percent most impaired days, and a 1.5 deciview improvement to 12.7 deciviews from the baseline visibility of 14.2 deciviews for the 20 percent least impaired days.

C. Long-Term Strategy/Strategies

As described in section III.E of this action, the LTS is a compilation of state-specific control measures relied on by

[9] The science behind the revised IMPROVE equation is summarized in numerous published papers. *See,* e.g.: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado. *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm;* and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006. *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

[10] The term, ''dv,'' is the abbreviation for ''deciview.''

the state for achieving its RPGs. South Carolina's LTS for the first implementation period addresses the emissions reductions from Federal, state, and local controls that take effect in the State from the end of the baseline period starting in 2004 until 2018. The South Carolina LTS was developed by the State, in coordination with the VISTAS RPO, through an evaluation of the following components: (1) Identification of the emissions units within South Carolina and in surrounding states that likely have the largest impacts currently on visibility at the State's Class I area; (2) estimation of emissions reductions for 2018 based on all controls required or expected under Federal and state regulations for the 2004–2018 period (including BART); (3) comparison of projected visibility improvement with the uniform rate of progress for the State's Class I area; and (4) application of the four statutory factors in the reasonable progress analysis for the identified emissions units to determine if additional reasonable controls were required.

In a separate action proposing limited disapproval of the regional haze SIPs of a number of states, EPA noted that these states relied on the trading programs of CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the state-adopted reasonable progress goals. *See* 76 FR 82219 (December 30, 2011). In that action, EPA proposed a limited disapproval of South Carolina's regional haze SIP submittal insofar as the SIP relied on CAIR. For that reason, EPA is not taking action on that aspect of South Carolina's regional haze SIP in this action. Comments on the December 30, 2011, proposed determination were accepted at Docket ID No. EPA–HQ–OAR–2011–0729. The comment period for EPA's December 30, 2011, proposed rulemaking is scheduled to end on February 28, 2012.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by VISTAS with assistance from South Carolina. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from Federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM, and SO_2. The BART Guidelines direct states to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in section IV.C.3, VISTAS performed modeling sensitivity analyses, which demonstrated that anthropogenic emissions of VOC and NH_3 do not significantly impair visibility in the VISTAS region. Thus, while emissions inventories were also developed for NH_3 and VOC, and applicable Federal VOC reductions were incorporated into South Carolina's regional haze analyses, South Carolina did not further evaluate NH_3 and VOC emissions sources for potential controls under BART or reasonable progress.

VISTAS developed emissions for five inventory source classifications: Stationary point and area sources, off-road and on-road mobile sources, and biogenic sources. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. VISTAS estimated emissions on a countywide level for the inventory categories of: (a) Stationary area sources; (b) off-road (or non-road) mobile sources (i.e., equipment that can move but does not use the roadways); and (c) biogenic sources (which are natural sources of emissions, such as trees). On-road mobile source emissions are estimated by vehicle type and road type, and are summed to the countywide level.

There are many Federal and state control programs being implemented that VISTAS and South Carolina anticipate will reduce emissions between the end of the baseline period and 2018. Emissions reductions from these control programs are projected to achieve substantial visibility improvement by 2018 in Cape Romain. The control programs relied upon by South Carolina include CAIR; EPA's NO_X SIP Call; North Carolina's Clean Smokestacks Act; Georgia's multi-pollutant rule; consent decrees for Santee Cooper, Tampa Electric, Virginia Electric and Power Company, Gulf Power-Plant Crist, and East Kentucky Power Cooperative; NO_X and/or VOC reductions from the control rules in 1-hour ozone SIPs for Atlanta, Birmingham, and Northern Kentucky; North Carolina's NO_X reasonably available control technology state rule for Philip Morris USA and Norandal USA in the Charlotte/Gastonia/Rock Hill 1997 8-hour ozone nonattainment area; Federal 2007 heavy duty diesel engine standards for on-road trucks and buses; Federal Tier 2 tailpipe controls for on-road vehicles; Federal large spark ignition and recreational vehicle controls; EPA's non-road diesel rules; South Carolina's *Smoke Management Guideline for Vegetative Debris Burning Operations* and state regulation, *Prohibition of Open Burning* (R. 61–62.2); and Early Action Compacts with 45 out of 46 counties in South Carolina to reduce pollution that creates ground-level ozone. Controls from various Federal Maximum Achievable Control Technology (MACT) rules were also utilized in the development of the 2018 emissions inventory projections. These MACT rules include the industrial boiler/process heater MACT (referred to as ''Industrial Boiler MACT''), the combustion turbine and reciprocating internal combustion engines MACTs, and the VOC 2-, 4-, 7-, and 10-year MACT standards.

Effective July 30, 2007, the D.C. Circuit mandated the vacatur and remand of the Industrial Boiler MACT Rule.[11] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010, (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). The VISTAS modeling included emissions reductions from the vacated Industrial Boiler MACT rule, and South Carolina did not redo its modeling analysis when the rule was re-issued. Even though South Carolina's modeling is based on the vacated Industrial Boiler MACT limits, the State's modeling conclusions are unlikely to be affected because the expected reductions due to the vacated rule were relatively small compared to the State's total SO_2, $PM_{2.5}$, and coarse particulate matter (PM_{10}) emissions in 2018 (i.e., 0.2 to 0.5 percent, depending on the pollutant, of the projected 2018 SO_2, $PM_{2.5}$, and PM_{10} inventory). Thus, EPA does not expect that differences between the vacated and final Industrial Boiler MACT emissions limits would affect the adequacy of the existing South Carolina regional haze SIP. If there is a need to address discrepancies between projected emissions reductions from the vacated Industrial Boiler MACT and the Industrial Boiler MACT issued March 21, 2011 (76 FR 15608), EPA expects South Carolina to do so in the State's five-year progress report.

[11] *See NRDC* v. *EPA,* 489 F.3d 1250 (D.C. Cir. 2007).

Below in Tables 2 and 3 are summaries of the 2002 baseline and 2018 estimated emissions inventories for South Carolina.

TABLE 2—2002 EMISSIONS INVENTORY SUMMARY FOR SOUTH CAROLINA

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	38,928	130,681	27,766	36,779	1,552	263,790
Area	175,666	24,602	63,802	287,162	29,074	14,087
On-Road Mobile	114,861	138,941	2,473	6,505	4,646	5,909
Off-Road Mobile	55,016	50,249	3,945	4,152	33	4,866
Total	384,471	344,473	97,986	334,598	35,305	288,652

TABLE 3—2018 EMISSIONS INVENTORY SUMMARY FOR SOUTH CAROLINA

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	44,562	95,477	36,118	53,054	2,396	146,851
Area	177,273	26,491	70,274	333,404	34,535	14,816
On-Road Mobile	41,866	39,348	988	3,994	5,878	584
Off-Road Mobile	36,131	31,758	2,474	2,617	41	1,198
Total	299,832	193,074	109,854	393,069	42,850	163,449

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

VISTAS performed modeling for the regional haze LTS for the 10 southeastern states, including South Carolina. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. VISTAS used the following modeling system:

- *Meteorological Model:* The Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model is a nonhydrostatic, prognostic, meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5,}$ and regional haze regulatory modeling studies.
- *Emissions Model:* The Sparse Matrix Operator Kernel Emissions modeling system is an emissions modeling system that generates hourly gridded speciated emissions inputs of mobile, non-road mobile, area, point, fire, and biogenic emissions sources for photochemical grid models.
- *Air Quality Model:* The EPA's Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, PM, visibility, and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ version 4.5. It was modified through VISTAS with a module for Secondary Organics Aerosols in an open and transparent manner that was also subjected to outside peer review.

CMAQ modeling of regional haze in the VISTAS region for 2002 and 2018 was carried out on a grid of 12×12 kilometer cells that covers the 10 VISTAS states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia) and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36×36 kilometer grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. VISTAS conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The VISTAS states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze,* located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*, EPA–454/B–07–002, April 2007, and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html*, EPA–454/R–05–001, August 2005, updated November 2005 (''EPA's Modeling Guidance'').

VISTAS examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. VISTAS used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once VISTAS determined the model performance to be acceptable, VISTAS used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the State of South Carolina provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to

develop the glidepath and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA proposes to accept the VISTAS technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and simulated according to EPA Modeling Guidance. EPA proposes to agree with the VISTAS model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the South Carolina LTS and regional haze SIP.

3. Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, source sectors, and geographic areas, VISTAS developed emissions sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the VISTAS region, VISTAS' contribution assessment, based on IMPROVE monitoring data, demonstrated that ammonium sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the VISTAS and neighboring states. On the 20 percent worst visibility days in 2000–2004, ammonium sulfate accounted for 75 to 87 percent of the calculated light extinction at the inland Class I areas in VISTAS, and 69 to 74 percent of the calculated light extinction for all but one of the coastal Class I areas in the VISTAS states. In particular, for Cape Romain, sulfate particles resulting from SO_2 emissions contribute roughly 71 percent to the calculated light extinction on the haziest days. In contrast, ammonium nitrate contributed less than five percent of the calculated light extinction at the VISTAS Class I areas on the 20 percent worst visibility days. Particulate organic matter (organic carbon) accounted for 20 percent or less of the light extinction on the 20 percent worst visibility days at the VISTAS Class I areas.

VISTAS grouped its 18 Class I areas into two types, either ''coastal'' or ''inland'' (sometimes referred to as ''mountain'') sites, based on common/similar characteristics (e.g., terrain, geography, meteorology), to better represent variations in model sensitivity and performance within the VISTAS region, and to describe the common factors influencing visibility conditions in the two types of Class I areas. South Carolina's Cape Romain area is classified as a ''coastal'' area.

Results from VISTAS' emissions sensitivity analyses indicate that sulfate particles resulting from SO_2 emissions are the dominant contributor to visibility impairment on the 20 percent worst days at all Class I areas in VISTAS. South Carolina concluded that reducing SO_2 emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits for Cape Romain. Because ammonium nitrate is a small contributor to $PM_{2.5}$ mass and visibility impairment on the 20 percent worst days at the coastal Class I areas in VISTAS, which include Cape Romain, the benefits of reducing NO_X and NH_3 emissions at these sites are small. Some of the worst days at Cape Romain and other coastal sites within the VISTA region occur in the winter when ammonium nitrate has a somewhat larger contribution to visibility impairment. South Carolina concluded that reducing ammonia emissions would be more beneficial for reducing ammonium nitrate contributions to visibility impairment in wintertime than further reducing NO_X emissions from either ground or point sources.

The VISTAS' sensitivity analyses show that VOC emissions from biogenic sources such as vegetation also contribute to visibility impairment. However, control of these biogenic sources of VOC would be extremely difficult, if not impossible. The anthropogenic sources of VOC emissions are minor compared to the biogenic sources. Therefore, controlling anthropogenic sources of VOC emissions would have little if any visibility benefits at the Class I areas in the VISTAS region, including South Carolina's area. The sensitivity analyses also show that reducing primary carbon from point sources, ground level sources, or fires is projected to have small to no visibility benefit at the VISTAS Class I areas.

South Carolina considered the factors listed in under 40 CFR 51.308(d)(3)(v) and in section III.E of this action to develop its LTS as described below. South Carolina, in conjunction with VISTAS, demonstrated in its SIP that elemental carbon (a product of highway and non-road diesel engines, agricultural burning, prescribed fires, and wildfires), fine soils (a product of construction activities and activities that generate fugitive dust), and ammonia are relatively minor contributors to visibility impairment at the Class I area in South Carolina. South Carolina considered agricultural and forestry smoke management techniques, in conjunction with the State's open burning requirements, to address visibility impacts from elemental carbon. The South Carolina Forestry Commission (SCFC) developed a smoke management program (*Smoke Management Guideline for Vegetative Debris Burning Operations*), which regulates vegetative debris burning for forestry, agriculture, and wildlife purposes in the State. SC DHEC and SCFC have a memorandum of understanding (MOU) describing their respective roles in implementing the State's smoke management plan that utilizes basic smoke management practices and addresses the issues laid out in EPA's 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* available at: *http://www.epa.gov/ttncaaa1/t1/memoranda/firefnl.pdf.* SC DHEC notes in its SIP that this MOU represents the State's collective commitment to develop a comprehensive approach to establish and maintain a smoke management plan. In addition, SC DHEC's Bureau of Air Quality has developed a state air pollution control regulation (R. 61–62.2, *Prohibition of Open Burning*) that prohibits: (a) Open burning of any/all household garbage, (b) open burning for the purpose of land clearing or right of way maintenance in areas other than predominantly residential areas, and (c) open burning of residential construction waste from building and construction operations unless specific conditions are met. South Carolina notes in its SIP that, viewed together, the State's smoke management program and open burning requirements minimize visibility impacts from all sources of fire used for land management purposes within the State while recognizing the important ecological role of fires. With regard to fine soils, the State considered those activities that generate fugitive dust, including construction activities. Fine soil particles are minor contributors to visibility at Cape Romain. The State has chosen not to develop controls for fine soils in this first implementation period because of their relatively minor contribution to visibility impairment.

EPA preliminarily concurs with the State's technical demonstration showing that elemental carbon, fine soils, and ammonia are not significant contributors to visibility in the State's Class I area, and therefore, proposes to find that South Carolina has adequately

satisfied 40 CFR 51.308(d)(3)(v). EPA's TSD to this **Federal Register** action and South Carolina's SIP provide more details on the State's consideration of these factors for South Carolina's LTS.

The emissions sensitivity analyses conducted by VISTAS predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the VISTAS region, more than any other visibility-impairing pollutant. Specific to South Carolina, the VISTAS sensitivity analysis projects visibility benefits in Cape Romain from SO_2 reductions from EGUs in eight of the 10 VISTAS states: Alabama, Georgia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia. Additional, smaller benefits are projected from SO_2 emissions reductions from non-utility industrial point sources. SO_2 emissions contributions to visibility impairment from other RPO regions are comparatively small in contrast to the VISTAS states' contributions, and thus, controlling sources outside of the VISTAS region is predicted to provide less significant improvements in visibility in the Class I areas within VISTAS.

Taking the VISTAS sensitivity analyses results into consideration, South Carolina concluded that reducing SO_2 emissions from EGU and non-EGU point sources within South Carolina would have the greatest visibility benefits for Cape Romain. The State chose to focus solely on evaluating certain SO_2 sources contributing to visibility impairment to the State's Class I area for additional emissions reductions for reasonable progress in this first implementation period (described in sections IV.C.4 and IV.C.5 of this action). EPA proposes to agree with the State's analyses and conclusions used to determine the pollutants and source categories that most contribute to visibility impairment in the South Carolina Class I area, and proposes to find the State's approach to focus on developing a LTS that includes largely additional measures for point sources of SO_2 emissions to be appropriate.

SO_2 sources for which it is demonstrated that no additional controls are reasonable in this current implementation period will not be exempted from future assessments for controls in subsequent implementation periods or, when appropriate, from the five-year periodic SIP reviews. In future implementation periods, additional controls on these SO_2 sources evaluated in the first implementation period may be determined to be reasonable, based on a reasonable progress control evaluation, for continued progress toward natural conditions for the 20 percent worst days and to avoid further degradation of the 20 percent best days. Similarly, in subsequent implementation periods, the State may use different criteria for identifying sources for evaluation and may consider other pollutants as visibility conditions change over time.

4. Procedure for Identifying Sources To Evaluate for Reasonable Progress Controls in South Carolina and Surrounding Areas

As discussed in section IV.C.3 of this action, through comprehensive evaluations by VISTAS and the Southern Appalachian Mountains Initiative (SAMI),[12] the VISTAS states concluded that sulfate particles resulting from SO_2 emissions account for the greatest portion of the regional haze affecting the Class I areas in VISTAS states, including Cape Romain in South Carolina. Utility and non-utility boilers are the main sources of SO_2 emissions within the southeastern United States. VISTAS developed a methodology for South Carolina, which enables the State to focus its reasonable progress analysis on those geographic regions and source categories that impact visibility at its Class I area. Recognizing that there was neither sufficient time nor adequate resources available to evaluate all emissions units within a given area of influence (AOI) around each Class I area that South Carolina's sources impact, the State established a threshold to determine which emissions units would be evaluated for reasonable progress control. In applying this methodology, SC DHEC first calculated the fractional contribution to visibility impairment from all emissions units within the SO_2 AOI for Cape Romain and from those surrounding areas in other states potentially impacted by emissions from emissions units in South Carolina. The State then identified those emissions units with a contribution of one percent or more to the visibility impairment at that particular Class I area, and evaluated each of these units for control measures for reasonable progress, using the following four ''reasonable progress factors'' as required under 40 CFR 51.308(d)(1)(i)(A): (i) Cost of compliance; (ii) time necessary for compliance; (iii) energy and non-air quality environmental impacts of compliance; and (iv) remaining useful life of the emissions unit.

South Carolina's SO_2 AOI methodology captured greater than 80 percent of the total point source SO_2 contribution to visibility impairment in the Class I area in South Carolina and required an evaluation of 22 emissions units. Capturing a significantly greater percentage of the total contribution would involve an evaluation of many more emissions units that have substantially less impact. EPA believes the approach developed by VISTAS and implemented for the Class I area in South Carolina is a reasonable methodology to prioritize the most significant contributors to regional haze and to identify sources to assess for reasonable progress control in the State's Class I area. The approach is consistent with EPA's Reasonable Progress Guidance. The technical approach of VISTAS and South Carolina was objective and based on several analyses, which included a large universe of emissions units within and surrounding the State of South Carolina and all of the 18 VISTAS Class I areas. It also included an analysis of the VISTAS emissions units affecting nearby Class I areas surrounding the VISTAS states that are located in other RPOs' Class I areas.

5. Application of the Four CAA factors in the Reasonable Progress Analysis

SC DHEC identified 22 emissions units at 13 facilities in South Carolina (*see* Table 4) with SO_2 emissions that were above the State's minimum threshold for reasonable progress evaluation because they were modeled to fall within the sulfate AOI of any Class I area and have a one percent or greater contribution to the sulfate visibility impairment to at least one Class I area.[13] Using the expected costs of controls for EGUs complying with CAIR as an indicator of what might be reasonable for non-EGU sources, SC DHEC established a threshold of $2,000 per ton of SO_2 for controls. Next, an analysis of control options, generic costs of controls, and cost per ton for various units contributing greater than one

[12] Prior to VISTAS, the southern states cooperated in a voluntary regional partnership ''to identify and recommend reasonable measures to remedy existing and prevent future adverse effects from human-induced air pollution on the air quality related values of the Southern Appalachian Mountains.'' States cooperated with FLMs, EPA, industry, environmental organizations, and academia to complete a technical assessment of the impacts of acid deposition, ozone, and fine particles on sensitive resources in the Southern Appalachians. The SAMI Final Report was delivered in August 2002.

[13] *See* also EPA's TSD, section III.C.2, fractional contribution analysis tables for each Class I area, excerpted from the South Carolina's regional haze SIP submittal, Appendix H.

percent to any Class I area was developed and matched with data from AirControlNET, an EPA air pollution control cost database (accessible at: *http://www.epa.gov/ttnecas1/AirControlNET.htm*), to identify expected cost per ton reduced for the application of each of the specific control measures available for these units. SC DHEC then compared the range cost effectiveness estimates for these units to its cost threshold of $2,000 per ton for controls. As explained in section IV.C.5, 16 of these 22 emissions units were already subject to CAIR or were determined to not have a reasonable expectation of having control costs less than $2,000 per ton.

TABLE 4—SOUTH CAROLINA FACILITIES SUBJECT TO REASONABLE PROGRESS ANALYSIS

Facilities With Unit(s) Subject to Reasonable Progress Analysis:
DAK Americas, SC
Giant Cement, SC
Holcim Holly Hill, SC Units 1, 2
International Paper—Georgetown, SC
MeadWestvaco, SC
Facilities With Unit(s) Subject to CAIR Within AOI of Any Class I Area:
EGUs Subject to CAIR:
Duke Energy—Lee, Units 1, 2, 3
Santee Cooper—Cross, Units 2, 3
Santee Cooper—Jefferies Units 3, 4
South Carolina Electric & Gas (SCE&G)—Canadys, Units 1, 2
SCE&G—Williams, Unit 1
Facilities With Unit(s) Evaluated using AirControlNET Only:
Alumax of South Carolina Units 2, 3, 4, 5
Cogen South
Showa Denko Carbon

A. Facilities With Emissions Unit(s) Subject to Reasonable Progress Analysis

SC DHEC analyzed whether SO_2 controls should be required for six units at five facilities, (DAK Americas, MeadWestvaco, Giant Cement, Holcim Holly Hill Units 1 and 2, and International Paper), based on a consideration of the four factors set out in the CAA and EPA's regulations. For the limited purpose of evaluating the cost of compliance for the reasonable progress assessment in this first regional haze SIP for the non-EGUs, SC DHEC concluded that it was not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy. Using CAIR as a guide, SC DHEC used a cost of $2,000 per ton of SO_2 controlled or reduced as a threshold for cost effectiveness.

1. DAK Americas

DAK Americas operates a facility in Moncks Comer, South Carolina, which produces polyethylene terephthalate (also commonly known as ''PET'') and finishes it into synthetic fibers and bottle resin products. Boiler No. 2, a 206 million British thermal unit per hour (MMBtu/hr) bituminous coal-fired boiler, was subject to a reasonable progress control review. Currently, the existing air pollution control device is a baghouse to control PM and a one percent sulfur limit on the coal sulfur content to control sulfur emissions. Boiler No. 2 is the only coal-fired boiler at the site. SC DHEC reviewed five technologies for reasonable progress: Low-sulfur coal, wet flue gas desulfurization (FGD), spray dryer absorber (SDA), fluidized-bed combustion, and dry sorbent injection. The energy and non-air quality impacts of the options were qualitatively ranked according to the degree of energy usage and waste generation generally associated with each option. The FGD and SDA options are the most cost-effective options but would only reduce emissions 33–48 tons and are anticipated to be $3,758 and over $4,000 per ton, respectively. SC DHEC deemed all the available control options to be above its $2,000 per ton of SO_2 controlled cost effectiveness threshold.

2. Giant Cement Company (Giant)

Giant owns and operates a Portland cement manufacturing facility located in Harleyville, South Carolina. In 2005, Giant completed the modernization of its cement manufacturing facility. The modernized cement facility consists of one dry process cement kiln system that replaced four wet process cement kilns. The modernized cement kiln system is more energy efficient than the previous wet process cement kilns. A Prevention of Significant Deterioration (PSD) permit to construct and operate the kiln system was issued in 2003, and the first clinker was produced in March 2005. Based on the information in the reasonable progress control analysis that Giant provided, SC DHEC concluded that switching to low sulfur coal is not a cost effective solution to address SO_2 emissions at the Giant facility. Sulfur input to the cement kiln system as a result of coal usage is less than five percent of the total sulfur input, which corresponds to between 55 and 69 tons of SO_2 emitted per year. Switching to a low sulfur coal reduces emissions between 24 and 36 tons of SO_2 per year, but at a cost ranging from $7,801 to $11,152 per ton of SO_2 reduced. SC DHEC concluded that none of the control options would be below its cost effectiveness threshold for reasonable progress.

3. Holcim (US) Inc. (Holcim)

The Holcim Holly Hill Plant produces Portland cement. The two wet process cement kilns identified in the reasonable progress analysis at the Holly Hill facility were shut down in 2003 and eventually demolished. They were replaced with a single, more efficient preheater precalciner kiln system which began operation in 2003. Holcim prepared a reasonable progress control analysis to assess the potential switch to lower sulfur fuel oil from three percent sulfur coal, which is the sulfur level that the current permit is based upon. The analysis demonstrated that this switch would result in a maximum SO_2 reduction of 4,011 tons at an additional cost to Holcim of $41,039 per ton of SO_2 removed. SC DHEC concluded that additional reductions from this facility would be above its cost effectiveness threshold.

4. International Paper

International Paper operates a paper mill located in Georgetown, South Carolina. Units subject to a reasonable progress analysis are the No. 1 Power Boiler, No. 2 Power Boiler, No. 1 Recovery Boiler, and No. 2 Recovery

Boiler. The power boilers currently burn a diverse fuel mix consisting of wood, coal, tire-derived fuel, fuel oil, natural gas, and propane. These power boilers are permitted for several additional fuels that are currently not being utilized. The fuels that contribute to sulfur emissions are coal, tire-derived fuel, and No. 6 fuel oil. The recovery boilers primarily burn black liquor solids, but also burn limited amounts of No. 6 fuel oil, primarily during start-up (e.g., less than two percent of fuel input annually). International Paper prepared a reasonable progress control analysis which evaluated three fuel switching options.

The Mill evaluated switching sulfur-contributing fuels (coal, tire-derived fuel, and No. 6 fuel oil) with natural gas, low-sulfur fuel oil, and distillate oils for the reasonable progress control analysis. The first option was to replace all coal, No. 6 fuel oil, and tire-derived fuel with natural gas. The second option was to replace all sulfur fuels with low sulfur fuel oil. The Mill's title V permit limits No. 6 fuel oil consumption in the power boilers. Therefore, the Mill calculated the second option two ways: (a) Replacing as much fuel oil as possible with low sulfur fuel oil and leaving the balance as natural gas, and (b) assuming the Mill would not be limited on firing low sulfur fuel oil, calculating a complete fuel switch to low sulfur fuel oil. The third option was to replace all coal, No. 6 fuel oil, and tire-derived fuel with low sulfur distillate oils. The annual SO_2 emissions reductions from these options ranged from 2,281 to 3,284 tons of SO_2. However, the cost-effectiveness estimates for the fuel switching options ranged from $6,417 to $10,012 per ton SO_2, which are above SC DHEC's cost effectiveness threshold.

5. MeadWestvaco

MeadWestvaco Corporation operates a paper mill in North Charleston, South Carolina. MeadWestvaco Corporation submitted a reasonable progress control analysis for a switch to a lower sulfur fuel for the two recovery boilers listed in emissions unit ID 06 of title V Air Quality Operating (title V) Permit TV–0560–0008. The reasonable progress control analysis evaluated costs associated with the most feasible fuel switch, a change from high sulfur No. 6 fuel oil to low sulfur No. 6 fuel oil. No. 6 fuel oil is used mainly as startup/shutdown fuel in the recovery boilers; however, it can be used to supplement and stabilize steam load when the recovery boilers are burning black liquor. The analysis used the worst case scenario for SO_2 emissions, which is to assume all fuel oil is burned without black liquor, because burning a blend of fuel oil and black liquor would be expected to yield lower emissions than fuel oil firing alone. This analysis considered firing the furnace at actual fuel usage rates and at a maximum level, consistent with its existing SO_2 PSD limit. Changing from high sulfur No. 6 fuel oil to low sulfur No. 6 oil in the No. 1 recovery boiler would reduce SO_2 emissions 81 tons and cost $7,463 per ton of SO_2 removed based on the actual operating scenario and reduce SO_2 emissions 384 tons and cost $3,359 per ton of SO_2 removed at its maximum allowed operating level. Both scenarios are above SC DHEC's $2,000 per ton SO_2 emissions removed cost effectiveness threshold.

6. EPA Assessment

As noted in EPA's Reasonable Progress Guidance, the states have wide latitude to determine appropriate additional control requirements for ensuring reasonable progress, and there are many ways for a state to approach identification of additional reasonable measures. States must consider the four statutory factors, at a minimum, in determining reasonable progress, but states have flexibility in how to take these factors into consideration.

South Carolina applied the methodology developed by VISTAS for identifying appropriate sources to be considered for additional controls under reasonable progress for the implementation period ending in 2018 that is addressed by this SIP. Using this methodology, SC DHEC first identified those emissions and emissions units most likely to have an impact on visibility in the State's Class I area. Units with emissions of SO_2 with a relative contribution to visibility impairment of at least a one percent contribution at any Class I area were then subject to further analysis to determine whether it would be appropriate to require controls on these units for purposes of reasonable progress. As noted above, six units were subject to this analysis.

SC DHEC concluded, based on its evaluation of the companies' submittals, that no further controls are warranted at this time. After reviewing SC DHEC's methodology and analyses, EPA proposes to find that South Carolina's conclusion that no further controls are necessary at this time acceptable. EPA proposes to determine that South Carolina adequately evaluated the control technologies available at the time of its analysis and applicable to these types of facilities and consistently applied its criteria for reasonable compliance costs. The State included appropriate documentation in its SIP of the technical analysis it used to assess the need for and implementation of reasonable progress controls. Although the use of a specific threshold for assessing costs means that a state may not fully consider available emissions reduction measures above its threshold that would result in meaningful visibility improvement, EPA believes that the South Carolina SIP still ensures reasonable progress. In proposing to approve South Carolina's reasonable progress analysis, EPA is placing great weight on the fact that there is no indication in the SIP submittal that South Carolina, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I area. EPA notes that given the emissions reductions resulting from CAIR and the measures in nearby states, the visibility improvements projected for the affected Class I area are in excess of that needed to be on the uniform rate of progress.

B. Emissions Units Subject to CAIR Within AOI of Any Class I Area

Ten of the 22 emissions units identified for a reasonable progress control analysis are EGUs. These ten EGUs are subject to CAIR. To determine whether any additional controls beyond those required by CAIR would be considered reasonable for South Carolina's EGUs for this first implementation period, SC DHEC evaluated the SO_2 reductions expected from the EGU sector based upon results of the Intergrated Planning Model (IPM), as adjusted by the VISTAS states based on their knowledge of which facilities will be installing controls, to estimate the region-wide impacts of all the anticipated EGU controls, including CAIR. South Carolina determined that for EGUs, emissions reductions predicted to result from CAIR would be sufficient for ensuring reasonable progress during the first implementation period (between the baseline and 2018).

In reaching this decision, SC DHEC considered the four reasonable progress factors set forth in EPA's RHR as they apply to the State's entire EGU sector (*see* Appendix H of the South Carolina SIP and section III.C.2 of EPA's TSD for this action). In particular, the State took into account the factors of cost and time necessary for compliance in view of EPA's analysis supporting CAIR. Based on the analysis, SC DHEC concluded that additional SO_2 control measures, beyond those needed to meet CAIR requirements, for South Carolina's EGUs would not be reasonable during this first

implementation period based on a consideration of the reasonable progress statutory factors. This conclusion is bolstered by the fact that visibility improvement at the Cape Romain Wilderness Area is projected to exceed the uniform rate of progress in this first implementation period. EPA proposes to find acceptable South Carolina's methodology and determination that no additional controls beyond CAIR are reasonable for SO_2 for affected South Carolina EGUs for the first implementation period.

C. Facilities With Unit(s) Evaluated Using AirControlNET Only

SC DHEC determined that there were no cost effective controls for six non-EGU emissions units at three other facilities. As clarified in a November 9, 2009, letter from SC DHEC to EPA Region 4, the State assessed, through VISTAS, Alumax of South Carolina Units 2, 3, 4, and 5, Cogen South, and Showa Denko Carbon using AirControlNET in the initial review of affected sources for reasonable progress. (The November 2009 letter is in the docket for this action and can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2009–0785.) Based on this assessment, SC DHEC determined that there were no available controls for these facilities that were expected to be below the $2,000 cost effectiveness threshold for non-EGUs established by SC DHEC. Thus, the State did not pursue further evaluation of the three remaining statutory factors (i.e., time necessary for compliance, energy and non-air quality environmental impacts of compliance, and remaining useful life of the emissions unit) since there were no cost-effective controls to evaluate.

6. BART

BART is an element of South Carolina's LTS for the first implementation period. The BART evaluation process consists of three components: (a) An identification of all the BART-eligible sources, (b) an assessment of whether the BART-eligible sources are subject to BART, and (c) a determination of the BART controls. These components, as addressed by SC DHEC, and SC DHEC's findings, are discussed as follows.

A. BART-Eligible Sources

The first phase of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. SC DHEC identified BART-eligible sources in South Carolina by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and EPA's regulations (40 CFR 51.301): (1) One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emissions units were not in operation prior to August 7, 1962, and were in existence on August 7, 1977; and (3) these units have the potential to emit 250 tons or more per year of any visibility-impairing pollutant.

The BART Guidelines also direct states to address SO_2, NO_X, and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairment pollutants, and to exercise judgment in determining whether VOC or ammonia emissions from a source impair visibility in an area. *See* 70 FR 39160. VISTAS modeling demonstrated that VOC from anthropogenic sources are not significant visibility-impairing pollutants in South Carolina, as discussed in section IV.C.3 of this action. Regarding ammonia, the State notes in Appendix H of the SIP that analyses of spatial and temporal distributions of ammonia concentrations indicate that the primary point source ammonia contributor to regional haze at Cape Romain is likely the MeadWestvaco Plant in North Charleston, South Carolina, which is located 29 kilometers from Cape Romain. MeadWestvaco is not subject to BART because its BART-eligible units emit only approximately 130 tons per year of NH_3 and do not meet the BART eligibility threshold criteria. For this reason, South Carolina did not evaluate emissions of VOC and NH_3 in its BART determinations.

B. BART-Subject Sources

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, i.e., those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, South Carolina required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

1. Modeling Methodology

The BART Guidelines allow states to use the CALPUFF [14] modeling system (CALPUFF) or another appropriate model to predict the visibility impacts from a single source on a Class I area and therefore, to determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, i.e., ''is subject to BART.'' EPA believes that CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162). South Carolina, in coordination with VISTAS, used the CALPUFF modeling system to determine whether individual sources in South Carolina were subject to BART.

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. The VISTAS states, including South Carolina, developed a ''Protocol for the Application of CALPUFF for BART Analyses.'' Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the VISTAS protocol.

The RHR gives the states significant flexibility in making decisions concerning the BART modeling analysis as part of the regional haze process. Several BART facilities located in South Carolina proposed an alternative approach from the recommendation contained in the VISTAS CALPUFF protocol to developing the sea salt concentration when using the new IMPROVE equation to calculate visibility impacts. For a few sources subject to coastal influences, the more accurate but less generally available sodium ion concentration from ambient data rather than the chloride ion concentration was used to calculate the sea salt contribution. After consultation with EPA prior to the submittal of the regional haze SIP, SC DHEC allowed the use of either the sodium ion or the chloride ion to derive the IMPROVE sea salt estimate for use in the assessment of visibility impacts to Class I areas from individual BART-subject sources for this first implementation period.

[14] Note that EPA's reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (e.g., the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer on the following Web site: *http://www.src.com/verio/download/download.htm.*

VISTAS has examined the effects of sea salt and proposed a hierarchy of methods for sea salt estimation based on a consideration of different factors that impact how technically reliable each method is for estimating sea salt in the atmosphere. (For further details, see section III.D.2 of EPA's TSD for this action and Appendices O.1 and O.3 of the South Carolina regional haze SIP revision). As a result, SC DHEC chose to accept additional information on a case-by-case basis for several BART facilities that requested a more refined approach, i.e., use of the new IMPROVE equation with sodium ion data, in their BART exemption modeling. While the use of the sodium ion derived alternative sea salt estimate would be justified for any facility modeling visibility impairment at Cape Romain, that refinement was not required if a facility exempted using chloride ion concentration. EPA proposes to find that South Carolina's approach to estimating sea salt concentration to determine visibility impacts at Cape Romain is acceptable based on the supporting technical information provided by the State in its SIP.

VISTAS developed a post-processing approach to use the new IMPROVE equation with the CALPUFF model results so that the BART analyses could consider both the old and new IMPROVE equations. SC DHEC sent a letter and a supplementary email to EPA justifying the need for this post-processing approach, and the EPA Region 4 Regional Administrator sent the State a letter of approval dated October 5, 2007. South Carolina's justification included a method to process the CALPUFF output and a rationale on the benefits of using the new IMPROVE equation. The South Carolina and EPA Region 4 letters are located in Appendix O.1 of the State's December 17, 2007, regional haze SIP submittal and can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2009–0785.

2. Contribution Threshold

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' The BART Guidelines also state that ''the appropriate threshold for determining whether a source 'contributes to visibility impairment' may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach.

South Carolina used a contribution threshold of 0.5 deciview for determining which sources are subject to BART. SC DHEC concluded that, considering the results of the visibility impacts modeling conducted, a 0.5 deciview threshold was appropriate and a lower threshold was not warranted. South Carolina demonstrated that it is unlikely that multiple BART-eligible sources would simultaneously adversely impact visibility at Cape Romain at a level that would warrant a lower threshold value. For the South Carolina sources that were shown to be impacting the Wolf Island Class I area in Georgia, South Carolina demonstrated that they were located far from Wolf Island and that the majority of the individual BART-eligible sources had visibility impacts well below 0.5 deciview. Additional details regarding South Carolina's justification for using a 0.5 deciview threshold are provided in section III.D.2 of EPA's TSD for this action. EPA is proposing to agree with South Carolina that the overall impacts of these sources are not sufficient to warrant a lower contribution threshold and that a 0.5 deciview threshold was appropriate in this instance.

3. Identification of Sources Subject to BART

South Carolina initially identified 24 facilities with BART-eligible sources. The State subsequently determined that three sources (Shaw Industries—Anderson, Solutia, Inc., and Honeywell—Clemson) are not BART-eligible because the capacities of the boilers originally identified at these facilities fall below the BART source category threshold for fossil-fuel boilers of 250 MMBtu/hr heat input. *See* 40 CFR 51.301. Table 5 lists the 21 BART-eligible sources in South Carolina.

TABLE 5—SOUTH CAROLINA'S BART-ELIGIBLE SOURCES

Albermarle Corp.
Bowater Inc. Paper/Pulp
BP Amoco Chemical—Cooper River Plant
DAK Americas
Eastman Chemical
International Paper Georgetown Mill
INVISTA—Camden Plant
INVISTA—Spartanburg Plant (formerly KOSA: Arteva)
ISG Georgetown
MeadWestvaco—Kraft Mill
Milliken Chemical—Dewey Plant
Owens Corning—Anderson
Rhodia—Charleston
Santee Cooper—Grainger
Santee Cooper—Jefferies
Santee Cooper—Winyah
SCE&G—Canadys
SCE&G—Wateree
SCE&G—Williams
Stone Container—Florence
Wellman Inc.—Palmetto Plant

Of the 21 BART-eligible sources, 19 sources demonstrated that they are not subject to BART. Seven of the 19 (Albermarle, BP Amoco Chemical—Cooper River Plant, Rhodia—Charleston, Eastman Chemical, INVISTA—Spartanburg, Owens Corning—Anderson, Milliken Chemical—Dewey) are exempt from further BART review because they are only major sources for VOC emissions. As discussed in section IV.C.3 of this action, SC DHEC determined that controlling anthropogenic sources of VOCs has little, if any, visibility benefit at Cape Romain. Twelve of the 19 (Bowater, DAK Americas, International Paper—Georgetown, INVISTA—Camden Plant, ISG Georgetown, MeadWestvaco—Kraft Mill, Santee Cooper—Jefferies, Santee Cooper—Winyah, Santee Cooper—Grainger, SCE&G—Canadys, Stone Container—Florence, Wellman—Palmetto) are not subject to BART because their modeled visibility impact is less than 0.5 deciview at the affected Class I areas. In addition, although modeling exempted them from BART, DAK Americas took an emissions limit for further assurance of their exemption. South Carolina found that two of its BART-eligible sources, SCE&G's Williams and Wateree Stations, had modeled visibility impacts of more than the 0.5 deciview threshold for BART exemption and are considered to be subject to BART. SCE&G Willams and Wateree Stations, the two BART-eligible EGUs in the State, relied on CAIR to satisfy BART for SO_2 and NO_X for its EGUs in CAIR, in accordance with 40 CFR 51.308(e)(4). Therefore, as discussed in section III.D of this action, these facilities were only required to evaluate PM emissions in their BART determinations.

Prior to the CAIR remand, the State's reliance on CAIR to satisfy BART for NO_X and SO_2 for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). However, the BART assessments for CAIR EGUs for NO_X and SO_2 and other provisions in this SIP revision are based on CAIR. In a separate action, EPA has previously proposed a limited disapproval of the South Carolina regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the DC Circuit to EPA of CAIR. *See* 76 FR 82219. Consequently, EPA is not taking action in this proposed rulemaking to address the State's reliance on CAIR to meet certain regional haze requirements, including BART for SO_2 and NO_X emissions from EGUs.

C. BART Determinations for PM

South Carolina's two sources found subject to BART for PM (SCE&G's Wateree and Williams Stations) each submitted permit applications to the State that included their proposed BART determinations. In accordance with the BART Guidelines, to determine the level of control that represents BART for each source, the State first reviewed existing controls on these units to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. The State's evaluations and conclusions, and EPA's assessment, are summarized below.

1. SCE&G Wateree

SCE&G Wateree Station is located in Eastover, South Carolina. The station consists of two identical pulverized coal-fired, wet bottom boilers (Units 1 and 2). The two boilers produce superheated steam, which is used in the two dedicated turbine generators. Units 1 and 2 are equipped with fabric filter baghouses to control PM emissions, and low-NO_X burners and selective catalytic reduction (SCR) to control NO_X emissions. Although Units 1 and 2 commenced commercial operation in the early 1970s, there is no near-term limitation on the useful life of these units.

SCE&G also installed two wet limestone scrubbers to control SO_2 emissions in the summer of 2009. Wateree Station Units 1 and 2 were retrofit with FGD systems using limestone slurry in a spray tower to remove SO_2 from the gas stream. Although designed to control SO_2 emissions, the FGD systems provide the added benefit of removing sulfates, a principal constituent of condensable PM_{10}. The operation of the FGD systems is projected to reduce visibility impacts to well below the State's 0.5 deciview BART contribution threshold.

To address the BART requirement, SCE&G prepared an analysis of several additional options for PM_{10} addressing the statutory factors. The cost effectiveness of the various options ranged from $11,238 to $19,056 per ton of PM_{10} removed with a projected additional visibility improvement of approximately 0.04–0.05 deciview at Cape Romain. SC DHEC determined that the additional annualized costs associated with additional PM_{10} control options were excessive and that no additional control measures were cost effective.

2. SCE&G Williams

SCE&G Williams Station is located in Goose Creek, South Carolina. The station consists of a single pulverized coal-fired, dry bottom boiler (Unit 1). The boiler produces superheated steam, which is used in a turbine generator. Although Unit 1 commenced commercial operation in 1973, there is no near-term limitation on the useful life of this unit.

Unit 1 is currently equipped with low-NO_X burners and SCR to control NO_X emissions and an electrostatic precipitator to control PM_{10} emissions, the latter of which has been demonstrated to achieve performance levels comparable to those being specified as best achievable control technology for new coal-fired boilers. The existing control device, therefore, is considered representative of BART for PM_{10}. To address the BART requirement, SCE&G evaluated several additional options for control of PM_{10} and addressed the statutory factors. The cost effectiveness of the various options ranged from $307,420 to $376,318 per ton of PM_{10} removed with a projected visibility improvement of less than 0.01 deciview. SC DHEC determined that the additional annualized costs associated with additional PM_{10} control options were excessive and that no additional control measures were cost effective.

In October 2009, SCE&G retrofitted Williams Station Unit 1 with a FGD system using limestone slurry in a spray tower to remove SO_2 from the gas stream. Although designed to control SO_2 emissions, the FGD system will provide the added benefit of removing sulfates, a principal constituent of condensable PM_{10}. PM_{10} emissions will be reduced from 925 tons per year to 464 tons per year following the installation of the FGD system. This 50 percent reduction is attributable to the removal of condensable PM_{10}, principally sulfates, in the FGD system. After the installation of the FGD system, the modeled 98th percentile deciview visibility impact from this facility will be reduced by 0.69 deciview at Cape Romain.

3. EPA Assessment

EPA proposes to agree with South Carolina's analyses and conclusions for the BART emissions units located at these facilities. EPA has reviewed the South Carolina analyses and proposes to conclude that they were conducted in a manner that is consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* (*http://www.epa.gov/ttncatc1/products.html#cccinfo*). Therefore, EPA

proposes to find that the conclusions reflect a reasonable application of EPA's guidance to these sources.

7. RPGs

The RHR at 40 CFR 51.308(d)(1) requires states to establish RPGs for each Class I area within the state (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility. VISTAS modeled visibility improvements under existing Federal and state regulations for the period 2004–2018, and additional control measures which the VISTAS states planned to implement in the first implementation period. At the time of VISTAS modeling, some of the other states with sources potentially impacting visibility at the South Carolina Class I area had not yet made final control determinations for BART and/or reasonable progress, and thus, these controls were not included in the modeling submitted by South Carolina. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, which give further assurances that South Carolina will achieve its RPGs. This modeling demonstrates that the 2018 base control scenario provides for an improvement in visibility better than the uniform rate of progress for Cape Romain for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

As shown in Table 6 below, South Carolina's RPGs for the 20 percent worst days provide greater visibility improvement by 2018 than the uniform rate of progress for the State's Class I area (i.e., 22.7 deciviews in 2018). Also, the RPGs for the 20 percent best days provide greater visibility improvement by 2018 than current best day conditions. The regional haze provisions specify that a state may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. 40 CFR 51.308(d)(1)(vi). Therefore, the CAIR states with Class I areas, like South Carolina, took into account emissions reductions anticipated from CAIR in determining their 2018 RPGs.[15] The modeling supporting the analysis of these RPGs is consistent with EPA guidance at the time.

TABLE 6—SOUTH CAROLINA 2018 RPGS

[In deciviews]

Class I area	Baseline visibility—20% worst days	2018 RPG—20% worst days (improvement from baseline)	Uniform rate of progress at 2018—20% worst days	Baseline visibility—20% best days	2018 RPG—20% best days (improvement from baseline)
Cape Romain	26.5	22.7 (3.8)	23.2	14.2	12.7 (1.5)

The RPGs for the Class I area in South Carolina are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. These projections can be expected to change as additional information regarding future conditions becomes available. For example, new sources may be built, existing sources may shut down or modify production in response to changed economic circumstances, and facilities may change their emissions characteristics as they install control equipment to comply with new rules. It would be both impractical and resource-intensive to require a state to continually revise its RPGs every time an event affecting these future projections changed.

EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions, and addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a mandatory standard which must be achieved by a particular date. *See* 64 FR at 35733. At the same time, EPA established a requirement for a midcourse review and, if necessary, correction of the states' regional haze plans. *See* 40 CFR 52.308(g). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emissions management strategies in meeting the RPG and to provide an assessment of whether current implementation strategies are sufficient for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. *See* 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the state's conclusion that the current strategies are insufficient to meet the RPGs. South Carolina specifically committed to follow this process in its submittal. Accordingly, EPA proposes to approve South Carolina's RPGs for the Cape Romain Class I Area.

D. Coordination of RAVI and Regional Haze Requirements

EPA's visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in sections III.F and III.G of this action. Under EPA's RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. *See* 40 CFR 51.302. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I federal area.'' Visibility in any mandatory Class I area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in South Carolina. In addition, the Class I area in South Carolina is not experiencing RAVI, nor are any of its sources affected by the RAVI provisions. Thus, the December 17, 2007, South Carolina regional haze SIP submittal does not explicitly address the two requirements regarding coordination of the regional haze with the RAVI LTS and monitoring provisions. South Carolina has, however, previously made a commitment to address RAVI should the FLM certify visibility impairment from an individual source.[16] EPA

[15] Many of the CAIR states without Class I areas similarly relied on CAIR emissions reductions within the state to address some or all of their contribution to visibility impairment in other states' Class I areas, which the impacted Class I area state(s) used to set the RPGs for their Class I area(s). Certain surrounding non-CAIR states also relied on reductions due to CAIR in nearby states to develop their regional haze SIP submittals.

[16] South Carolina submitted its visibility SIP revisions addressing RAVI on June 3, 1985, which EPA approved on January 21, 1986 (51 FR 2698).

proposes to find that this regional haze submittal appropriately supplements and augments South Carolina's RAVI visibility provisions to address regional haze by updating the monitoring and LTS provisions as summarized below in this section.

In the December 17, 2007, submittal, SC DHEC updated its visibility monitoring program and developed a LTS to address regional haze. Also in this submittal, SC DHEC affirmed its commitment to complete items required in the future under EPA's RHR. Specifically, SC DHEC made a commitment to review and revise its regional haze implementation plan and submit a plan revision to EPA by July 31, 2018, and every 10 years thereafter. *See* 40 CFR 51.308(f). In accordance with the requirements listed in 40 CFR 51.308(g) of EPA's regional haze regulations and 40 CFR 51.306(c) of the RAVI LTS regulations, SC DHEC made a commitment to submitting a report to EPA on progress towards the RPGs the mandatory Class I area located within South Carolina and in each mandatory Class I area located outside South Carolina which may be affected by emissions from within South Carolina. The progress report is required to be in the form of a SIP revision and is due every five years following the initial submittal of the regional haze SIP. *See* 40 CFR 51.308(g). Consistent with EPA's monitoring regulations for RAVI and regional haze, South Carolina will rely on the IMPROVE network for compliance purposes, in addition to any RAVI monitoring that may be needed in the future. *See* 40 CFR 51.305, 40 CFR 51.308(d)(4). Also, the South Carolina new source review rules, previously approved in the State's SIP, continue to provide a framework for review and coordination with the FLMs on new sources which may have an adverse impact on visibility in either form (i.e., RAVI and/or regional haze) in any Class I area.

The original South Carolina visibility SIP submitted to EPA June 3, 1985, addressing the monitoring and LTS requirements in 40 CFR 51.305 and 40 CFR 51.306, respectively, was supplemented by an EPA regulation, 40 CFR 52.2132, on July 12, 1985 (50 FR 28544), as amended on November 24, 1987 (52 FR 45132). The 1985 and 1987 EPA actions incorporate 40 CFR 52.26 and 40 CFR 52.29 into the South Carolina SIP and continue to be in effect. Because the December 17, 2007, regional haze submittal appropriately addresses the monitoring and LTS requirements in 40 CFR 51.305 and 40 CFR 51.306, and supersedes these previous requirements, EPA is proposing to rescind the Federal regulations in 40 CFR 52.2132 and rely on the provisions in this December 17, 2007, submittal to meet these requirements.

E. Monitoring Strategy and Other Implementation Plan Requirements

The primary monitoring network for regional haze in South Carolina is the IMPROVE network. As discussed in section IV.B.2 of this action, there is currently one IMPROVE site in South Carolina, which serves as the monitoring site for Cape Romain (ROMA1).

IMPROVE monitoring data from 2000–2004 serves as the baseline for the regional haze program and is relied upon in the December 17, 2007, regional haze submittal. In the submittal, South Carolina states its intention to rely on the IMPROVE network for complying with the regional haze monitoring requirement in EPA's RHR for the current and future regional haze implementation periods.

Data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the five-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data. The Visibility Information Exchange Web System (VIEWS) web site has been maintained by VISTAS and the other RPOs to provide ready access to the IMPROVE data and data analysis tools. South Carolina is encouraging VISTAS and the other RPOs to maintain the VIEWS or a similar data management system to facilitate analysis of the IMPROVE data.

In addition to the IMPROVE measurements, the State supplements the IMPROVE sampling by operating additional co-located monitoring. Monitoring at Cape Romain includes:

- A tapered element oscillating microbalance for continuously measuring $PM_{2.5}$ mass concentration;
- An aethalometer for continuously measuring black carbon;
- An integrating nephelometer, supported by VISTAS, for continuously measuring light scattering; and
- Continuous monitoring of NO_2 and SO_2 precursor gasses.

Additional haze-related measurements were taken in South Carolina in 2002–2005 as part of special monitoring studies by VISTAS to better understand source contributions to $PM_{2.5}$ mass and visibility. These studies included: continuous monitoring of sulfate, nitrate, and carbon to better understand daily trends in $PM_{2.5}$; detailed analyses of carbon collected on high volume filters to identify source contributions to carbon; and additional analyses of sodium and ammonium on IMPROVE filter samples. VISTAS does not have the funding to continue these special studies and has therefore transferred the equipment to SC DHEC. South Carolina has also acquired several continuous sulfate monitors and expects to operate them at urban and rural sites to further the understanding of both $PM_{2.5}$ and visibility formation and trends in the State. SC DHEC will operate the units discussed above as long as funds allow. In addition, SC DHEC operates a comprehensive $PM_{2.5}$ network of filter-based Federal reference method monitors, continuous mass monitors, filter-based speciated monitors, and continuous speciated monitors.

F. Consultation With States and FLMs

1. Consultation With Other States

In December 2006 and in May 2007, the State Air Directors from the VISTAS states held formal interstate consultation meetings. The purpose of the meetings was to discuss the methodology proposed by VISTAS for identifying sources to evaluate for reasonable progress. The states invited FLM and EPA representatives to participate and to provide additional feedback. The Directors discussed the results of analyses showing contributions to visibility impairment from states to each of the Class I areas in the VISTAS region.

SC DHEC has evaluated the impact of South Carolina sources on Class I areas in neighboring states. The state in which a Class I area is located is responsible for determining which sources, both inside and outside of that state, to evaluate for reasonable progress controls. Because many of these states had not yet defined their criteria for identifying sources to evaluate for reasonable progress, South Carolina applied its AOI methodology to identify sources in the State that have emissions units with impacts large enough to potentially warrant further evaluation and analysis. The State identified seven emissions units at three facilities in South Carolina with a contribution of one percent or more to the visibility impairment at the following five Class I areas in two neighboring states: Wolf Island Wilderness Area and Okefenokee Wilderness Area in Georgia; and Joyce Kilmer, Shining Rock, and Swanquarter Wilderness Areas in North Carolina.

Georgia and North Carolina submitted letters to South Carolina requesting that the State consider adding several of its sources' emissions units to the SC DHEC's final reasonable progress

control analysis list of facilities so as to account for those facilities that Georgia believes are likely to contribute more than 0.5 percent, and North Carolina believes are likely to contribute more than one percent, to the total visibility impairment at one or more Class I areas in these states, respectively. In its response to this request, SC DHEC provided Georgia and North Carolina with a list of sources identified as likely to contribute one percent or more to visibility impairment in South Carolina and a justification as to why or why not each facility would be included in South Carolina's final reasonable progress control analysis list of facilities. South Carolina provided initial results for several of its reasonable progress control evaluations to both states. SC DHEC also notified Georgia that four of the facilities identified by Georgia in its letter were either below the 0.5 percent contribution threshold used by Georgia or did not meet South Carolina's cost effectiveness threshold for additional controls. The remaining facilities are addressed by CAIR. Based on an evaluation of the four reasonable progress statutory factors, South Carolina determined that there are no additional control measures for these South Carolina emissions units that would be reasonable to implement to mitigate visibility impacts in Class I areas in these neighboring states. SC DHEC has consulted with these states regarding its reasonable progress control evaluations showing that no additional cost-effective controls are available for those emissions units in South Carolina contributing at least one percent to visibility impairment at Class I areas in the states. The documentation for these formal consultations is provided in Appendix J of South Carolina's SIP.

Regarding the impact of sources outside of the State on the Class I area in South Carolina, SC DHEC sent a letter to Georgia identifying two emissions units in that State that South Carolina believes contributed one percent or higher to visibility impairment at Cape Romain. At that time, Georgia was still in the process of evaluating BART and reasonable progress for its sources. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, which gives further assurances that South Carolina will achieve its RPGs. Therefore, to be conservative, South Carolina opted not to rely on any additional emissions reductions from sources located outside the State's boundaries beyond those already identified in the State's regional haze SIP submittal and as discussed in section IV.C.1 of this action.

South Carolina also received letters from the Mid-Atlantic/Northeast Visibility Union (MANE–VU) RPO States of New Jersey and New Hampshire in the spring of 2007, stating that based on MANE–VU's analysis of 2002 emissions data, South Carolina contributed to visibility impairment to Class I areas in those states. The MANE–VU states asked South Carolina to participate in further consultation with MANE–VU during the summer of 2007. SC DHEC sent response letters to both states and expressed its intent to consult with them through VISTAS representatives. SC DHEC also explained in its responses that VISTAS has conducted assessments for the VISTAS states to help predict the influence of emissions from the VISTAS region on visibility at Class I areas in and near the VISTAS region. This work took into account the latest data and information available, including the reductions from CAA and state programs that will be in effect in 2018. SC DHEC notified New Jersey and New Hampshire that these assessments do not indicate that South Carolina facility emissions have an impact on visibility at any Class I area outside of the VISTAS region, and that SC DHEC thus concluded that emissions from South Carolina do not reasonably contribute to visibility impairment at these States' areas. EPA proposes to find that South Carolina has adequately addressed the consultation requirements in the RHR and appropriately documented its consultation with other states in its SIP submittal.

2. Consultation With the FLMs

Through the VISTAS RPO, South Carolina and the nine other member states worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the VISTAS states. South Carolina provided a draft regional haze plan to the FLMs and EPA for early input in the August to September 2007 time period. The proposed regional haze plan for South Carolina was out for public comment from October 26, 2007, until December 12, 2007.

The FLMs submitted comments on the August 17, 2007, draft SIP provided by the State to the FLMs and EPA for initial consultation prior to the public comment period. The October 9, 2007, letter from the U.S. Fish & Wildlife Service (FWS) noted that the draft SIP should provide discussion or justifications for modifications made to the new IMPROVE equation for determining which BART-eligible sources are contributing to visibility impairment at any Class I area. Additionally, FWS indicated that the modifications to the new IMPROVE equation did not appear to be applied consistently throughout the regional haze analyses and needed further explanation. The FWS recommended that the SIP provide information that indicates that EPA has approved these modifications. The FWS also identified several appendices that were not included in the draft SIP, including the appendix that addresses reasonable progress, BART, and the LTS. The FWS also recommended that the State include its smoke management plan in the SIP. The FWS suggested that the State add discussion of South Carolina's evaluation of impacts to Class I areas outside of the State to the narrative that was in an appendix, and made several other recommendations to provide more detail or to clarify technical discussions in the SIP. South Carolina responded to the comments and subsequently modified the plan to address comments received on this initial version of the State's regional haze SIP. South Carolina included extensive discussion and documentation in both the SIP narrative and appendices to explain the refinements to the IMPROVE equation that BART-eligible sources could use, including the alternative approach to the recommendation contained in the VISTAS CALPUFF protocol using the sodium ion concentration to develop the sea salt concentration when using the new IMPROVE equation to calculate visibility impacts. The State also provided the missing appendices to the FLMs on September 28, 2007, and added two other appendices on November 21, 2007. SC DHEC made the requested clarifications to the SIP. Instead of including the State's smoke management plan, SC DHEC explained the reasons that the MOU with SCFC is included instead, with references to the smoke management plan. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), SC DHEC made a commitment in the SIP to ongoing consultation with the FLMs on regional haze issues throughout implementation of its plan, including annual discussions.

G. Periodic SIP Revisions and Five-Year Progress Reports

As also summarized in section IV.D of this action, consistent with 40 CFR 51.308(g), SC DHEC affirmed its commitment to submitting a progress report in the form of a SIP revision to

EPA every five years following this initial submittal of the South Carolina regional haze SIP. The report will evaluate the progress made towards the RPGs for the mandatory Class I area located within South Carolina and in each mandatory Class I area located outside South Carolina which may be affected by emissions from within South Carolina. South Carolina also offered recommendations for several technical improvements that, as funding allows, can support the State's next LTS. These recommendations are discussed in detail in the South Carolina submittal in Appendix K.

If another state's regional haze SIP identifies that South Carolina's SIP needs to be supplemented or modified, and if, after appropriate consultation and South Carolina agrees, today's action may be revisited, or additional information and/or changes will be addressed in the five-year progress report SIP revision.

V. What action is EPA taking?

EPA is proposing a limited approval of a revision to the South Carolina SIP submitted by the State of South Carolina on December 17, 2007, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, as described previously in this action. Also in this action, EPA is proposing to rescind the Federal regulations in 40 CFR 52.2132 that were approved into the South Carolina SIP on July 12, 1985, and November 24, 1987, and to rely on the provisions in South Carolina's December 17, 2007, SIP revision to meet the monitoring and LTS requirements for RAVI.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act (UMRA)

Under section 202 of the UMRA of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's proposal does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' Consistent with the EPA

Policy on Consultation and Coordination with Indian Tribes, EPA complies with this Executive Order through the process of tribal consultation. With respect to today's action, EPA has offered the Catawba Indian Nation two opportunities to consult.[17] First, in an email dated October 21, 2010, EPA extended the Catawba Indian Nation an opportunity to consult, however, the Tribe declined to consult with EPA at that time. Due to the passage of time between the initial offer of consultation and today's proposed action, EPA provided the Catawba Indian Nation a second opportunity to consult on the South Carolina Regional Haze SIP revision on February 1, 2012. In an email dated February 8, 2012, the Catawba Indian Nation stated that no consultation on this pending action was needed by the Tribe. Further, EPA has no information to suggest that today's action will impose substantial direct costs on tribal governments or preempt tribal law.

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

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxide, Volatile organic compounds.

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

Dated: February 15, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–4680 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

[17] The Catawba Indian Nation Reservation is located within the South Carolina. Generally, SIPs do not apply in Indian country throughout the United States, however, for purposes of the Catawba Indian Nation Reservation in Rock Hill, the South Carolina SIP does apply within the Reservation pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (providing that ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'')

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2009–0689; A–1–FRL–9638–7]

Approval and Promulgation of Air Quality Implementation Plans; Vermont; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Vermont State Implementation Plan (SIP) submitted by the Vermont Department of Environmental Conservation (VT DEC) on August 26, 2009, with a supplemental submittal on January 3, 2012, that addresses regional haze for the first planning period from 2008 through 2018. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I areas (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

DATES: Written comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2009–0689 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2009–0631,'' Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.
5. Hand Delivery or Courier. *Deliver your comments to:* Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2009–0689. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov* your email 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 electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the State submittal are also available for public inspection during normal business hours, by appointment at the Air Pollution Control Division, Agency of Natural Resources, Building 3 South, 103 South Main Street, Waterbury, VT 05676.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone number (617) 918–1697, fax number (617) 918–0697, email *mcwilliams.anne@epa.gov.*

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Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles and their precursors (*e.g.,* sulfur dioxide, nitrogen oxides, and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), which also impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the Western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without manmade air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. See 64 FR 35715, (July 1, 1999).

B. Background Information

In section 169A(a)(1) of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [1] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment'' (RAVI). See 45 FR 80084 (Dec. 2,1980). These regulations

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions (42 U.S.C. 7472(a)). Although States and Tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). (42 U.S.C. 7602(i)). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the Regional Haze Rule. The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in Section II. The requirement to submit a regional haze SIP applies to all 50 States, the District of Columbia and the Virgin Islands. Forty CFR 51.308(b) requires States to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007. On January 15, 2009, EPA found that 37 States, the District of Columbia and the U.S. Virgin Islands failed to submit this required implementation plan. See 74 FR 2392, (Jan. 15, 2009). In particular, EPA found that Vermont failed to submit a plan that met the requirements of 40 CFR 51.308. See 74 FR 2393. On August 26, 2009, VT DEC submitted revisions to the Vermont SIP to address regional haze as required by 40 CFR 51.308. Supplemental documentation was submitted on January 3, 2012. EPA has reviewed Vermont's submittal and proposes to find that it is consistent with the requirements of 40 CFR 51.308 outlined in Section II.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among States, tribal governments, and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the States and Tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their States and Tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of $PM_{2.5}$ and other pollutants leading to regional haze.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) RPO is a collaborative effort of State governments, Tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Northeastern United States. Member State and Tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, and Vermont.

II. What are the requirements for regional haze SIPs?

A. The CAA and the Regional Haze Rule (RHR)

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require States to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install Best Available Retrofit Technology (BART) controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is determined by measuring the visual range (or deciview), which is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[2]

The deciview is used in expressing Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., manmade sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program and as part of the process for determining reasonable progress, States must calculate the degree of existing visibility impairment at each Class I area within the State at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year planning period. To do this, the RHR requires States to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, States must also develop an estimate of natural visibility conditions for the purposes of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to States regarding how to calculate baseline, natural, and current visibility conditions in documents titled, *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,*

[2] The preamble to the RHR provides additional details about the deciview. See 64 FR 35714, 35725 (July 1, 1999).

September 2003, (EPA–454/B–03–005, available at *www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003 (EPA–454/B–03–004, available at *www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of impairment for the 20 percent least impaired days and 20 percent most impaired days at the time the regional haze program was established. Using monitoring data from 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area within the State, based on the average of annual values over the five year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that establish RPGs for Class I areas for each (approximately) 10-year planning period. The RHR does not mandate specific milestones or rates of progress, but instead calls for States to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions for their Class I areas. In setting RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in the CAA and in EPA's RHR: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. See 40 CFR 51.308(d)(1)(i)(A). States have considerable flexibility in how they take these factors into consideration, as noted in EPA's July 1, 2007 memorandum from William L. Wehrum, Acting Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10, entitled *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program* (p. 4–2, 5–1) (EPA's Reasonable Progress Guidance). In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glide path'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. The year 2064 represents a rate of progress which States are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each State with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing States,'' i.e., other nearby States with emission sources that may be contributing to visibility impairment at the Class I State's areas. See 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs States to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, the CAA requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the State. (CAA 169A(b)(2)a)).[3] States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist States in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART applicability determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a State must use the approach set forth in the BART Guidelines. A State is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter (PM). EPA has stated that States should use their best judgment in determining whether volatile organic compounds (VOCs), or ammonia (NH_3) and ammonia compounds impair visibility in Class I areas.

The RPOs provided air quality modeling to the States to help them in determining whether potential BART sources can be reasonably expected to cause or contribute to visibility impairment in a Class I area. Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the State should not be higher than 0.5 deciviews. See 70 FR 39161, (July 6, 2005).

In their SIPs, States must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control

[3] The set of ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

determination analyses. The term ''BART-eligible source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. See 70 FR 39161, (July 6, 2005). In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor. See 70 FR 39170, (July 6, 2005).

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a State has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP, as required by CAA (section 169(g)(4)) and the RHR (40 CFR 51.308(e)(1)(iv)). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. States have the flexibility to choose the type of control measures they will use to meet the requirements of BART.

E. Long-Term Strategy (LTS)

Forty CFR 51.308(d)(3) of the RHR requires that States include a LTS in their SIPs. The LTS is the compilation of all control measures a State will use to meet any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the State. See 40 CFR 51.308(d)(3).

When a State's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the RHR requires the impacted State to coordinate with the contributing States in order to develop coordinated emissions management strategies. See 40 CFR 51.308(d)(3)(i). In such cases, the contributing State must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, States must describe how each of the seven factors listed below is taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. See 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the State's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the State must revise its plan to provide for review and revision of a coordinated LTS for addressing reasonably attributable and regional haze visibility impairment, and the State must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic reviews of a State's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Forty CFR 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the State. The strategy must be coordinated with the monitoring strategy required in section 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through participation in the IMPROVE network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a State with mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas both within and outside the State;
- Procedures for using monitoring data and other information in a State with no mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas in other States;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A State must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

Forty CFR 51.308(f) of the RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of 40 CFR 51.308(d) with the exception of BART. The BART provisions of 40 CFR 51.308(e), as noted above, apply only to

the first implementation period. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that States consult with FLMs before adopting and submitting their SIPs. See 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a State must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. What is EPA's analysis of Vermont's regional haze SIP submittal?

On August 26, 2009, VT DEC's Office of Air resources submitted revisions to the Vermont SIP to address regional haze as required by EPA's RHR, specifically 40 CFR 51.308. Supplemental documentation was submitted on January 3, 2012. EPA has reviewed Vermont's submittal and is proposing to find that it is consistent with the requirements of 40 CFR 51.308 as outlined in Section II. A detailed analysis follows.

Vermont is responsible for developing a regional haze SIP which addresses visibility in Vermont's Class I area, Lye Brook Wilderness Area. The state must also address Vermont's impact on any other nearby Class I areas.

A. Vermont's Affected Class I Area

Vermont is home to one Class I area, Lye Brook Wilderness Area (''Lye Brook''). In addition to Lye Brook, the MANE–VU RPO contains six other Class I areas in three states: Moosehorn Wilderness Area, Acadia National Park, and Roosevelt/Campobello International Park in Maine; Presidential Range/Dry River Wilderness Area and Great Gulf Wilderness Area in New Hampshire; and Brigantine Wilderness Area in New Jersey.

The Vermont regional haze SIP establishes RPGs for visibility improvement at its Class I area and a LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the RPGs for Lye Brook, Vermont considered both emission sources inside and outside of Vermont that may cause or contribute to visibility impairment in Vermont's Class I area. The State also identified and considered emission sources within Vermont that may cause or contribute to visibility impairment in Class I areas in neighboring States as required by 40 CFR 51.308(d)(3). The MANE–VU RPO worked with the State in developing the technical analyses used to make these determinations, including state-by-state contributions to visibility impairment in specific Class I areas, which included Lye Brook and those areas which may be affected by emissions from Vermont. This analysis is discussed in Section III.C.

B. Determination of Baseline, Natural and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, Vermont calculated baseline/current and natural conditions for its Class I area.

1. Estimating Natural Visibility Conditions

Natural background refers to visibility conditions that existed before human activities affected air quality in the region. The national goal, as set out in the Clean Air Act, is a return to natural visibility conditions.

Estimates of natural visibility conditions are based on annual average concentrations of fine particle components. The IMPROVE [4] equation is a formula for estimating light extinction from species measured by the IMPROVE monitors. As documented in EPA's 2003 Natural Visibility Guidance, EPA determined, with concurrence from the IMPROVE Steering Committee, that States may use a ''refined approach'' to the then current IMPROVE formula to estimate the values that characterize the natural visibility conditions of the Class I areas. The purpose of the refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction. The new IMPROVE equation takes into account the most recent review of the science [5] and accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations. Vermont opted to use this refined approach, referred to as the ''new IMPROVE equation,'' for its Class I area.

Natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by MANE–VU. EPA finds that the best and worst 20 percent natural visibility values for Lye Brook, as shown in Table 1, were calculated using the EPA guidelines.

2. Estimating Baseline Conditions

Lye Brook does not contain an IMPROVE monitor. In cases where onsite monitoring is not available, 40 CFR 51.308(d)(2)(i) requires States to use the most representative monitoring available for the 2000–2004 period to

[4] The Interagency Monitoring of Protected Visual Environments (IMPROVE) program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing man-made visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[5] The science behind the revised IMPROVE equation is summarized in numerous published papers. *See, e.g.,* J. L. Hand & W. C. Malm, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report,* March 2006 (Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, CO), available at *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm;* Marc Pitchford, *Natural Haze Levels II: Application of the New IMPROVE Alogrithm to Natural Species Concentrations Estimates: Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup,* Sept. 2006, available at *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

establish baseline visibility conditions, in consultation with EPA. Vermont used, and EPA concurs with the use of, 2000–2004 data from the IMPROVE monitor at Mount Equinox for Lye Brook. The Mount Equinox IMPROVE monitor is located on a mountain ridge across the valley to the west of Lye Brook. Lye Brook is at high elevation in the Green Mountains and the IMPROVE site across the valley is at about the same height as Lye Brook.

As explained in Section II.B, for the first regional haze SIP, baseline visibility conditions are the same as current conditions. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days for Lye Brook. IMPROVE data records for the period 2000 to 2004 meet the EPA requirements for data completeness. See EPA's 2003 Tracking Progress Guidance, p. 2–8.

3. Summary of Baseline and Natural Conditions

For the Vermont Class I area, baseline visibility conditions on the 20 percent worst days is 24.4 deciviews. Natural visibility for this area is predicted to be 11.7 on the 20 percent worst visibility days. The natural and background conditions for Lye Brook for both the 20 percent worst and 20 percent best days are presented in Table 1 below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR THE LYE BROOK WILDERNESS AREA

	Average for 20 percent worst days (dv)	Average for the 20 percent best days (dv)
Natural Background Conditions	11.7	2.8
Baseline Visibility Conditions	24.4	6.4

4. Uniform Rate of Progress

In setting the RPGs, Vermont considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glide path'') and the emission reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glide path.

For Lye Brook, the overall visibility improvement necessary to reach natural conditions is the difference between the baseline visibility of 24.4 dv and natural background visibility of 11.7 dv, or an improvement of 12.7 dv for the 20 percent worst visibility days. VT DEC must also ensure no degradation in visibility for the best 20 percent visibility days over the same period in accordance with 40 CFR 51.308(d)(1).

Vermont's SIP submittal presents two graphs, one for the 20 percent best days, and one for the 20 percent worst days, for its Class I area. Vermont constructed the graphs for the worst days (i.e., the glide path) in accordance with EPA's 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of natural visibility conditions in 2064. For the best days, the graphs include a horizontal, straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. Vermont's SIP shows that the State's RPG for its Class I areas provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best visibility days over the same period in accordance with 40 CFR 51.308(d)(1).

C. Reasonable Progress Goals

As a state containing a Class I area, 40 CFR 51.308(d)(1) of the RHR requires Vermont to develop the reasonable progress goals for visibility improvement during the first planning period.

1. Relative Contributions of Pollutants to Visibility Impairment

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, MANE–VU developed emission sensitivity model runs using EPA's Community Multiscale Air Quality (CMAQ) air quality model [6] to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the MANE–VU region, MANE–VU's contribution assessment demonstrated that sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic Region.[7] Sulfate particles commonly account for more than 50 percent of particle-related light extinction at northeastern Class I areas on the clearest days and for as much as, or more than, 80 percent on the haziest days. For example, at the Brigantine National Wildlife Refuge Class I area (the MANE–VU Class I area with the greatest visibility impairment), on the 20 percent worst visibility days in 2000 through 2004, sulfate accounted for 66 percent of the particle extinction. After sulfate, organic carbon (OC) consistently accounts for the next largest fraction of light extinction. Organic carbon accounted for 13 percent of light extinction on the 20 percent worst visibility days for Brigantine, followed by nitrate that accounts for 9 percent of light extinction.

The emissions sensitivity analyses conducted by MANE–VU predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the MANE–VU region, more than any other visibility-impairing pollutant. As a result of the dominant role of sulfate in the formation of regional haze in the Northeast and Mid-Atlantic Region, MANE–VU concluded that an effective emissions management approach would rely heavily on broad-based regional SO_2 control efforts in the eastern United States.

Through source apportionment modeling, MANE–VU assisted States in determining their contribution to the visibility impairment of each Class I area in the MANE–VU region. Vermont and the other MANE–VU States adopted

[6] CMAQ is a photochemical grid model. The model uses simulations of chemical reactions, emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors, and the Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model to produce speciated $PM_{2.5}$ concentrations. For more information, see *www.epa.gov/asmdnerl/CMAQ/cmaq_model.html.*

[7] See the NESCAUM Document ''Regional Haze and Visibility in the Northeast and Mid-Atlantic States,'' January 31, 2001.

a weight-of-evidence approach which relied on several independent methods for assessing the contribution of different sources and geographic source regions to regional haze in the northeastern and mid-Atlantic portions of the United States. Details about each technique can be found in the NESCAUM Document *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States,* August 2006 (hereinafter referred to as the ''Contribution Report'').[8]

The MANE–VU Class I States determined that any state contributing at least 2% of the total sulfate observed on the 20 percent worst visibility days in 2002 were contributors to visibility impairment at the Class I area. States found to contribute 2% or more of the sulfate at any of the MANE–VU Class I areas were: Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin.[9]

The contribution of Vermont emissions to the total sulfate observed on the 20% worst visibility days in 2002 was determined to be less than 2%, therefore, not impacting the visibility in the Vermont Class I area, nor any other Class I area.

EPA proposes to find that VT DEC has adequately demonstrated that emissions from Vermont sources do not cause or contribute to visibility impairment in any Class I Area.

2. Procedure for Identifying Sources to Evaluate for Reasonable Progress Controls

In developing the 2018 reasonable progress goal, Vermont relied primarily upon the information and analysis developed by MANE–VU to meet this requirement. Based on the Contribution Report, MANE–VU focused on SO_2 as the dominant contributor to visibility impairment at all MANE–VU Class I areas during all seasons. In addition, the Contribution Report found that only 25 percent of the sulfate at the MANE–VU Class I areas originate in the MANE–VU States. Sources in the Midwest and Southeast regions were responsible for 15 to 25 percent, respectively. Point sources dominated the inventory of SO_2 emissions. Therefore, MANE–VU's strategy includes additional measures to control sources of SO_2 both within the MANE–VU region and in other States that were determined to contribute to regional haze at the MANE–VU Class I Areas.

Based on information from the Contribution Report and additional emission inventory analysis, MANE–VU and Vermont identified the following source categories for further examination for reasonable controls:

- Coal and oil-fired EGUs;
- Point and area source industrial, commercial and institutional boilers;
- Cement and Lime Kilns;
- Heating Oil; and
- Residential wood combustion.

MANE–VU analyzed these sources categories as potential sources of emission reductions for making reasonable progress based on the ''four statutory factors'' according to 40 CFR 51.308(d)(3)(V).

3. Application of the Four Clean Air Act Factors in the Reasonable Progress Analysis

As discussed in Section II.C above, Vermont must consider the following factors in developing the RPGs: (1) Cost of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. MANE–VU's four factor analysis can be found in *Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas,* July 9, 2007, otherwise known as the Reasonable Progress Report.[10]

Vermont and the other MANE–VU States reviewed the Reasonable Progress Report, consulted with one another about possible controls measures, and agreed to the following measures as recommended strategies for making reasonable progress: Implementation of the BART requirements; a 90 percent reduction in SO_2 emissions from 167 EGUs identified as causing the greatest visibility impact[11] (or other equivalent emission reduction); and a reduction in the sulfur content of fuel oil. These measures are collectively known as the MANE–VU ''Ask.''

MANE–VU used model projections to calculate the RPG for the Class I areas in the MANE–VU region. Additional modeling details are provided in Section III.E.2. The projected improvement in visibility due to emission reductions expected by the end of the first period, 2018, is shown in Table 2.

TABLE 2—PROJECTED REASONABLE PROGRESS GOAL AND UNIFORM RATE OF PROGRESS (URP) FOR THE VERMONT CLASS I AREA FROM NESCAUM 2018 VISIBILITY PROJECTIONS IN DECIVIEWS

		2000–2004 baseline	2018 Projection	URP	Natural background
Lye Brook Wilderness Area	20% Worst Visibility Days	24.4	20.9	21.43	11.7
	20% Best Visibility Days	6.4	5.5		2.8

At the time of MANE–VU modeling, some of the other States with sources potentially impacting visibility in the Class I areas of the MANE–VU region, including Lye Brook Wilderness Area in Vermont, had not yet made final control determinations for BART, and thus, these controls were not included in the modeling prepared by MANE–VU and used by Vermont. This is a conservative approach because additional emission reductions could result from the application of BART controls. The modeling conducted by MANE–VU demonstrates that the 2018 control scenario (2018 projection) provides for an improvement in visibility greater than the uniform rate of progress for the Vermont Class I area for the most impaired days over the period of the implementation plan and ensures no

[8] The August 2006 NESCAUM document ''Contributions to Regional Haze in the Northeast and Mid-Atlantic United States'' has been provided as part of the docket to this proposed rulemaking.

[9] MANE–VU modeling did not indicate Wisconsin's contribution was above this threshold. VT DEC undertook independent modeling that showed Wisconsin's contribution to Vermont's visibility impairment was above this threshold. Therefore, Vermont requested Wisconsin join the interstate consultation process.

[10] This report has been included as part of the docket for this rulemaking.

[11] MANE–VU identified these 167 units based on source apportionment modeling using two different meteorological data sets. From each of the modeling runs, MANE–VU identified the top 100 units which contribute to visibility impairment. Differences in model output resulted in a total of 167 units being identified for further control.

degradation in visibility for the least impaired days over the same period.

Consistent with EPA guidance at the time, the MANE–VU modeling included reductions from the Clean Air Interstate Rule (CAIR) in estimating the RPGs for 2018. The regional haze provisions specify that a state may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. See 40 CFR 51.308(d)(1)(vi). Therefore, in estimating the RPGs for 2018, many States took into account emission reductions anticipated from CAIR. MANE–VU initially reduced emissions from highest impacting 167 EGUs by ninety percent. However, many of the units targeted for the 90% reduction were part of the CAIR program. Since the 90% reduction was larger, in total tons of emissions reduced, than the reductions expected from CAIR, MANE–VU added the excess emissions back into the inventory to account for trading of the emission credits across the modeling domain. This way, MANE–VU States would not overestimate the emission reductions or the related visibility improvement if States used the CAIR program as their response to the MANE–VU's ''Ask'' of ninety percent reduction from the 167 EGUs in the eastern United States.

The RPGs for the Lye Brook Class I area in Vermont are based on modeled projections of future emissions that were developed using the best available information at the time the analysis was completed. While MANE–VU's emission inventory used for modeling included estimates of future emission growth, projections can change as additional information regarding future conditions becomes available. It would be both impractical and resource-intensive to require a state to continually adjust the RPG every time an event affecting these future projections changed. EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions, and addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a mandatory standard which must be achieved by a particular date. See 64 FR 35733. At the same time, EPA established a requirement for a five-year, midcourse review and, if necessary, correction of the States' regional haze plans. See 40 CFR 52.308(g). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emission management strategies in meeting the RPG and to provide an assessment of whether current implementation strategies are sufficient for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. See 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the state's conclusion that the current strategies are insufficient to meet the RPGs. In its SIP submittal, Vermont commits to the midcourse review and submitting revisions to the regional haze plan where necessary.

The RPGs that Vermont has adopted are predicated on other contributing states achieving the EGU emission reductions anticipated under CAIR. However, Vermont's regional haze plan does not rely on CAIR for Vermont's appropriate contribution toward meeting the RPGs for the Class I area in Vermont or any other state. Vermont has demonstrated that the emission controls in the MANE–VU ''Ask''—timely installation of BART Controls, a 90 percent reduction in SO_2 emissions from EGUs and a low sulfur fuel oil strategy—are reasonable measures for the reduction of visibility impairment as required by EPA's RHR. Therefore, EPA is proposing to approve Vermont's RPG for the first regional haze planning period irrespective of the status of CAIR and irrespective of the associated issues regarding the adequacy of other state's plans. For similar reasons, EPA believes the approvability of the Vermont plan is not affected by the status of the Cross State Air Pollution Rule, which was promulgated on August 8, 2011 at 76 FR 48208 and stayed on December 30, 2011.

D. BART

As part of developing its SIP, Vermont evaluated the major point sources in the State and determined that none meet the criteria (as described in Section II.D) to be considered BART-eligible.[12] EPA agrees with VT DEC's determination and proposes to find that there are no sources in Vermont which meet the BART eligibility criteria.

E. Long-Term Strategy

As described in Section II.E of this action, the LTS is a compilation of State-specific control measures relied on by the State to obtain its share of emission reductions to support the RPGs established by Vermont, New Hampshire, Maine, and New Jersey, the nearby Class I area States. Vermont's LTS for the first implementation period addresses the emissions reductions from federal, State, and local controls that take effect in the State from the baseline period starting in 2002 until 2018. Vermont participated in the MANE–VU regional strategy development process and supported a regional approach towards deciding which control measures to pursue for regional haze, which was based on technical analyses documented in the following reports: (a) The Contribution Report; (b) the Reasonable Progress Report; (c) *Five-Factor Analysis of BART–Eligible Sources: Survey of Options for Conducting BART Determinations* (available at *www.nescaum.org/documents/bart-final-memo-06-28-07.pdf*); and (d) *Assessment of Control Technology Options for BART–Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants and Paper, and Pulp Facilities* (available at *www.nescaum.org/documents/bart-control-assessment.pdf*).

The LTS was developed by Vermont, in coordination with MANE–VU, identifying the emissions units within Vermont that are currently likely to have the largest impacts on visibility at nearby Class I areas, estimating emissions reductions for 2018, based on all controls required under federal and State regulations for the 2002–2018 period, and comparing projected visibility improvement with the uniform rate of progress for the nearby Class I area.

Vermont's LTS includes measures needed to achieve its share of emissions reductions agreed upon through the consultation process with MANE–VU Class I States and includes enforceable emissions limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals established by New Hampshire, Maine and New Jersey for their Class I areas.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The State-wide emissions inventories used in the regional haze technical analyses were developed by MARAMA for MANE–VU with assistance from Vermont. The 2018 emissions inventory was developed by projecting 2002 emissions forward based on assumptions regarding emissions growth due to projected increases in economic activity and emission reductions expected from federal and State regulations. MANE–VU's emissions inventories included

[12] A list of the BART-eligible sources in the MANE–VU area can be found in Appendix A of Attachment T–MANE–VU Five Factor Analysis of BART Eligible Sources of the Vermont SIP submittal.

estimates of NO_X, coarse particulate matter (PM_{10}), $PM_{2.5}$, and SO_2, VOC, and NH_3. The BART guidelines direct States to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in Section III.C.1 above, MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic region. It was also determined that the total ammonia emissions in the MANE–VU region are extremely small.

MANE–VU developed emissions inventories for four inventory source classifications: (1) Stationary point sources, (2) stationary area sources, (3) non-road mobile sources, and (4) on-road mobile sources. The New York Department of Environmental Conservation also developed an inventory of biogenic emissions for the entire MANE–VU region. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. Non-road mobile sources are equipment that can move but do not use the roadways. On-road mobile source emissions are automobiles, trucks, and motorcycles that use the roadway system. The emissions from these sources are estimated by vehicle type and road type. Biogenic sources are natural sources like trees, crops, grasses, and natural decay of plants. Stationary point sources emission data is tracked at the facility level. For all other source types, emissions are summed on the county level.

There are many federal and State control programs being implemented that MANE–VU and Vermont anticipate will reduce emissions between the baseline period and 2018. Emission reductions from these control programs in the MANE–VU region were projected to achieve substantial visibility improvement by 2018 at all of the MANE–VU Class I areas. To assess emissions reductions from ongoing air pollution control programs, BART, and reasonable progress goals, MANE–VU developed 2018 emissions projections called ''Best and Final.'' The emissions inventory provided by the VT DEC for the ''Best and Final'' 2018 projections is based on expected control requirements.

Vermont relied on emission reductions from the following ongoing and expected air pollution control programs as part of the state's long term strategy. Non-EGU point source controls in Vermont include: Industrial, Commercial, and Institutional (ICI) Boiler requirements; 2-year, 4-year, 7-year, and 10-year Maximum Achievable Control Technology (MACT) Standards; Combustion Turbine and Reciprocating Internal Combustion Engine (RICE) MACT; Industrial Boiler/Process Heater MACT; and a low sulfur fuel oil strategy which is further described in Section III.E.3.

On July 30, 2007, the U.S. Court of Appeals for the District of Columbia vacated and remanded the Industrial Boiler MACT Rule. *NRDC* v. *EPA,* 489F.3d 1250 (DC Cir. 2007). This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator (CISWI) definition rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010, (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). On May 18, 2011, EPA stayed the effective date of the Industrial Boiler MACT pending review by the DC Circuit or the completion of EPA's reconsideration of the rule. See 76 FR 28662.

On December 2, 2011, EPA issued a proposed reconsideration of the MACT standards for existing and new boilers at major (76 FR 80598) and area (76 FR 80532) source facilities, and for Commercial and Industrial Solid Waste Incinerators (76 FR 80452). On January 9, 2012, the U.S. District Court for the District of Columbia vacated EPA's stay of the effectiveness date of the Industrial Boiler MACT, reinstating the original effective date and therefore requiring compliance with the current rule in 2014. *Sierra Club* v. *Jackson,* Civ. No. 11–1278, slip op. (D.D.C. Jan. 9, 2012).

Even though Vermont's modeling is based on the old Industrial Boiler MACT limits Vermont's modeling conclusions are unlikely to be affected because the expected reductions in SO_2 and PM resulting from the vacated MACT rule are a relatively small component of the Vermont inventory and the expected emission reductions from the final MACT rule are comparable to those modeled. In addition, the new MACT rule requires compliance by 2014 and therefore the expected emission reductions will be achieved prior to the end of the first implementation period in 2018. Thus, EPA does not expect that differences between the old and revised Industrial Boiler MACT emission limits would affect the adequacy of the existing Vermont regional haze SIP. If there is a need to address discrepancies between projected emissions reductions from the old Industrial Boiler MACT and the Industrial Boiler MACT finalized in March 2011, we expect Vermont to do so in their 5-year progress report.

Controls on area sources expected by 2018 include: solvent metal cleaning (APC regulation 5–253.14); coating of miscellaneous metal parts (APC regulation 5–253.13); and VOC control measures for portable fuel containers (contained in EPA's Mobile Source Air Toxics rule).

Controls on mobile sources expected by 2018 include: Stage I vapor recovery systems at vehicle refueling stations (APC regulation 5–253.5); Stage II vapor recovery at gasoline dispensing facility with an annual gasoline throughput of 400,000 gallons or more (APC regulation 5–253.7) [13]; Federal On-Board Refueling Vapor Recovery (ORVR) Rule; Federal Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Requirements; Federal Heavy-Duty Diesel Engine Emission Standards for Trucks and Buses; and Federal Emission Standards for Large Industrial Spark-Ignition Engines and Recreation Vehicles.

Controls on non-road sources expected by 2018 include the following federal regulations: Control of Air Pollution: Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression Ignition Engines at or above 37 kilowatts (59 FR 31306, (June 17, 1994)); Control of Emissions of Air Pollution from Nonroad Diesel Engines (63 FR 56967, (Oct. 23, 1998)); Control of Emissions from Nonroad Large Spark-Ignition Engines and Recreational Engines (67 FR 68241, (Nov. 8, 2002));

[13] Vermont's recently enacted legislation, Title 10 V.S.A. § 583, ''Repeal of Stage II vapor recovery requirements,'' repeals the DEC's authority to require Stage II controls as of January 1, 2013, and exempts from control facilities constructed after May 1, 2009. In addition, Vermont's statute states that ''each gasoline dispensing facility shall decommission its Stage II vapor recovery systems, including below-ground components, pursuant to methods approved by the secretary'' within two years of the Stage II requirements no longer applying to the individual gasoline dispensing facility. It should be noted, however, that the CAA requires states in the Ozone Transport Region, such as Vermont, to adopt, and submit to EPA as a State Implementation Plan (SIP) revision, Stage II controls or measures that achieve comparable emission reductions. Previously, Vermont's strategy for addressing this requirement has been to implement a Stage II vapor recovery program. However, since Vermont statute now calls for the sunset of this program, the DEC will need to submit a SIP revision demonstrating that the state is achieving comparable volatile organic compound (VOC) emission reductions through the implementation of other control measures. Therefore, consideration of these reductions in the model is reasonable.

and Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuels (69 FR 38958, (June 29, 2004)).

Tables 3 and 4 are summaries of the 2002 baseline and 2018 estimated emissions inventories for Vermont. The 2018 estimated emissions include emissions growth as well as emission reductions due to ongoing emission control strategies and reasonable progress goals.

TABLE 3—2002 EMISSIONS INVENTORY SUMMARY FOR VERMONT

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	1,097	787	267	304	6,194	905
Area	23,265	3,028	11,065	56,131	9,848	4,087
On-Road Mobile	17,288	20,670	483	670	934	894
Non-Road Mobile	10,548	4,217	486	530	5	372
Biogenics	118,377	1,142	0	0	0	0
Total	170,574	30,024	12,300	57,634	16,981	6,258

TABLE 4—2018 EMISSIONS INVENTORY SUMMARY FOR VERMONT

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	1,711	572	271	322	9	407
Area	26,197	3,430	7,214	22,585	14,580	2,990
On-Road Mobile	4,072	4,744	144	145	936	82
Non-Road Mobile	7,566	2,262	303	331	6	13
Biogenics	118,377	1,142	0	0	0	0
Total	157,922	12,149	7,932	23,383	15,531	3,493

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

MANE–VU performed modeling for the regional haze LTS for the 11 Mid-Atlantic and Northeast States and the District of Columbia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. MANE–VU used the following modeling system:

• Meteorological Model: The Fifth-Generation Pennsylvania State University/National Center for Atmospheric Research (NCAR) Mesoscale Meteorological Model (MM5) version 3.6 is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.

• Emissions Model: The Sparse Matrix Operator Kernel Emissions (SMOKE) version 2.1 modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.

• Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) version 4.5.1 is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale.

• Air Quality Model: The Regional Model for Aerosols and Deposition (REMSAD) is a Eulerian grid model that was primarily used to determine the attribution of sulfate species in the Eastern US via the species-tagging scheme.

• Air Quality Model: The California Puff Model (CALPUFF), version 5 is a non-steady-state Lagrangian puff model used to access the contribution of individual States' emissions to sulfate levels at selected Class I receptor sites.

CMAQ modeling of regional haze in the MANE–VU region for 2002 and 2018 was carried out on a grid of 12x12 kilometer (km) cells that covers the 11 MANE–VU States (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont) and the District of Columbia and States adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. MANE–VU conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The MANE–VU States' modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,* April 2007 (EPA–454/B–07–002, available at *www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf*), and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* August 2005 and updated November 2005 (EPA–454/R–05–001, available at *www.epa.gov/ttnchie1/eidocs/eiguid/index.html*) (hereinafter referred to as ''EPA's Modeling Guidance'').

MANE–VU examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping

with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. MANE–VU used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once MANE–VU determined the model performance to be acceptable, MANE–VU used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), VT DEC provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glide path and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA is proposing to find the MANE–VU technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress acceptable because the modeling system was chosen and used according to EPA Modeling Guidance. EPA agrees with the MANE–VU model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the Vermont LTS and regional haze SIP.

3. Meeting the MANE–VU ''Ask''

Vermont in cooperation with the MANE–VU States developed the MANE–VU ''Ask'' to provide for reasonable progress towards achieving natural visibility at the MANE–VU Class I areas. The ''Ask'' included: (a) Timely implementation of BART requirements; (b) a 90 percent reduction in SO_2 emissions from each of the EGU stacks identified by MANE–VU comprising a total of 167 stacks; (c) adoption of a low sulfur fuel oil strategy; and (d) continued evaluation of other control measures to reduce SO_2 and NO_X emissions.

a. Timely Implementation of BART

Vermont does not have any BART-eligible units identified as contributing to visibility impairment in any Class I area.

b. Ninety Percent Reduction in SO_2 Emissions From Each of the EGU Stacks Identified by MANE–VU Comprising a Total of 167 Stacks

MANE–VU did not identify any additional EGU stacks in Vermont and consequently did not include any Vermont sources on the list of 167 stacks.[14]

c. Vermont Low Sulfur Fuel Oil Strategy

The MANE–VU low sulfur fuel oil strategy includes two phases. Phase I of the strategy requires the reduction of sulfur in distillate oil to 0.05% sulfur by weight (500 parts per million (ppm)) by no later than 2014. Phase II requires reductions of sulfur in #4 residual oil to 0.25% sulfur by weight, in #6 residual oil to 0.5% sulfur by weight, and a further reduction in the sulfur content of distillate oil to 15 ppm, all by 2018.

On September 28, 2011, Vermont adopted revisions to Section 5–221, ''Prohibition of Potentially Polluting Materials in Fuel,'' and submitted the revised rule to EPA as a SIP revision on January 3, 2012. This rule was previously approved into the Vermont SIP. See 43 FR 59496, (Dec. 21, 1978). The revisions to the rule added the following prohibition of the sale or purchase of residual (#4, #5, and #6) and distillate oil:

(1) Beginning July 1, 2014 and ending June 30, 2018, a person may not sell or purchase No. 2 distillate oils and animal and vegetable fuel oils with a sulfur content greater than 0.05% by weight;

(2) Beginning July 1, 2018, a person may not sell or purchase No. 2 distillate oils and animal and vegetable fuel oils with a sulfur content greater than 0.0015% by weight.

(3) Beginning July 1, 2018, a person may not sell or purchase No 4. residual oil with a sulfur content greater than 0.25%, and

(4) Beginning July 1, 2018, a person may not sell or purchase No. 5 and No. 6 residual oils with a sulfur content greater than 0.5% by weight.

The regulation allows for the continued use (but not sale) of fuel stored in Vermont that met the applicable sulfur content limit at the time the fuel was stored in Vermont. The regulation also allows for the use of a flue gas control to meet an emission limit comparable to the above sulfur in fuel oil limits.

The regulation allows the Governor, by executive order, to temporarily suspend the implementation and enforcement of this section if the Governor determines, after consulting with the Secretary and commissioner of public service, that meeting the requirement is not feasible due to inadequate supply of the required fuel. In its SIP submittal for the rule, Vermont indicated that given the formal and public nature of executive orders, one would expect this authority would be used sparingly. In addition, the law specifically states that any suspension from the requirements must be temporary. The suspension may not be permanent or open-ended. EPA agrees that it is unlikely that this regulation would be suspended for any excessive period of time.

Finally, Vermont's revised regulation includes the appropriate recordkeeping and reporting requirements to ensure compliance with the rule.

The emission limits in Vermont's revised Section 5–221 are more stringent than the 2% sulfur by weight limit contained in Vermont's existing SIP-approved rule, thus meeting the anti-back sliding requirements of section 110(l) of the CAA. Therefore, EPA proposes that the revised rule be incorporated into the Vermont SIP.

VT DEC continues to evaluate other control measures to reduce SO_2 and NO_X emissions. EPA proposes to find that Vermont has sufficiently addressed the applicable provisions of the MANE–VU ''Ask'' and has therefore demonstrated a plan to achieve reasonable progress toward natural visibility.

4. Additional Considerations for the LTS

Forty CFR 51.308(d)(3)(v) requires States to consider the following factors in developing the long term strategy:

a. Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment;

b. Measures to mitigate the impacts of construction activities;

c. Emission limitations and schedules for compliance to achieve the reasonable progress goal;

d. Source retirement and replacement schedules;

e. Smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes;

f. Enforceability of emissions limitations and control measures; and

g. The anticipated net effect on visibility due to projected changes in point area, and mobile source emissions over the period addressed by the long term strategy.

[14] See Appendix G—''2018 Emissions from EGUs in the Eastern US'' of the Vermont SIP submittal for a complete listing of the 167 stacks.

a. Emission Reductions Including RAVI

No source in Vermont has been identified as subject to RAVI. A list of Vermont's ongoing air pollution control programs is included in Section III.E.1.

b. Construction Activities

The Regional Haze Rule requires Vermont to consider measures to mitigate the impacts of construction activities on regional haze. MANE–VU's consideration of control measures for construction activities is documented in ''Technical Support Document on Measures to Mitigate the Visibility Impacts of Construction Activities in the MANE–VU Region, Draft, October 20, 2006.'' [15]

The construction industry is already subject to requirements for controlling pollutants that contribute to visibility impairment. For example, federal regulations require the reduction of SO_2 emissions from construction vehicles.

MANE–VU's Contribution Report found that, from a regional haze perspective, crustal material generally does not play a major role. On the 20 percent best-visibility days during the 2000–2004 baseline period, crustal material accounted for 6 to 11 percent of the particle-related light extinction at the MANE–VU Class I Areas. On the 20 percent worst-visibility days, however, the contribution was reduced to 2 to 3 percent. Furthermore, the crustal fraction is largely made up of pollutants of natural origin (e.g., soil or sea salt) that are not targeted under the Regional Haze Rule. Nevertheless, the crustal fraction at any given location can be heavily influenced by the proximity of construction activities; and construction activities occurring in the immediate vicinity of MANE–VU Class I area could have a noticeable effect on visibility.

For this regional haze SIP, Vermont concluded that its current regulations are currently sufficient to mitigate the impacts of construction activities. Any future deliberations on potential control measures for construction activities and the possible implementation will be documented in the first regional haze SIP progress report. EPA proposes to find that Vermont has adequately addressed measures to mitigate the impacts of construction activities.

c. Emission Limitations and Schedules for Compliance To Achieve the RPG

In addition to the existing CAA control requirements discussed in Section III.E.1, Vermont has adopted a low sulfur fuel oil strategy consistent with the MANE–VU ''Ask.'' The compliance date for Phase I will be in 2014 and the compliance date for Phase II will be in 2018. EPA is proposing to determine that Vermont has satisfactorily considered emissions limitations and schedules as part of the LTS.

d. Source Retirement and Replacement Schedule

Forty CFR 51.308(d)(3)(v)(D) of the Regional Haze Rule requires Vermont to consider source retirement and replacement schedules in developing the long term strategy. Source retirement and replacement were considered in developing the 2018 emission inventory. EPA is proposing to determine that Vermont has satisfactorily considered source retirement and replacement schedules as part of the LTS.

e. Smoke Management Techniques

The Regional Haze Rule requires States to consider smoke management techniques related to agricultural and forestry management in developing the long-term strategy. MANE–VU's analysis of smoke management in the context of regional haze is documented in ''Technical Support Document on Agricultural and Smoke Management in the MANE–VU Region, September 1, 2006.'' [16]

Vermont does not currently have a Smoke Management Program (SMP). However, SMPs are required only when smoke impacts from fires managed for resources benefits contribute significantly to regional haze. The emissions inventory presented in the above-cited document indicates that agricultural, managed and prescribed burning emissions are very minor; the inventory estimates that, in Vermont, those emissions from those source categories totaled 4.6 tons of PM_{10}, 4.0 tons of $PM_{2.5}$, and < 0.1 ton of SO_2 in 2002.

Source apportionment results show that wood smoke is a moderate contributor to visibility impairment at some Class I areas in the MANE–VU region; however, smoke is not a large contributor to haze in MANE–VU Class I areas on either the 20% best or 20% worst visibility days. Moreover, most of wood smoke is attributable to residential wood combustion. Therefore, it is unlikely that fires for agricultural or forestry management cause large impacts on visibility in any of the Class I areas in the MANE–VU region. On rare occasions, smoke from major fires degrades air quality and visibility in the MANE–VU area. However, these fires are generally unwanted wildfires that are not subject to SMPs. EPA proposes to approve Vermont's decision that an Agricultural and Forestry Smoke Management Plan to address visibility impairment is not required at this time.

f. Enforceability of Emission Limitations and Control Measures

All emission limitations included as part of Vermont's Regional Haze SIP are either currently federally enforceable or will become federally enforceable if this action is finalized as proposed. EPA is proposing to find that Vermont has adequately addressed the enforceability of emission limitations and control measures.

g. The Anticipated Net Effect on Visibility

MANE–VU used the best and final emission inventory to model progress expected toward the goal of natural visibility conditions for the first regional haze planning period. All of the MANE–VU Class I areas are expected to achieve greater progress toward the natural visibility goal than the uniform rate of progress, or the progress expected by extrapolating a trend line from current visibility conditions to natural visibility conditions.[17]

In summary, EPA is proposing to find that Vermont has adequately addressed the LTS regional haze requirements.

F. Consultation With States and Federal Land Managers

On May 10, 2006, the MANE–VU State Air Directors adopted the Inter-RPO State/Tribal and FLM Consultation Framework that documented the consultation process within the context of regional phase planning, and was intended to create greater certainty and understanding among RPOs. MANE–VU States held ten consultation meetings and/or conference calls from March 1, 2007 through March 21, 2008. In addition to MANE–VU members attending these meetings and conference calls, participants from the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO, Midwest RPO, and the relevant Federal Land Managers were also in attendance. In addition to the conference calls and meeting, the FLMs were given the opportunity to review and comment on each of the technical documents developed by MANE–VU.

[15] This document has been provided as part of the docket to this proposed rulemaking.

[16] This document has been included as part of the docket to this proposed rulemaking.

[17] Projected visibility improvements for each MANE–VU Class I area can be found in the NESCAUM document dated May 13, 2008, ''2018 Visibility Projections'' (*www.nescaum.org/documents/2018-visibility-projections-final-05-13-08.pdf/*).

On December 22, 2008, Vermont submitted a draft Regional Haze SIP to the relevant FLMs for review and comment pursuant to 40 CFR 51.308(i)(2). The FLMs provided comments on the draft Regional Haze SIP in accordance with 40 CFR 51.308(i)(3). The comments received from the FLMs were addressed and incorporated in Vermont's SIP revision. Most of the comments were requests for additional detail as to various aspects of the SIP. These comments and Vermont's response to comments can be found in the docket for this proposed rulemaking.

On January 15, 2009, Vermont proposed its Regional Haze SIP for public hearing and public comment. No public comments or requests for a hearing were received. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), Vermont commits in their SIP to ongoing consultation with the FLMs on emission strategies, major new source permits, assessments or rulemaking concerning sources identified as probable contributors to visibility impairment, any changes to the monitoring strategy, work on the periodic revisions to the SIP, and ongoing communications regarding visibility impairment.

EPA is proposing to find that Vermont has addressed the requirements for consultation with States impacting Vermont's Class I areas and with the Federal Land Managers.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the Regional Haze Rule requires a monitoring strategy for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all mandatory Class I Areas within the State of Vermont. The monitoring strategy relies upon participation in the IMPROVE network.

The State of Vermont participates in the IMPROVE network, and will evaluate the monitoring network periodically and make those changes needed to be able to assess whether reasonable progress goals are being achieved in Vermont's mandatory Class I Areas. In its SIP submittal, Vermont is committing to continued support of the IMPROVE network for the Lye Brook Wilderness area.

Forty CFR 51.308(d)(4)(i) requires States to establish additional monitoring sites or equipment as needed to assess whether reasonable progress goals are being achieved toward visibility improvement at mandatory Class I areas. At this time, the current monitor is sufficient to make this assessment.

In its SIP submittal, Vermont commits to meet the requirements under 40 CFR 51.308(d)(4)(iv) to report to EPA visibility data for Vermont's Class I Area annually.

The Regional Haze Rule (40 CFR 51.308(d)(4)(vi)) requires the inclusion of other monitoring elements, including reporting, recordkeeping, and other measures, necessary to assess and report visibility. While the VT DEC has concluded that the current IMPROVE network provides sufficient data to adequately measure and report progress toward the goals set for the MANE–VU Class I sites, the State has also found additional monitoring information useful to assess visibility and fine particle pollution in the region in the past. Examples of these data include results from the MANE–VU Regional Aerosol Intensive Network (RAIN), which provides continuous, speciated information on rural aerosol characteristics and visibility parameters; the EPA Clean Air Status and Trends Network (CASTNET), which has provided complementary rural fine particle speciation data at non-class I sites; the EPA Speciation Trends Network (STN), which provides speciated, urban fine particle data to help develop a comprehensive picture of local and regional sources; state-operated rural and urban speciation sites using IMPROVE or STN methods; and the Supersites program, which has provided information through special studies that generally expands our understanding of the processes that control fine particle formation and transport in the region. Vermont plans to continue to utilize these and other data—as they are available and fiscal realities allow—to improve their understanding of visibility impairment and to document progress toward the reasonable progress goals under the Regional Haze Rule.

H. Periodic SIP Revisions and Five-Year Progress Reports

Consistent with the requirements of 40 CFR 51.308(g), Vermont has committed to submitting a report on reasonable progress (in the form of a SIP revision) to the EPA every five years following the initial submittal of its regional haze SIP. The reasonable progress report will evaluate the progress made towards the RPGs for the MANE–VU Class I areas, located in Maine, New Hampshire, Vermont, and New Jersey.

Forty CFR 51.308(f) requires the VT DEC to submit periodic revisions to its Regional Haze SIP by July 31, 2018, and every ten years thereafter. VT DEC acknowledges and agrees to comply with this schedule.

Pursuant to 40 CFR 51.308(d)(4)(v), VT DEC will also make periodic updates to the Vermont emissions inventory. VT DEC plans to complete these updates to coincide with the progress reports. Actual emissions will be compared to projected modeled emissions in the progress reports.

Lastly, pursuant to 40 CFR 51.308(h), VT DEC will submit a determination of adequacy of its regional haze SIP revision whenever a progress report is submitted. Vermont's regional haze SIP states that, depending on the findings of its five-year review, Vermont will take one or more of the following actions at that time, whichever actions are appropriate or necessary:

- If Vermont determines that the existing SIP requires no further substantive revision in order to achieve established goals for visibility improvement and emissions reductions, VT DEC will provide to the EPA Administrator a negative declaration that further revision of the existing plan is not needed.
- If Vermont determines that its implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources in one or more other State(s) which participated in the regional planning process, Vermont will provide notification to the EPA Administrator and to those other State(s). Vermont will also collaborate with the other State(s) through the regional planning process for the purpose of developing additional strategies to address any such deficiencies in Vermont's plan.
- If Vermont determines that its implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources in another country, Vermont will provide notification, along with available information, to the EPA Administrator.
- If Vermont determines that its implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources within the State, Vermont will revise its SIP to address the plan's deficiencies within one year from this determination.

IV. What action is EPA proposing to take?

EPA is proposing approval of Vermont's August 26, 2009 SIP revision and supplemental submittal on January 3, 2012, as meeting the applicable requirements of the Regional Haze Rule found in 40 CFR 51.308. In addition, EPA is proposing to approve Vermont's

revised Section 5–221 ''Prohibition of Potentially Polluting Materials in Fuel,'' and incorporate this regulation into the Vermont SIP.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

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

Dated: February 13, 2012.

H. Curtis Spalding,

Regional Administrator, EPA Region 1.

[FR Doc. 2012–4683 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0059; FRL–9638–9]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Wisconsin State Implementation Plan addressing regional haze for the first implementation period. Wisconsin submitted its regional haze plan on January 18, 2012. The Wisconsin regional haze plan addresses Clean Air Act (CAA) and Regional Haze Rule (RHR) requirements to remedy any existing and prevent future anthropogenic visibility impairment at mandatory Class I areas, notably including establishing limits requiring Best Available Retrofit Technology (BART) for the Georgia-Pacific facility in Green Bay. We are proposing to approve fully the Wisconsin regional haze plan.

DATES: Comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0059, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, 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.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0059. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly

available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

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I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities located across a broad geographic area and that emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic particles, elemental carbon, and soil dust) and its precursors—sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases ammonia (NH_3) and volatile organic compound (VOCs). Fine particle precursors react in the atmosphere to form fine particulate matter. Aerosol $PM_{2.5}$ impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity and distance one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range, the distance at which an object is barely discernable, in many Class I areas [1] in the Western United States is 100–150 kilometers. That is about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In the Eastern and Midwestern Class I areas of the United States, the average visual range is generally less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. See 64 FR 35715 (July 1, 1999).

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of the Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a Federal Land Manager. 42 U.S.C. 7602(i). When we use the term ''Class I area,'' we mean a ''mandatory Class I Federal area.''

B. Requirements of the CAA and EPA's RHR

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources known as ''reasonably attributable visibility impairment'' (RAVI). 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze, the RHR, on July 1, 1999 (64 FR 35713). The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III, below. The requirement to submit a regional haze state implementation plan (SIP) applies to all 50 states, the District of Columbia, and the Virgin Islands.[2]

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments, and various Federal agencies. Pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, effectively addressing the problem of

[2] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

visibility impairment in Class I areas means that states need to develop coordinated strategies that take into account the effect of emissions from one jurisdiction on the air quality in another state.

EPA has encouraged the states and tribes to address visibility impairment from a regional perspective because the pollutants that lead to regional haze can originate from sources located across broad geographic areas. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country and then pursued the development of regional strategies to reduce $PM_{2.5}$ emissions and other pollutants leading to regional haze.

The RPO for Wisconsin is the Midwest RPO (MRPO). The MRPO member states are Illinois, Indiana, Michigan, Ohio, and Wisconsin. The MRPO also included tribes and Federal land management agencies on discussions of regional haze and visibility in the Midwest.

D. The Relationship of the Clean Air Interstate Rule and the Cross-State Air Pollution Rule to Regional Haze Requirements

The Clean Air Interstate Rule (CAIR) required some states to reduce emissions of SO_2 and NO_X that contribute to violations of the 1997 National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$ and ozone. 70 FR 25162 (May 12, 2005). CAIR established emissions budgets for SO_2 and NO_X. A 2006 EPA determination (71 FR 60612, October 13, 2006) establishes that states opting to participate in the CAIR program need not require Best Available Retrofit Technology (BART) for SO_2 and NO_X at BART-eligible electric generating units (EGUs). Many states relied on CAIR as an alternative to BART for SO_2 and NO_X for their subject EGUs.

CAIR was later found to be inconsistent with the requirements of the CAA and the rule was remanded to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008). The court left CAIR in place until replaced by EPA with a rule consistent with its opinion. *See North Carolina* v. *EPA,* 550 F.3d at 1178.

EPA promulgated the Cross-State Air Pollution Rule (CSAPR), to replace CAIR in 2011 (76 FR 48208, August 8, 2011). Wisconsin is subject to the requirements of CSAPR.

In CSAPR, EPA noted that it had not conducted a technical analysis at that time to determine whether compliance with CSAPR would satisfy the requirements of the RHR addressing alternatives to BART. EPA has since conducted such an analysis and proposed on December 30, 2011 (76 FR 2219), that compliance with CSAPR will provide for greater reasonable progress toward improving visibility than source-specific BART controls for EGUs located in those states covered by CSAPR. On that same day, the DC Circuit issued an order addressing the status of CSAPR and CAIR in response to motions filed by numerous parties seeking a stay of CSAPR pending judicial review. In that order, the DC Circuit stayed CSAPR pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of CSAPR.

On January 18, 2012, Wisconsin made two submissions constituting its regional haze plan. Wisconsin's plan includes a statement that it wishes to rely on CSAPR to satisfy the BART requirements for SO_2 and NO_X for EGUs in the state.

III. What are the requirements for regional haze State Implementation Plans?

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas, the reasonable progress goal (RPG). Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting the RPG. Plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require those sources to install BART to reduce visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

A. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric or unit for expressing visibility impairment. This visibility metric expresses uniform proportional changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. Thus, a change in visibility by one deciview reflects a fixed proportion by which visibility changes, irrespective of the baseline from which the change occurred. Most people can detect a change in visibility at one deciview.[3]

The deciview is used in expressing RPGs, defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution. The national goal is a return to natural conditions such that anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437) and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time each regional haze SIP is submitted and at the progress review every five years, midway through each 10-year implementation period. The RHR requires states with Class I areas (Class I states) to determine the degree of impairment in deciviews for the average of the 20 percent least impaired (best) and 20 percent most impaired (worst) visibility days over a specified time period at each of its Class I areas. Each state must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf)* (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance'') and *Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/*

[3] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

rh_tpurhr_gd.pdf)) (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIP, which was due December 17, 2007, the ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent best days and 20 percent worst days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while comparisons of future conditions against baseline conditions will indicate the amount of progress made. In general, the 2000 to 2004 baseline period is considered the time from which improvement in visibility is measured.

B. Determination of Reasonable Progress Goals

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two distinct RPGs, one for the best days and one for the worst days for every Class I area for each approximately 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural visibility conditions. In setting RPGs, a state with a mandatory Class I area (Class I state) must provide for an improvement in visibility for the worst days over the approximately 10-year period of the SIP and ensure no degradation in visibility for the best days.

Class I states have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. The states must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. *See* EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 and the emissions reduction needed to achieve that rate of progress over the approximately 10-year period of the SIP. Each Class I state must also consult with potentially contributing states, i.e. those states that may affect visibility impairment at the Class I state's areas. 40 CFR 51.308(d)(1)(iv).

C. Best Available Retrofit Technology

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain older large stationary sources to address visibility impacts from these sources. Specifically, CAA section 169A(b)(2)(A) requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources built between 1962 and 1977 procure, install, and operate BART as determined by the state. The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7). The state can require source-specific BART controls, but it also has the flexibility to adopt an alternative such as a trading program if the alternate provides greater progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (BART Guidelines) to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. A state must use the approach in the BART Guidelines in making a BART determination for a fossil fuel-fired EGU with total generating capacity in excess of 750 megawatts. States are encouraged, but not required, to follow the BART Guidelines in making BART determinations for other sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA's guidance provides that states should use their best judgment in determining whether VOC or NH_3 emissions impair visibility in Class I areas.

States may select an exemption threshold value for their BART modeling under the BART Guidelines, below which a BART-eligible source may be considered to make a small enough contribution to visibility impairment in any Class I area to warrant being exempted from the BART requirement. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. The exemption threshold set by the state should not be higher than 0.5 dv. Any source with modeled impacts above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual source's impact.

The state must identify potential BART sources in its SIP, described as ''BART-eligible sources'' in the RHR, and document its BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires the state to consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. The BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the state's regional haze SIP. CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

The RHR also allows states to implement an alternative program in lieu of BART, so long as the alternative program can be demonstrated to achieve greater progress toward the national visibility goal than implementing BART controls. EPA made such a demonstration for CAIR under regulations issued in 2005 revising the regional haze program. 70 FR 39104

(July 6, 2005). EPA's regulations provide that states participating in the CAIR trading program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP, or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4). CAIR is not applicable to emissions of PM, so states are still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant.

As described above in section II, the DC Circuit found CAIR to be inconsistent with the requirements of the CAA. The rule was remanded to EPA but left in place until the Agency replaced it. EPA replaced CAIR with CSAPR in August 2011.

On December 30, 2011, EPA proposed to find that the trading programs in CSAPR would achieve greater progress towards improving visibility than would be obtained by implementing BART for SO_2 and NO_X for BART-subject EGUs in the area subject to CSAPR (see 76 FR 82219). Based on that proposed finding, EPA also proposed to revise the RHR to allow states to meet the requirements of BART by participation in the trading programs under CSAPR. CSAPR is not applicable to emissions of PM, so states would still be required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. EPA has not taken final action on that rule.

D. Long-Term Strategy

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a long-term strategy in their regional haze SIPs. The long-term strategy is the compilation of all control measures a state will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the RPGs for all Class I areas within or affected by emissions from the state. 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to address interstate visibility issues sufficiently.

States should consider all types of anthropogenic sources of visibility impairment in developing their long-term strategy, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their long-term strategy. The seven factors are: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the long-term strategy. 40 CFR 51.308(d)(3)(v).

E. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment Long-Term Strategy

EPA revised 40 CFR 51.306(c), which is a part of the RHR, regarding the long-term strategy for RAVI. The RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment in accordance with 40 CFR 51.308(b) and (c). The state must revise its plan to provide for review and revision of a coordinated long-term strategy for addressing RAVI and regional haze on or before this date. It must also submit the first such coordinated long-term strategy with its first regional haze SIP. Future coordinated long-term strategies and periodic progress reports evaluating progress towards RPGs must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's long-term strategy must be submitted to EPA as a SIP revision and must report on both RAVI and regional haze impairment.

F. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through participation in the IMPROVE network, meaning that the state reviews and uses monitoring data from the network. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, to be submitted in electronic format, if available;
- A statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year with available data, and future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018 with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter.

Periodic SIP revisions must meet the core requirements of section 51.308(d), except that BART is only required in the initial submittal. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

G. Consultation With States and Federal Land Managers

The RHR requires that states consult with Federal Land Managers (FLMs) before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for in person consultation at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of Wisconsin's regional haze plan?

Wisconsin submitted its regional haze plan to EPA in the form of two letters on January 18, 2012, addressing the BART requirements and the balance of the state's regional haze plan. EPA considers the two submissions to be a complete regional haze plan and is proposing to find that the plan meets the relevant CAA requirements and EPA regulations and guidance outlined in section II, above. A detailed analysis follows.

A. Class I Areas

States are required to address regional haze affecting Class I areas within a state and in Class I areas outside the state that may be affected by the state's emissions. 40 CFR 51.308(d). Wisconsin does not have any Class I areas for which visibility is an important value. See 40 CFR part 81, subpart D. Rainbow Lake Wilderness Area is located in Wisconsin but has not been identified by the Secretary of the Interior in consultation with other FLMs as an area where visibility is an important value. As Wisconsin has no Class I areas where visibility is an important value within its borders, Wisconsin is not required to address the following regional haze SIP elements: (a) Calculation of baseline and natural visibility conditions, (b) establishment of reasonable progress goals, (c) monitoring requirements, and d) RAVI requirements. Wisconsin is responsible for consulting with other states with Class I areas that are affected by Wisconsin's emissions and for developing a regional haze SIP which addresses Wisconsin's impact on any nearby Class I areas.

Wisconsin reviewed technical analyses conducted by MRPO and other RPOs to determine what Class I areas outside the state are affected by Wisconsin emission sources. Wisconsin's analysis shows that its emissions contribute to visibility impairment at Isle Royale National Park (Isle Royale) and Seney Wilderness Area (Seney) in Michigan and Boundary Waters Canoe Wilderness Area (Boundary Waters) and Voyageurs National Park (Voyageurs) in Minnesota. These four Class I areas in Michigan and Minnesota are collectively referred to as the Northern Class I areas. The state also noted that MRPO found that Wisconsin emission sources also contribute to visibility impairment at Upper Buffalo Creek in Arkansas and at two Missouri Class I areas: Hercules-Glades Wilderness Area and Mingo Wilderness Area. EPA proposes to find that Wisconsin has appropriately identified affected Class I areas.

B. Baseline, Current, and Natural Conditions

The RHR requires Class I states to calculate the baseline and natural conditions for their Class I areas. Wisconsin does not have any Class I areas. Therefore, Wisconsin is not required to submit such calculations.

C. Reasonable Progress Goals

States with Class I areas must set RPGs that achieve reasonable progress toward achieving natural visibility conditions. Wisconsin does not have any Class I areas, so it does not need to set any RPGs. As discussed in section E, Wisconsin did consult with affected Class I states to ensure that it achieves its share of the overall emission reductions necessary to achieve the RPGs of Class I areas that it affects.

D. Best Available Retrofit Technology

Wisconsin followed a multi-step process to identify which sources are subject to BART and to determine what emission limits satisfy this requirement. The first step of this process was to identify all the sources in the state that are within one of the 26 categories established under prevention of significant deterioration rules and having at least 250 tons per year of potential emissions. The second step was for the MRPO to conduct modeling to assess the impact of each of these identified candidate sources. This modeling deviated in selected respects from EPA's recommended approach, first by evaluating source impacts relative to cleanest day visibility rather than to average day visibility, and second by using meteorological data taken directly from the outputs of a meteorological model without making adjustments (''blending'') based on local observations of actual meteorology. However, EPA views the modeling analysis overall to be more likely to overstate rather than understate source impacts, so that LADCO's modeling provided an acceptable test of whether sources had sufficient impact to warrant being subject to BART. Consistent with EPA guidance, Wisconsin elected to exempt sources with a 98th percentile [4] impact of less than 0.5 dv. Wisconsin concluded that 0.5 dv was an appropriate threshold for defining significant impact for BART purposes because sources are not clustered in the same geographic areas and thus are unlikely to impact the same Class I areas concurrently.

Based on this process, Wisconsin concluded that nine EGU facilities and four paper mills warranted being subject to BART. However, owners of three of the paper mills provided more refined modeling showing the facilities have a 98th percentile impact less than 0.5 dv impact. Thus, Wisconsin revised its finding to conclude that only the nine EGU facilities and one paper mill, in particular the paper mill owned by Georgia-Pacific and located in Green Bay, are subject to the requirement for BART.

To address the BART requirement for the EGUs, Wisconsin referenced EPA's proposed finding that CSAPR is an acceptable alternative to source-specific BART for SO_2 and/or NO_X for EGUs located in the CSAPR region, including

[4] The 98th percentile of values is compared to the contribution threshold. The 98th percentile value would exclude about the seven most impaired days per years. EPA feels that this does not give undue weight to the extreme tail of the modeled distribution. EPA judges that this approach effectively captures sources contributing to visibility impairment, while minimizing the effect the highest model impairments that might have been caused by model assumptions or unusual meteorology.

in Wisconsin. (*See* 76 FR 82219, December 30, 2011.) Therefore, Wisconsin has elected to rely on CSAPR to satisfy the BART requirement for EGUs with respect to SO_2 and NO_X emissions.

EPA has analyzed the benefits of CSAPR in relation to the benefits of BART on EGUs that are subject to CSAPR. On December 30, 2011 (76 FR 82219), EPA proposed a rule finding that CSAPR is more beneficial in mitigating visibility impairment than application of BART to the affected EGUs on a source-specific basis. If the proposal is finalized, CSAPR may be considered to satisfy the requirement for BART for EGUs in Wisconsin for SO_2 and NO_X.

For PM, Wisconsin conducted extensive analysis of the options for PM control at the nine EGU facilities subject to BART. Wisconsin found that fabric filters, commonly called baghouses, and electrostatic precipitators mandated under existing regulations generally achieve 99 percent or more control of PM. Wisconsin found further that few opportunities for enhancement of these controls are available, that further control would likely be expensive, and that further controls would generally improve visibility by 0.01 dv or less. Therefore, Wisconsin concluded, with one exception, that existing PM limitations on these EGU facilities in combination with CSAPR limitations on SO_2 and NO_X emissions represents BART. The exception applies to the PM limits for Alliant Energy's Columbia facility. This facility has relatively old PM control equipment and correspondingly higher emission limits than apply to other facilities in the state, resulting in its PM impacts being the highest PM impacts on visibility of any facility in the state. On November 11, 2011, Wisconsin issued a permit to this facility that limits PM emissions to 0.025 and 0.0195 pounds of particulate matter per million British Thermal Units (lbs/MMBTU) for boilers B21 and B22, respectively, representing limits similar to or lower than PM limits for other facilities in the state. EPA proposes to find that the tightened PM limits for Alliant Energy's Columbia facility and the existing PM limits for other EGUs represent BART for PM for EGUs in Wisconsin.

Wisconsin also determined appropriate BART limitations for the paper mill in Green Bay owned by Georgia-Pacific, based on a particularly extensive review of control alternatives. In 2004, the facility operated five boilers identified as B24, B25, B26, B27, and B28. Two of these boilers, B26 and B27, began operation between 1962 and 1977 and are subject to the BART requirement; the other boilers are not. Wisconsin determined that emissions of both SO_2 and NO_X from both B26 and B27 were significant and warranted evaluation for control.

After evaluating the costs, benefits, and other characteristics of a number of control alternatives, Wisconsin determined that BART with respect to SO_2 emissions for both boilers should be defined as wet scrubbing and eliminating the use of petroleum coke. The control efficiency of the wet scrubbing was estimated to be 93 percent and the overall control percentage, also reflecting elimination of petroleum coke, was estimated to be 95.8 percent for B26 and 93.8 percent for B27. The difference in percentages reflects the difference in baseline petroleum coke usage at the two boilers. For NO_X, Wisconsin determined BART to be combustion control using overfire air plus post combustion control. For B26, a stoker boiler, Wisconsin estimated that overfire air would reduce emissions by 35 percent and that selective noncatalytic reduction would reduce the remaining emissions by 50 percent (including a compliance margin) for a net reduction of 68 percent. For B27, Wisconsin estimated that overfire air would reduce emissions by 50 percent and that recirculating selective catalytic reduction would reduce the remaining emissions by 70 percent for a net reduction of 85 percent.

The exhaust gases from Georgia-Pacific's boilers are combined before entering a pair of baghouses, after which the exhaust gases are recombined and vented out a single stack. Additional SO_2 and NO_X control devices are most logically placed after the baghouses, controlling exhaust gas originating as a combination of emissions from all operating boilers. Consequently, the company requested that Wisconsin develop limits governing the combined emissions of all operating boilers. Wisconsin determined these limits by first finding the sum of the controlled emissions for B26 and B27 plus the baseline, uncontrolled emissions for B25 and B28. In calculating these limits, emissions were not allocated for B24, because this boiler has been shut down for the last several years.[5] The final limits were determined by then subtracting 10 percent of the remaining emissions of B26 and B27, providing an environmental benefit as called for in the economic incentive program guidance[6] for cases such as this, where emissions of multiple units may in effect be traded.

Wisconsin determined emission limits both on a 30-day basis and on a 12-month basis. Wisconsin calculated these limits using operating rate information from the 2002 to 2004 SIP baseline period. Specifically, the operating rate used to determine the 30-day limit was the maximum 30-day heat input for the four boilers being included in the limit during the 2002 to 2004 period. The operating rate used to determine the 12-month limit was the average heat input for 2002 to 2004 for the four boilers. The emission factors used in calculating the limits were the average emission rates in 2002 to 2004, adjusted to reflect emission controls for B26 and B27 and further reduced as noted above to provide an additional margin for environmental benefit. The resulting emission limits for SO_2 are a 30-day limit of 268 tons and a 12-month limit of 2,340 tons. The limits for NO_X are a 30-day limit of 110 tons and a 12-month limit of 977 tons.

Wisconsin also conducted modeling to assess the environmental impact of establishing BART alternatives that involve less control of NO_X emissions and correspondingly more control of SO_2 emissions. The relevant portion of the modeling included in Wisconsin's submission reflects simulations in which SO_2 emissions are reduced between 2.1 and 2.2 tons for every ton that NO_X emissions are increased. Three different levels of NO_X emission increase were assessed. For all of these simulations, both the number of days with visibility impacts of at least 0.5 dv and the 98th percentile magnitude of the source's impact remained unchanged or slightly declined with this exchange of SO_2 and NO_X control. Further simulations conducted by Wisconsin also show environmental benefit according to these same indicators with SO_2 emissions being reduced by 2 tons for every ton of NO_X emission increase.

On this basis, Wisconsin identified three alternatives to the BART limits described above. These alternatives are listed along with the primary BART limits in Table 1. Each alternative reflects an increase of NO_X emissions and a corresponding decrease of 2 tons of SO_2 emissions for each 1 ton of NO_X

[5] Wisconsin is not taking credit for the shutdown of B24, so it is not necessary for the shutdown to be enforceable. If Georgia-Pacific were to resume operation of B24, the emissions of B24 would count against the collective stack emission limit and thus would require compensating reductions from other boilers.

[6] ''Draft Economic Incentive Policy Guidance,'' Office of Air and Radiation, September 1999, available at *http://www.epa.gov/ttn/oarpg/t1/memoranda/eip9–2.pdf*

emissions relative to the primary BART limits. According to the draft administrative order included in Wisconsin's SIP submittal, the primary limits shall be enforceable, except that Georgia-Pacific may, by July 15, 2013, select one of the three specified alternatives, in which case the selected alternative shall be enforceable. Compliance with the applicable limits must be by the end of 2015.

TABLE 1—BART LIMITS AND ALTERNATIVE LIMITS FOR GEORGIA-PACIFIC

Option	SO_2 Limit (tons)		NO_X Limit (tons)	
	Annual	30-day	Annual	30-day
Primary Limits	2,340	268	977	110
Alternative 1	2,150	246	1,072	121
Alternative 2	1,700	195	1,297	147
Alternative 3	1,250	143	1,522	172

EPA proposes to approve Wisconsin's determinations of BART for Georgia-Pacific. The state has conducted a full analysis of control options and has defined a control strategy that will provide significant reductions in emissions of SO_2 and NO_X. EPA proposes to find acceptable the use of a collective emission limit governing the sum of emissions from the two BART boilers as well as from the operating non-BART boilers, insofar as the state has set limits that can be expected to assure that overall emissions will be controlled to the same degree as would be the case if the emission limits applied only to the BART boilers. While the establishment of limits governing emissions from the full set of operating boilers rather than just the BART boilers creates some uncertainty as to how much the emissions from the BART boilers will be controlled, Wisconsin has arguably compensated for that uncertainty by providing an ''environmental benefit'' in the form of a reduction of the overall cap by an amount equal to 10 percent of the emissions of the BART boilers at BART control levels. Wisconsin has provided adequate justification that the three alternative sets of emission limits provide equivalent improvement in visibility, such that any of the three alternatives, like the primary set of BART limits, will suffice to satisfy the BART requirements for Georgia-Pacific. Wisconsin clearly provides for the establishment of one set of SO_2 and NO_X limits (selected by specified procedure by July 15, 2013 among a primary set and three equally acceptable alternative sets) that will mandate BART controls.

Wisconsin's submission contains a draft administrative order for imposing the emission limits for Georgia-Pacific discussed above, along with the statement that the state will issue a final administrative order once EPA has published this proposed rulemaking. EPA has concerns about the language of the draft administrative order, particularly with respect to the clarity and enforceability of the alternative limits should the company elect one of the alternatives. However, EPA expects the final administrative order to be modified to resolve these concerns.

EPA can only take final action to approve Wisconsin's plan if the limits needed to satisfy BART requirements are submitted in a fully adopted, fully enforceable form. However, EPA expects Wisconsin to issue a clear and enforceable final administrative order, which will be incorporated into its Regional haze SIP, rendering it Federally enforceable, before EPA signs final rulemaking on Wisconsin's plan, and EPA is proposing approval based on this premise.

In summary, EPA proposes to approve Wisconsin's BART determinations. Wisconsin has followed appropriate procedures and applied appropriate criteria for identifying facilities that are subject to BART. EPA in particular finds the identification of candidate BART sources appropriate, EPA finds the screening modeling used appropriately defined inputs to identify sources with sufficiently low impacts to warrant exempting from the BART requirement, and EPA agrees that the refined modeling appropriately justifies exempting three of the four paper mills from being subject to the BART requirement.

EPA proposes to approve Wisconsin's BART determinations for Georgia-Pacific as a SIP revision, based on the premise that Wisconsin will issue and submit a final administrative order that provides for clear enforceability of the limits identified in the draft administrative order in Wisconsin's submittal.

For EGUs, EPA proposes to approve Wisconsin's reliance on the already promulgated CSAPR FIP for EGU sources in Wisconsin as an alternative to BART for SO_2 and NO_X for its EGUs. Therefore, EPA is proposing that if EPA finalizes the rule finding that CSAPR satisfies the BART requirement for EGUs for SO_2 and NO_X in the CSAPR region, then Wisconsin's submission will satisfy applicable BART requirements for SO_2 and NO_X for EGUs.

We do not believe that the order issued by the DC Circuit staying CSAPR pending the court's resolutions of the petitions for review of CSAPR in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases) impacts our proposed approval of the Wisconsin SIP. Under the RHR, an alternative to BART does not need to be fully implemented until 2018. As that is well after we expect the stay to be lifted, EPA believes the Agency and Wisconsin may still rely on CSAPR as an alternative to BART. We note that our proposed approval of Wisconsin's SIP does not impact the implementation of CSAPR or otherwise interfere with the stay of CSAPR.

EPA also proposes to approve the tightened PM limits for Alliant Energy's Columbia facility and the existing PM limits for other EGUs as BART.

E. Long-Term Strategy

Under section 169A(b)(2) of the CAA and 40 CFR 51.308(d), states' regional haze programs must include a long-term strategy for making reasonable progress toward meeting the national visibility goal. Section 51.308(d)(3) requires that Wisconsin consult with the affected states in order to develop a coordinated emission management strategy. As a contributing state, Wisconsin must demonstrate that it has included in its plan all measures necessary to obtain its share of the emissions reductions needed to meet the RPGs for the Class I areas affected by Wisconsin sources. As described in section III.E., above, the long-term strategy is the compilation of all control measures Wisconsin will use to meet applicable RPGs. The long-term strategy must include enforceable emissions limitations, compliance schedules, and other measures as

necessary to achieve the RPGs for the affected Class I areas.

Wisconsin relied on MPRO's modeling and analysis along with its emission information in developing a LTS. Wisconsin consulted with Class I states through its participation in MRPO. MRPO facilitated consultations with other Midwest states and with states in other regions through inter-RPO processes. Wisconsin consulted with Minnesota and Michigan on their Class I areas. Wisconsin also participated in MRPO's inter-RPO consultations. MANE–VU, the RPO for the Northeastern states, facilitated consultation between Wisconsin and Maine, New Hampshire, New Jersey, and Vermont. Wisconsin also consulted with Arkansas and Missouri through their RPO.

At 40 CFR 51.308(d)(3)(v), the RHR identifies seven factors that a state must consider in developing its long-term strategy: (A) Emission reductions due to ongoing programs, (B) measures to mitigate impact from construction, (C) emission limits to achieve the RPG, (D) replacement and retirement of sources, (E) smoke management techniques, (F) Federally enforceable emission limits and control measures, and (G) the net effect on visibility due to projected emission changes over the long-term strategy period. Wisconsin considered the seven factors in developing its long-term strategy.

Wisconsin relied on MPRO's modeling and analysis along with its emission information in developing a long-term strategy. Wisconsin consulted with Class I states through its participation in MRPO. MRPO facilitated consultations with other Midwest states and with states in other regions through inter-RPO processes.

Wisconsin considered these ongoing and expected programs in developing its long-term strategy: CAIR; NO_X SIP Call; BART; inspection and maintenance program; reformulated gasoline; Large Spark Ignition and Recreational Vehicle standards; heavy-duty diesel engine standards; low sulfur fuel; non-road mobile source control programs; area source standards; consent decrees; NO_X Reasonably Available Control Technology; and measures taken to attain the NAAQS.

Consistent with EPA guidance at the time, Wisconsin, in developing its long-term visibility strategy, initially relied on the visibility improvements expected to result from controls planned or already installed on sources in order to meet CAIR provisions. Wisconsin now relies on CSAPR. As CSAPR will result in greater emission reductions overall than CAIR, we anticipate that the substitution of CSAPR for CAIR does not weaken Wisconsin's long-term strategy and will enable Wisconsin to meet its obligations to obtain its share of the emissions reductions needed to meet the RPGs for the Class I areas affected by Wisconsin sources. However, we will assess the midcourse review of Wisconsin's SIP to ensure that this is so.

Wisconsin has addressed the requirement to consider measures to mitigate the impacts of construction activities through the general and transportation conformity measures that are included in the Wisconsin SIP. The visibility impacts of new major sources will be mitigated using the existing New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs. The PSD program requires sources to install stringent emission controls. New and modified sources need to consider the potential affect on visibility in Class I areas under the NSR and PSD programs.

The state is required to investigate whether additional reasonable control strategies are available to help meet the visibility goal. MRPO studied the potential emission reductions from a variety of sources. The results are in section 5.2 of the MRPO technical support document. Electric generating units have the largest impact on Class I areas, but these sources are already being regulated. Reasonable controls can potentially be implemented on industrial, commercial, and institutional boilers. Wisconsin did not include additional controls for these sources in this plan as additional emission reductions are not needed now, but Wisconsin committed to reevaluate options for achieving emission reductions from this category of sources if needed in future. For example, Wisconsin will be required to conduct a midcourse progress review assessing whether the program is making appropriate progress toward mitigating visibility impairment, and EPA expects that review to include an assessment as to whether emission reductions from these sources are necessary to meet the state's obligation to alleviate its impacts on pertinent Class I areas.

Wisconsin will follow the requirement to consider source retirement and replacement schedules with the existing requirements in its PSD program. Wisconsin has met its obligation to consider smoke management during the long-term strategy development by developing a Smoke Management Plan, included in the regional haze SIP as Appendix D. Proper management of fire under the right meteorological conditions will help to protect public safety and will prevent deterioration of air quality.

Wisconsin must also ensure that the emission limits and control measures it is using to obtain its share of emission reductions are Federally enforceable. Included in the state's SIP submittal is a draft Administrative Order for its non-EGU source that is subject to BART, *i.e.,* Georgia-Pacific, and the state commits to issue a final administrative order following this proposed approval. Other rules that the state is relying on are federal rule or are already approved into the Wisconsin SIP. EPA believes that control measures and emission limits, including the final administrative order for Georgia-Pacific, will be Federally enforceable upon final approval of the Wisconsin regional haze plan.

EPA is proposing to find that Wisconsin has addressed the applicable requirements for a long-term strategy.

F. Monitoring Strategy

The RHR requires a monitoring strategy for measuring the various pollutants that influence visibility and reporting on visibility impairment that is representative of all mandatory Class I areas. There are no mandatory Class I areas in Wisconsin, so the state does not operate any IMPROVE monitoring sites. Wisconsin does use IMPROVE network data from the Class I states.

Wisconsin operates a monitoring network that provides data to analyze air quality problems. The monitoring network includes Federal Reference Method monitors, photochemical assessment monitoring, special purpose monitors, and ''speciation monitors'' that measure components or subcategories of particulate matter. The monitoring network measures and reports the levels of various pollutants throughout Wisconsin, including pollutants that contribute to visibility impairment. EPA finds that Wisconsin meets the monitoring requirements from the RHR and that its network of monitoring sites is satisfactory to measure air quality and assess its contribution to regional haze.

G. Federal Land Manager Consultation

Wisconsin consulted with the FLMs during the development of its regional haze plan. Wisconsin submitted a draft of its regional haze plan to the FLMs on January 13, 2011, and a revised draft on July 1, 2011. The Forest Service provided comments on July 27, 2011. The National Park Service sent a comment letter on September 2, 2011. Wisconsin later held a public hearing on September 13, 2011. The public comment period for the Wisconsin regional haze plan was from August 11,

2011 to September 16, 2011. Wisconsin has committed to continue to consult with the FLMs as it develops future SIP revisions and progress reports.

H. Comments

Wisconsin offered the public an opportunity to comment on its proposed regional haze plan. The public comment period for the Wisconsin regional haze plan was from August 11, 2011, to September 16, 2011. Wisconsin held a public meeting on September 13, 2011. It also had a public comment period from June 28, 2010, to July 29, 2010, specifically on the proposed BART for Georgia Pacific. A July 29, 2010, public hearing concluded the comment period. Evidence of the public notices and the public hearings were submitted to EPA with the regional haze plan.

Wisconsin summarized the comments in its plan and provided its responses to the comments. Wisconsin revised its proposed BART plan for Georgia Pacific following the 2010 and 2011 comment periods. Wisconsin has met the requirements from 40 CFR part 51, Appendix V to provide evidence that it gave public notice, took comment, and that it compiled and responded to comments.

V. What action is EPA taking?

EPA is proposing to approve Wisconsin's SIP addressing regional haze for the first implementation period, provided Wisconsin adopts and submits a clearly enforceable administrative order that establishes limits representing BART for Georgia Pacific consistent with the limits in its draft administrative order. Full approval of Wisconsin's use of CSAPR to satisfy the BART requirement for the EGUs at nine facilities is contingent on EPA's finalization of the rule, proposed on December 30, 2011, finding CSAPR as an approvable alternative to BART.

VI. Statutory and Executive Order Reviews

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

• Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

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

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 15, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–4688 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2009–0782–201149, FRL–9638–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Alabama; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval of a revision to the Alabama state implementation plan (SIP) submitted by the State of Alabama through the Alabama Department of Environmental Management (ADEM), on July 15, 2008, that addresses regional haze for the first implementation period. This revision addresses the requirements of the Clean Air Act (CAA or Act) and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of this SIP revision to implement the regional haze requirements for Alabama on the basis that the revision, as a whole, strengthens the Alabama SIP. Additionally, EPA is proposing to rescind the federal regulations previously approved into the Alabama SIP on November 24, 1987, and to rely on the provisions in Alabama's July 15, 2008, SIP submittal to meet the long-term strategy (LTS) requirements for reasonably attributable visibility impairment (RAVI). EPA has previously proposed a limited disapproval of the Alabama regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) to EPA of the Clean Air Interstate Rule (CAIR). Consequently, EPA is not proposing to take action in this rulemaking to address the State's reliance on CAIR to meet certain regional haze requirements.

DATES: Comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–

OAR–2009–0782, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* EPA–R04–OAR–2009–0782, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2009–0782.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sara Waterson or Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Sara Waterson can be reached at telephone number (404) 562–9061 and by electronic mail at *waterson.sara@epa.gov.* Michele Notarianni can be reached at telephone number (404) 562–9031 and by electronic mail at *notarianni.michele@epa.gov.*

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I. What action is EPA proposing to take?

EPA is proposing a limited approval of Alabama's July 15, 2008, SIP revision addressing regional haze under CAA sections 301(a) and 110(k)(3) because the revision as a whole strengthens the Alabama SIP. This proposed rulemaking and the accompanying Technical Support Document [1] (TSD) explain the basis for EPA's proposed limited approval action.[2]

In a separate action, EPA has proposed a limited disapproval of the Alabama regional haze SIP because of deficiencies in the State's regional haze

[1] EPA's TSD to this action, entitled ''*Technical Support Document for Alabama Regional Haze Submittal,''* is included in the public docket for this action.

[2] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. *See* 76 FR 82219 (December 30, 2011). EPA is not proposing to take action in today's rulemaking on issues associated with Alabama's reliance on CAIR in its regional haze SIP. Comments on EPA's proposed limited disapproval of Alabama's regional haze SIP are accepted at the docket for EPA's December 30, 2011 (*see* Docket ID No. EPA–HQ–OAR–2011–0729). The comment period for EPA's December 30, 2011, rulemaking is scheduled to end on February 28, 2012.

In this action, EPA is also proposing to rescind the federal regulations in 40 CFR 52.61 that were approved into the Alabama SIP. *See* 52 FR 45138 (November 24, 1987). EPA is proposing to rely on the provisions in Alabama's July 15, 2008, SIP submittal to meet the monitoring and LTS requirements for RAVI at 40 CFR 51.305 and 40 CFR 51.306.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., sulfur dioxide (SO_2), nitrogen oxides (NO_X), and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [3] in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. *See* 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I areas [4] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment''. *See* 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section III of this preamble. The requirement to submit a regional haze SIP applies to all 50 states, the District of Columbia, and the Virgin Islands.[5] 40 CFR 51.308(b) requires states to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among states, tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, states need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the states and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their states and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO is a collaborative effort of state governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the southeastern United States. Member state and tribal governments include: Alabama, Florida, Georgia, Kentucky,

[3] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[4] Areas designated as mandatory Class I areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. *See* 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. *See* 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. *See* 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I federal areas.'' Each mandatory Class I area is the responsibility of a ''Federal Land Manager.'' *See* 42 U.S.C. 7602(i). When the term ''Class I area'' is used in this action, it means a ''mandatory Class I federal area.''

[5] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia, and the Eastern Band of the Cherokee Indians.

III. What are the requirements for the regional haze SIPs?

A. The CAA and the RHR

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The deciview is a more useful measure for tracking progress in improving visibility than light extinction itself because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[6]

The deciview is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years, i.e., midway through each 10-year implementation period. To do this, the RHR requires states to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, states must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to states regarding how to calculate baseline, natural, and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–004 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, states are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the states that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for states to establish goals that provide for ''reasonable progress'' toward achieving natural (*i.e.,* ''background'') visibility conditions. In setting RPGs, states must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals Under the Regional Haze Program* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, states must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which states are to use for analytical comparison to the amount of

[6] The preamble to the RHR provides additional details about the deciview. *See* 64 FR 35714, 35725 (July 1, 1999).

progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby states with emissions sources that may be affecting visibility impairment at the Class I state's areas. *See* 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires states to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [7] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, states also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (hereinafter referred to as the ''BART Guidelines'') to assist states in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that states should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, states may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emissions sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciview.

In their SIPs, states must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that states consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emissions limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. *See* CAA section 169(g)(4); see 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows states to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. *See* 70 FR 39104 (July 6, 2005). EPA's regulations provide that states participating in the CAIR cap-and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan in 40 CFR part 97 need not require affected BART-eligible electrical generating units (EGUs) to install, operate, and maintain BART for emissions of SO_2 and NO_X. *See* 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, states were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. Challenges to CAIR resulted in the remand of the rule to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008).

EPA issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. See 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the states in which the Transport Rule applies. *See* 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow states to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not yet taken final action on that rule. Also on December 30, 2011, the DC Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the DC Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that states include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, section 51.308(d)(3) of the RHR requires that states include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a state will use during the

[7] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. *See* 40 CFR 51.308(d)(3).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing states in order to develop coordinated emissions management strategies. *See* 40 CFR 51.308(d)(3)(i). In such cases, the contributing state must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between states may be required to sufficiently address interstate visibility issues. This is especially true where two states belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, states must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. *See* 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and RAVI LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other states;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of section 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that states consult with FLMs before adopting and submitting their SIPs. *See* 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of Alabama's regional haze submittal?

On July 15, 2008, ADEM submitted revisions to the Alabama SIP to address regional haze in the State's Class I area as required by EPA's RHR.

A. Affected Class I Area

Alabama has one Class I area within its borders: Sipsey Wilderness Area. Alabama is responsible for developing

its a regional haze SIP that addresses the Class I area. The State determined RPGs, including consulting with other states that impact the Class I area, as discussed in IV.F.1. In addition, Alabama is responsible for describing its long-term emission strategies, its role in the consultation processes, and how its particular state SIP meets the other requirements in EPA's regional haze regulations.

The Alabama regional haze SIP establishes RPGs for visibility improvement at this Class I area and a LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the LTS, Alabama considered both emissions sources inside and outside of Alabama that may cause or contribute to visibility impairment in Alabama's Class I area. The State also identified and considered emissions sources within Alabama that may cause or contribute to visibility impairment in Class I areas in neighboring states as required by 40 CFR 51.308(d)(3). The VISTAS RPO worked with the State in developing the technical analyses used to make these determinations, including state-by-state contributions to visibility impairment in specific Class I areas, which included the one Class I area in Alabama and those areas affected by emissions from Alabama.

B. Determination of Baseline, Natural, and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, Alabama calculated baseline/current and natural visibility conditions for its Class I area, as summarized below (and as further described in sections III.B.1 and III.B.2 of EPA's TSD to this **Federal Register** action).

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in EPA's 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to the 2003 EPA guidance to estimate the values that characterize the natural visibility conditions of the Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE Steering Committee in December 2005.[8] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction. Alabama opted to use the default estimates for the natural concentrations, combined with the ''new IMPROVE equation,'' for its area. Using this approach, natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by VISTAS.

The new IMPROVE equation takes into account the most recent review of the science[9] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Conditions

ADEM estimated baseline visibility conditions at the Sipsey Wilderness Area using available monitoring data from a single IMPROVE monitoring site. As explained in section III.B, baseline visibility conditions are the same as current conditions for the first regional haze SIP. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days at the Alabama Class I area. IMPROVE data records for the Sipsey Wilderness Area for the period 2000 to 2004 meet the EPA requirements for data completeness. See page 2–8 of EPA's 2003 Tracking Progress Guidance. Table 3.3–1 from Appendix G of the Alabama regional haze SIP, also provided in section III.B.3 of EPA's TSD to this action, lists the 20 percent best and worst days for the baseline period of 2000–2004 for the Sipsey Wilderness Area. These data are also provided at the following Web site: *http://www.metro4-sesarm.org/vistas/SesarmBext_20BW.htm*.

3. Summary of Baseline and Natural Conditions

For the Alabama Class I area, baseline visibility on the 20 percent worst days is approximately 29 deciviews. Natural visibility in this area is predicted to be approximately 11 deciviews on the 20 percent worst days. The natural and baseline conditions for Alabama's Class I area for both the 20 percent worst and best days are presented in Table 1 below.

[8] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emissions sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[9] The science behind the revised IMPROVE equation is summarized in numerous published papers. See, *e.g.*, Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado. *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm*; and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006. *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR ALABAMA'S CLASS I AREA

Class I area	Average for 20% worst days (dv [10])	Average for 20% best days (dv)
Natural Background Conditions:		
Sipsey Wilderness Area	10.90	5.03
Baseline Visibility Conditions (2000–2004)		
Sipsey Wilderness Area	29.03	15.57

4. Uniform Rate of Progress

In setting the RPGs, Alabama considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glidepath.

The State's implementation plan presents two sets of graphs, one for the 20 percent best days and one for the 20 percent worst days, for its Class I area. Alabama constructed the graph for the worst days (i.e., the glidepath) in accordance with EPA's 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for its area. For the best days, the graph includes a horizontal, straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. Alabama's SIP shows that the State's RPGs for its area provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best days over the same period, in accordance with 40 CFR 51.308(d)(1).

For the Sipsey Wilderness Area, the overall visibility improvement necessary to reach natural conditions is the difference between baseline visibility of 29.03 deciviews for the 20 percent worst days and natural conditions of 10.90 deciviews, *i.e.,* 18.13 deciviews. Over the 60-year period from 2004 to 2064, this would require an approximate average improvement of 0.302 deciview per year (i.e., 18.13 deciviews/60 years) to reach natural conditions. Hence, for the 14-year period from 2004 to 2018, in order to achieve visibility improvements at least equivalent to the uniform rate of progress for the 20 percent worst days at the Sipsey Wilderness Area, Alabama would need to project at least 4.23 deciviews over the first implementation period (i.e., 0.302 deciviews × 14 years = 4.23 deciviews) of visibility improvement from the 29.03 deciviews baseline in 2004, resulting in visibility levels at or below 24.80 deciviews in 2018. As discussed below in section IV.C.7, Alabama projects a 5.50 deciview improvement to visibility from the 29.03 deciview baseline to 23.53 deciviews in 2018 for the 20 percent most impaired days, and a 1.35 deciview improvement to 14.22 deciviews from the baseline visibility of 15.57 deciviews for the 20 percent least impaired days.

C. Long-Term Strategy/Strategies

As described in section III.E of this action, the LTS is a compilation of state-specific control measures relied on by the state for achieving its RPGs. Alabama's LTS for the first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the State from the end of the baseline period starting in 2004 until 2018. The Alabama LTS was developed by the State, in coordination with the VISTAS RPO, through an evaluation of the following components: (1) Identification of the emissions units within Alabama and in surrounding states that likely have the largest impacts currently on visibility at the State's Class I area; (2) estimation of emissions reductions for 2018 based on all controls required or expected under federal and state regulations for the 2004–2018 period (including BART); (3) comparison of projected visibility improvement with the uniform rate of progress for the State's Class I area; and (4) application of the four statutory factors in the reasonable progress analysis for the identified emissions units to determine if additional reasonable controls were required.

In a separate notice proposing limited disapproval of the regional haze SIPs of a number of states, EPA noted that these states relied on the trading programs of CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the state-adopted reasonable progress goals. *See* 76 FR 82219 (December 30, 2011). In that action, EPA proposed a limited disapproval of Alabama's regional haze SIP submittal insofar as the SIP relied on CAIR. For that reason, EPA is not taking action on that aspect of Alabama's regional haze SIP in this action. Comments on the December 30, 2011, proposed determination are accepted at Docket ID No. EPA–HQ–OAR–2011–0729. The comment period for EPA's December 30, 2011, proposed rulemaking is scheduled to end on February 28, 2012.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by VISTAS with assistance from Alabama. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from Federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM, and SO_2. The BART Guidelines direct states to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in section IV.C.3, VISTAS performed modeling sensitivity analyses, which demonstrated that anthropogenic emissions of VOC and NH_3 do not significantly impair visibility in the VISTAS region. Thus, while emissions inventories were also developed for NH_3 and VOC and applicable Federal VOC reductions were incorporated into Alabama's regional haze analyses, Alabama did not further evaluate NH_3 and VOC emissions sources for potential controls under BART or reasonable progress.

VISTAS developed emissions for five inventory source classifications: stationary point and area sources, off-road and on-road mobile sources, and biogenic sources. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those

[10] The term, ''dv,'' is the abbreviation for ''deciview.''

sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. VISTAS estimated emissions on a countywide level for the inventory categories of: (a) Stationary area sources; (b) off-road (or non-road) mobile sources (i.e., equipment that can move but does not use the roadways); and (c) biogenic sources (which are natural sources of emissions, such as trees). On-road mobile source emissions are estimated by vehicle type and road type, and are summed to the countywide level.

There are many federal and state control programs being implemented that VISTAS and Alabama anticipate will reduce emissions between the end of the baseline period and 2018. Emissions reductions from these control programs are projected to achieve substantial visibility improvement by 2018 in the Sipsey Wilderness Area. The control programs relied upon by Alabama include CAIR; EPA's NO_X SIP Call; North Carolina's Clean Smokestacks Act; consent decrees for Tampa Electric, Virginia Electric and Power Company, Gulf Power-Plant Crist, Santee Cooper, East Kentucky Power Cooperative, and Alabama Power Company-Plant Miller; a consent decree for Cargill, Inc.; NO_X and/or VOC reductions from the control rules in 1-hour ozone SIPs for Atlanta, Birmingham, and Northern Kentucky; federal 2007 heavy duty diesel engine standards for on-road trucks and buses; federal Tier 2 tailpipe controls for on-road vehicles; federal large spark ignition and recreational vehicle controls; and EPA's non-road diesel rules. Controls from various federal Maximum Achievable Control Technology (MACT) rules were also utilized in the development of the 2018 emission inventory projections. These MACT rules include the industrial boiler/process heater MACT (referred to as ''Industrial Boiler MACT''), the combustion turbine and reciprocating internal combustion engines MACTs, and the VOC 2-, 4-, 7-, and 10-year MACT standards.

Effective July 30, 2007, the D.C. Circuit mandated the vacatur and remand of the Industrial Boiler MACT Rule.[11] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010, (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608). The VISTAS modeling included emissions reductions from the vacated Industrial Boiler MACT rule, and Alabama did not redo its modeling analysis when the rule was re-issued. Even though the State's modeling is based on the vacated Industrial Boiler MACT limits, Alabama's modeling conclusions are unlikely to be affected because the expected reductions due to the vacated rule were relatively small compared to the State's total SO_2, $PM_{2.5}$, and coarse particulate matter (PM_{10}) emissions in 2018 (*i.e.,* 0.2 to 0.5 percent, depending on the pollutant, of the projected 2018 SO_2, $PM_{2.5}$, and PM_{10} inventory). Thus, EPA does not expect that differences between the vacated and final Industrial Boiler MACT emission limits would affect the adequacy of the existing Alabama regional haze SIP. If there is a need to address discrepancies between projected emissions reductions from the vacated Industrial Boiler MACT and the Industrial Boiler MACT issued on March 21, 2011 (76 FR 15608), EPA expects Alabama to do so in the State's five-year progress report.

Tables 2 and 3, below, summarize the 2002 baseline and 2018 estimated emissions inventories for Alabama.

TABLE 2—2002 EMISSIONS INVENTORY SUMMARY FOR ALABAMA

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	49,332	244,348	23,291	32,886	2,200	544,309
Area	207,952	34,172	98,671	440,663	60,007	54,462
On-Road Mobile	127,295	158,212	2,799	3,903	5,588	6,900
Off-Road Mobile	60,487	65,366	4,526	4,949	33	7,584
Total	445,065	502,098	129,287	482,401	67,828	613,255

TABLE 3—2018 EMISSIONS INVENTORY SUMMARY FOR ALABAMA

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Point	57,243	142,676	27,366	37,746	3,536	249,075
Area	181,116	36,945	108,892	497,924	73,969	52,950
On-Road Mobile	49,175	47,298	1,192	2,410	7,298	720
Off-road Mobile	40,407	43,799	2,874	3,300	42	2,818
Total	327,941	270,718	140,324	541,380	84,845	305,563

2. Modeling To Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

VISTAS performed modeling for the regional haze LTS for the 10 southeastern states, including Alabama. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. VISTAS used the following modeling system:

- *Meteorological Model:* The Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model is a nonhydrostatic, prognostic, meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.

[11] *See NRDC* v. *EPA,* 489 F.3d 1250 (D.C. Cir. 2007).

• *Emissions Model:* The Sparse Matrix Operator Kernel Emissions modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emissions sources for photochemical grid models. Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) modeling system is a photochemical grid model capable of addressing ozone, PM, visibility, and acid deposition at a regional scale. The photochemical model selected for this study was CMAQ version 4.5. It was modified through VISTAS with a module for Secondary Organics Aerosols in an open and transparent manner that was also subjected to outside peer review.

CMAQ modeling of regional haze in the VISTAS region for 2002 and 2018 was carried out on a grid of 12 × 12 kilometer cells that covers the 10 VISTAS states (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, West Virginia) and states adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 kilometer cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. VISTAS conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The VISTAS states modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5,}$ and Regional Haze*, located at *http://www.epa.gov/scram001/guidance/guide/final-03-pm-rh-guidance.pdf,* (EPA–454/B–07–002), April 2007, and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* located at *http://www.epa.gov/ttnchie1/eidocs/eiguid/index.html,* EPA–454/R–05–001, August 2005, updated November 2005 (''EPA's Modeling Guidance'').

VISTAS examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. VISTAS used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once VISTAS determined the model performance to be acceptable, VISTAS used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), Alabama provided EPA with the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glidepath and to support the LTS are consistent with EPA's RHR and interim and final EPA Modeling Guidance. EPA proposes to accept the VISTAS technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress because the modeling system was chosen and simulated according to EPA Modeling Guidance. EPA proposes to agree with the VISTAS model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the Alabama LTS and regional haze SIP.

3. Relative Contributions to Visibility Impairment: Pollutants, Source Categories, and Geographic Areas

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, source sectors, and geographic areas, VISTAS developed emission sensitivity model runs using CMAQ to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the VISTAS region, VISTAS' contribution assessment, based on IMPROVE monitoring data, demonstrated that ammonium sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the VISTAS and neighboring states. On the 20 percent worst visibility days in 2000–2004, ammonium sulfate accounted for 75 to 87 percent of the calculated light extinction at the inland Class I areas in VISTAS, and 69 to 74 percent of the calculated light extinction for all but one of the coastal Class I areas in the VISTAS states. In particular, sulfate particles resulting from SO_2 emissions contribute roughly 75 percent to the calculated light extinction on the haziest days for the Sipsey Wilderness Area. In contrast, ammonium nitrate contributed less than five percent of the calculated light extinction at VISTAS Class I areas on the 20 percent worst visibility days. Particulate organic matter (organic carbon) accounted for 20 percent or less of the light extinction on the 20 percent worst visibility days at the VISTAS Class I areas.

VISTAS grouped its 18 Class I areas into two types, either ''coastal'' or ''inland'' (sometimes referred to as ''mountain'') sites, based on common/similar characteristics (e.g., terrain, geography, meteorology), to better represent variations in model sensitivity and performance within the VISTAS region, and to describe the common factors influencing visibility conditions in the two types of Class I areas. Alabama's Class I area is an ''inland'' area.

Results from VISTAS' emissions sensitivity analyses indicate that sulfate particles resulting from SO_2 emissions are the dominant contributor to visibility impairment on the 20 percent worst days at all Class I areas in VISTAS. Alabama concluded that reducing SO_2 emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits for the Sipsey Wilderness Area. Because ammonium nitrate is a small contributor to $PM_{2.5}$ mass and visibility impairment on the 20 percent worst days at the inland Class I areas in VISTAS, which include the Sipsey Wilderness Area, the benefits of reducing NO_X and NH_3 emissions at these sites is small.

The VISTAS sensitivity analyses show that VOC emissions from biogenic sources such as vegetation also contribute to visibility impairment. However, control of these biogenic sources of VOC would be extremely difficult, if not impossible. The anthropogenic sources of VOC emissions are minor compared to the

biogenic sources. Therefore, controlling anthropogenic sources of VOC emissions would have little if any visibility benefits at the Class I areas in the VISTAS region, including the Sipsey Wilderness Area. The sensitivity analyses also show that reducing primary carbon from point sources, ground level sources, or fires is projected to have small to no visibility benefit at the VISTAS Class I areas.

Alabama considered the factors listed in 40 CFR 51.308(d)(3)(v) and in section III.E of this action to develop its LTS as described below. Alabama, in conjunction with VISTAS, demonstrated in its SIP that elemental carbon (a product of highway and non-road diesel engines, agricultural burning, prescribed fires, and wildfires), fine soils (a product of construction activities and activities that generate fugitive dust), and ammonia are relatively minor contributors to visibility impairment at the Class I area in Alabama. The State considered agricultural and forestry smoke management techniques to address visibility impacts from elemental carbon. ADEM has an approved smoke management program that addresses the issues laid out in EPA's 1998 *Interim Air Quality Policy on Wildland and Prescribed Fires* available at: *http://www.epa.gov/ttncaaa1/t1/memoranda/firefnl.pdf.* With regard to fine soils, the State considered those activities that generate fugitive dust, including construction activities. Fine soil particles are minor contributors to visibility at the Sipsey Wilderness Area. With regard to construction activities, ADEM has issued regulations (ADEM Admin. Code 335–3–4-.02) to control fugitive dust from construction activities and to control particulates from fugitive dust emissions sources generated within plant boundaries. The State has chosen not to develop controls for fine soils in this first implementation period because of their relatively minor contribution to visibility impairment. With regard to ammonia emissions from agricultural sources, ADEM notes in its SIP that the State currently has no regulations and there are currently no Federal regulations related to the control of ammonia from animal feeding operations. Once EPA has proposed regulations for these sources, ADEM will commit to evaluating potential controls on applicable sources in Alabama.

EPA preliminary concurs with the State's technical demonstration showing that elemental carbon, fine soils, and ammonia are not significant contributors to visibility in the State's Class I area, and therefore, proposes to find that Alabama has adequately satisfied 40 CFR 51.308(d)(3)(v). EPA's TSD to this **Federal Register** action and Alabama's SIP provide more details on the State's consideration of these factors for Alabama's LTS.

The emissions sensitivity analyses conducted by VISTAS predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the VISTAS region, more than any other visibility-impairing pollutant. Specific to Alabama, the VISTAS sensitivity analysis projects that visibility benefits in the Sipsey Wilderness Area from SO_2 reductions from Alabama's EGUs would have the greatest visibility benefits in the Sipsey Wilderness Area. Contributions from other VISTAS states, other RPOs, and from the boundary conditions are smaller but not insignificant. Smaller benefits are projected from additional SO_2 emission reductions from non-utility industrial point sources. Thus, controlling sources outside of the VISTAS region is predicted to provide less significant improvements in visibility in the Sipsey Wilderness area.

Taking the VISTAS sensitivity analyses results into consideration, Alabama concluded that reducing SO_2 emissions from EGU and non-EGU point sources in the VISTAS states would have the greatest visibility benefits for the Sipsey Wilderness Area. The State chose to focus solely on evaluating certain SO_2 sources contributing to visibility impairment to the State's Class I area for additional emissions reductions for reasonable progress in this first implementation period (described in sections IV.C.4 and IV.C.5 of this action). EPA proposes to agree with the State's analyses and conclusions used to determine the pollutants and source categories that most contribute to visibility impairment in the Alabama Class I area, and proposes to find that the State's approach to focus on developing a LTS that includes largely additional measures for point sources of SO_2 emissions is appropriate.

SO_2 sources for which it is demonstrated that no additional controls are reasonable in this current implementation period will not be exempted from future assessments for controls in subsequent implementation periods or, when appropriate, from the five-year periodic SIP reviews. In future implementation periods, additional controls on these SO_2 sources evaluated in the first implementation period may be determined to be reasonable, based on a reasonable progress control evaluation, for continued progress toward natural conditions for the 20 percent worst days and to avoid further degradation of the 20 percent best days. Similarly, in subsequent implementation periods, the State may use different criteria for identifying sources for evaluation and may consider other pollutants as visibility conditions change over time.

4. Procedure for Identifying Sources To Evaluate for Reasonable Progress Controls in Alabama and Surrounding Areas

As discussed in section IV.C.3 of this action, through comprehensive evaluations by VISTAS and the Southern Appalachian Mountains Initiative (SAMI),[12] the VISTAS states concluded that sulfate particles resulting from SO_2 emissions account for the greatest portion of the regional haze affecting the Class I areas in VISTAS states, including the Sipsey Wilderness Area in Alabama. Utility and non-utility boilers are the main sources of SO_2 emissions within the southeastern United States. VISTAS developed a methodology for Alabama which enables the State to focus its reasonable progress analysis on those geographic regions and source categories that impact visibility at its Class I area. Recognizing that there was neither sufficient time nor adequate resources available to evaluate all emissions units within a given area of influence (AOI) around each Class I area that Alabama's sources impact, the State established a threshold to determine which emissions units would be evaluated for reasonable progress control. In applying this methodology, ADEM first calculated the fractional contribution to visibility impairment from all emissions units within the SO_2 AOI for the Sipsey Wilderness Area and those surrounding areas in other states potentially impacted by emissions from emissions units in Alabama. The State then identified those emissions units with a contribution of one percent or more to the visibility impairment at that particular Class I area, and evaluated each of these units for control measures for reasonable progress using the

[12] Prior to VISTAS, the southern states cooperated in a voluntary regional partnership ''to identify and recommend reasonable measures to remedy existing and prevent future adverse effects from human-induced air pollution on the air quality related values of the Southern Appalachian Mountains''. States cooperated with FLMs, EPA, industry, environmental organizations, and academia to complete a technical assessment of the impacts of acid deposition, ozone, and fine particles on sensitive resources in the Southern Appalachians. The SAMI Final Report was delivered in August 2002.

following four ''reasonable progress factors'' as required under 40 CFR 51.308(d)(1)(i)(A): (i) Cost of compliance; (ii) time necessary for compliance; (iii) energy and non-air quality environmental impacts of compliance; and (iv) remaining useful life of the emissions unit.

Alabama's SO_2 AOI methodology captured 55 percent of the total point source SO_2 contribution to visibility impairment in the Class I area in Alabama and 61 to 73 percent of the total contribution at the Class I areas in neighboring states, and required an evaluation of 29 sources. Capturing a significantly greater percentage of the total contribution would involve an evaluation of many more emissions units that have substantially less impact. EPA believes the approach developed by VISTAS and implemented for the Class I area in Alabama is a reasonable methodology to prioritize the most significant contributors to regional haze and to identify sources to assess for reasonable progress control in the State's Class I area. EPA proposes to find that the approach is consistent with the Agency's Reasonable Progress Guidance. The technical approach of VISTAS and Alabama was objective and based on several analyses, which included a large universe of emissions units within and surrounding the State of Alabama and all of the 18 VISTAS Class I areas. It also included an analysis of the VISTAS emissions units affecting nearby Class I areas surrounding the VISTAS states that are located in other RPOs' Class I areas.

5. Application of the Four CAA Factors in the Reasonable Progress Analysis

ADEM identified 29 emissions units at 12 facilities in Alabama (see Table 4) with SO_2 emissions that were above the State's minimum threshold for reasonable progress evaluation because they were modeled to fall within the sulfate AOI of any Class I area and have a one percent or greater contribution to the sulfate visibility impairment to at least one Class I area.[13] Of these 29 units, 19 emissions units were already subject to CAIR, five units were subject to BART, and one facility provided additional information documenting that they had been improperly identified as meeting the State's minimum threshold for reasonable progress evaluation. Using the expected costs of controls for EGUs complying with CAIR as an indicator of what might be reasonable for non-EGU sources, ADEM established a threshold of $2,000 per ton of SO_2 for controls. As explained in section IV.C.5, 19 of these 29 emissions units were already subject to CAIR or were determined to not have a reasonable expectation of having control costs less than $2,000 per ton. Of the four emissions units, three initially listed as having potential impacts on Class I areas in other states were not identified by these states as impacting their Class I areas.

TABLE 4—ALABAMA FACILITIES SUBJECT TO REASONABLE PROGRESS ANALYSIS

Facility With a Unit Subject to Reasonable Progress Analysis:
Cargill, Inc. Unit S–407
Facilities With Unit(s) Subject to CAIR Within AOI of Any Class I Area:
Alabama Power Co—Barry Units 002, 003, 004, 005, 006
Alabama Power Co—Gorgas Units 004, 005, 008
Alabama Power Co—Gaston Unit 006
Alabama Power Co—Miller Units 001, 002, 004, 005
TVA—Colbert Unit 014
TVA—Widows Creek, Units 002, 004, 005, 008, 009
Facilities With Unit(s) Found Not Subject to a Reasonable Progress Analysis:
Non-EGUs Subject to BART
Solutia, Inc. Units 009, 013, 014, 015
International Paper Co. Unit 006
Not Subject to Evaluation Based on Updated Information
Akzo Nobel Chemicals Inc., Unit 003
Analysis Not Required By Impacted State
Escambia Operating Co (Exxon Mobile Co.) Unit 014
Sanders Lead Co. Units 003, 008

A. Facility With an Emissions Unit Subject to Reasonable Progress Analysis

ADEM analyzed whether SO_2 controls should be required for the Cargill, Inc., stoker boiler (S–407) based on a consideration of the four factors set out in the CAA and EPA's regulations. For the limited purpose of evaluating the cost of compliance for the reasonable progress assessment in this first regional haze SIP for the non-EGUs, ADEM concluded that it was not equitable to require non-EGUs to bear a greater economic burden than EGUs for a given control strategy. Using CAIR as a guide, ADEM used a cost of $2,000 per ton of SO_2 controlled or reduced as a threshold for cost effectiveness.

Cargill's S–407 unit is permitted to burn coal, natural gas, or No. 2 fuel oil. Coal with a sulfur content of 1.2 to 1.3 pounds/million British Thermal units (lb/MMBtu) is the primary fuel source. S–407 emits about 780 tons per year of SO_2. Cargill evaluated three control options: lower sulfur content coal, wet scrubbers, and dry scrubbers. Lower sulfur content coal could not be used because of its lack of availability. Also, even if lower sulfur western coal were available, significant boiler modification would be necessary to burn it and the coal would challenge the boiler's combustion integrity due to its higher dust content. Therefore, lower sulfur coal was determined to be technically infeasible. As for the add-on controls (wet and dry scrubbers), Cargill estimated that it would cost $2,946/ton to control SO_2 with these technologies. Although no modeling was submitted, Cargill also questioned whether S–407 contributed to visibility impairment at the Sipsey Wilderness Area. Cargill submitted a wind rose with five years of data from the nearby Huntsville, Alabama, airport that indicates that winds coming from the northeast blow from the facility toward the Sipsey Wilderness Area only three percent of

[13] See also EPA's TSD, section III.C.2, fractional contribution analysis tables for each Class I area, excerpted from the Alabama SIP, Appendix H.

the time. Based on Cargill's submittal, ADEM determined that none of the evaluated controls are cost effective for this unit.

As noted in EPA's Reasonable Progress Guidance, the states have wide latitude to determine appropriate additional control requirements for ensuring reasonable progress and there are many ways for a state to approach identification of additional reasonable measures. In determining reasonable progress, states must consider, at a minimum, the four statutory factors, but states have flexibility in how to take these factors into consideration.

Alabama applied the methodology developed by VISTAS for identifying appropriate sources to be considered for additional controls under reasonable progress for the implementation period addressed by this SIP, which ends in 2018. Using this methodology, ADEM first identified those emissions and emissions units most likely to have an impact on visibility in the State's Class I area. Units with emissions of SO_2 with a relative contribution of at least a one percent to the visibility impairment at any Class I area were then subject to a reasonable progress control analysis. As noted above, of the emissions units in Alabama, one emissions unit at Cargill was subject to this analysis. ADEM concluded, based on their evaluation of the Cargill analyses, that no further controls were warranted at this time.

After reviewing ADEM's methodology and analyses presented in the SIP materials prepared by ADEM, EPA is proposing to approve Alabama's conclusion that no further controls are necessary at this time for S–407. EPA proposes to agree with the State's approach of identifying the key pollutants contributing to visibility impairment at its Class I area, and considers ADEM's methodology to identify sources of SO_2 most likely to have an impact on visibility on any Class I area to be an appropriate methodology for narrowing the scope of the State's analysis. In general, EPA also proposes to find Alabama's evaluation of the four statutory factors for reasonable progress to be reasonable. In addition, EPA proposes to find that ADEM fully evaluated all control technologies available at the time of its analysis and applicable to the one emissions unit at the Cargill facility. Although the use of a specific threshold for assessing costs means that Alabama may not have fully considered other available emissions reduction measures above its threshold, EPA believes that the Alabama SIP still ensures reasonable progress. In considering Alabama's approach, EPA is also proposing to place great weight on the fact that there is no indication in the SIP submittal that Alabama, as a result of using a specific cost effectiveness threshold, rejected potential reasonable progress measures that would have had a meaningful impact on visibility in its Class I area. EPA notes that given the emissions reductions resulting from CAIR, Alabama's BART determinations, and the measures in nearby states, the visibility improvements projected for the affected Class I area are in excess of that needed to be on the uniform rate of progress.

B. Emissions Units Subject to CAIR Within AOI of Any Class I Area

Nineteen emissions units identified for a reasonable progress control analysis are EGUs and are subject to CAIR. These EGUs, located at six facilities, are: Alabama Power Co—Barry Units 002, 003, 004, 005, 006; Alabama Power Co—Gorgas Units 004, 005, 008; Alabama Power Co—Gaston Unit 006; Alabama Power Co—Miller Units 001, 002, 004, 005; TVA—Colbert Unit 014; and TVA—Widows Creek, Units 002, 004, 005, 008, 009.

In reaching this decision, ADEM considered the four reasonable progress factors set forth in EPA's RHR as they apply to the State's entire EGU sector (see section 7.6 of the Alabama SIP and section III.C.2 of EPA's TSD for this action). In particular, the State took into account the factors of cost and time necessary for compliance in view of EPA's analysis supporting CAIR. Based on the analysis, ADEM concluded that additional SO_2 control measures, beyond those needed to meet CAIR requirements, for Alabama's EGUs would not be reasonable during this first implementation period based on a consideration of the reasonable progress statutory factors. This conclusion is bolstered by the fact that visibility improvement at the Sipsey Wilderness Area is projected to exceed the uniform rate of progress in this first implementation period. EPA proposes to find acceptable Alabama's methodology and determination that no additional controls beyond CAIR are reasonable for SO_2 for affected Alabama EGUs for the first implementation period.

C. Facilities With Unit(s) Found Not Subject to a Reasonable Progress Analysis

1. Non-EGUs Subject to BART.

At both the International Paper-Courtland Mill and the Solutia, Inc., facilities, all five units identified as being subject to analysis for reasonable progress for the Sipsey Wilderness Area are subject to BART and subsequently were evaluated for BART controls. ADEM believes that BART is equivalent to reasonable progress for these five units, and thus, is not requiring any additional controls for reasonable progress. As discussed in EPA's Reasonable Progress Guidance, since the BART analysis is based, in part, on an assessment of many of the same factors that must be addressed in establishing the RPGs, EPA believes that it is reasonable to conclude that any control requirements imposed in the BART determination also satisfy the RPG-related requirements for source review in the first implementation period.[14] Thus, EPA proposes to agree with the State's conclusions that BART satisfies reasonable progress for the first implementation period for these five non-EGU emissions units at International Paper-Courtland Mill and the Solutia facility.

2. Other Units Found Not Subject to a Reasonable Progress Control Analysis.

Four other emissions units at three Alabama facilities were determined to not be subject to a reasonable progress control analysis (see Table 4). ADEM initially identified one emissions unit, a sulfuric acid plant at the Akzo Nobel facility, which met the State's minimum threshold for reasonable progress evaluation. ADEM determined that the 2018 projected SO_2 emissions rate for Akzo Nobel's sulfuric acid plant exceeded the allowable emissions rate for that unit. When the analysis was revised to incorporate the allowable emissions rate, the contribution from the sulfuric acid unit was below the State's one percent contribution threshold for consideration.

ADEM had initially determined that a sulfur recovery unit at Escambia was contributing one percent or more to the sulfate visibility impairment at the Breton Wilderness Area in Louisiana. It is the responsibility of the state in which the Class I area resides to determine which sources need to be assessed to evaluate for reasonable progress for that state's Class I area. Subsequently, the State of Louisiana completed its analyses for the Breton area and did not identify this unit as meeting Louisiana's minimum threshold for evaluation for reasonable progress, and did not request a reasonable progress analysis for this source. Alabama also notes in its SIP that this unit at Escambia took a permit limit of approximately 7,963 tons of actual SO_2 emissions (equivalent to approximately a 40 percent reduction in emissions) so

[14] EPA's Reasonable Progress Guidance, pages 4.2–4–3.

that it would not be subject to BART. The State issued a permit enforcing this limit in 2006.

For the St. Marks Wilderness area in Florida, ADEM initially determined that two emissions units at the Sanders Lead Company met Alabama's minimum threshold for reasonable progress evaluation. Subsequently, the State of Florida completed its analyses and did not identify these units as meeting its minimum threshold for evaluation for reasonable progress and did not request a reasonable progress analysis of these units. Based on consultations with the States of Florida and Louisiana, Alabama conducted no further evaluation of the three emissions units at Escambia and Sanders Lead.

6. BART

BART is an element of Alabama's LTS for the first implementation period. The BART evaluation process consists of three components: (a) An identification of all the BART-eligible sources, (b) an assessment of whether the BART-eligible sources are subject to BART, and (c) a determination of the BART controls. These components, as addressed by ADEM and ADEM's findings, are discussed as follows.

A. BART-Eligible Sources

The first phase of a BART evaluation is to identify all the BART-eligible sources within the state's boundaries. ADEM identified the BART-eligible sources in Alabama by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and EPA's regulations (40 CFR 51.301): (1) One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emissions units were not in operation prior to August 7, 1962, and were in existence on August 7, 1977; and (3) these units have the potential to emit 250 tons or more per year of any visibility-impairing pollutant.

The BART Guidelines also direct states to address SO_2, NO_X and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairment pollutants, and to exercise judgment in determining whether VOC or ammonia emissions from a source impair visibility in an area. *See* 70 FR 39160. VISTAS modeling demonstrated that VOC from anthropogenic sources and ammonia from point sources are not significant visibility-impairing pollutants in Alabama, as discussed in section IV.C.3. of this action. Based on the VISTAS modeling, analyses of spatial and temporal distributions of ammonia concentrations indicate that the State's point sources are not anticipated to cause or contribute significantly to any impairment of visibility in Class I areas and should be exempt for BART purposes.

B. BART-Subject Sources

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, *i.e.,* those sources that are subject to BART. The BART Guidelines allow states to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, Alabama required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas.

1. Modeling Methodology.

The BART Guidelines allow states to use the CALPUFF [15] modeling system (CALPUFF) or another appropriate model to predict the visibility impacts from a single source on a Class I area, and therefore, to determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, *i.e.*, ''is subject to BART.'' The Guidelines state that EPA believes that CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162). Alabama, in coordination with VISTAS, used the CALPUFF modeling system to determine whether individual sources in Alabama were subject to or exempt from BART.

The BART Guidelines also recommend that states develop a modeling protocol for making individual source attributions and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. The VISTAS states, including Alabama, developed a ''Protocol for the Application of CALPUFF for BART Analyses.'' Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the VISTAS protocol.

VISTAS developed a post-processing approach to use the new IMPROVE equation with the CALPUFF model results so that the BART analyses could consider both the old and new IMPROVE equations. Alabama's justification included a method to process the CALPUFF output and a rationale on the benefits of using the new IMPROVE equation, in Appendix B of its July 15, 2008, submittal.

2. Contribution Threshold.

For states using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that ''[a] single source that is responsible for a 1.0 deciview change or more should be considered to 'cause' visibility impairment.'' The BART Guidelines also state that ''the appropriate threshold for determining whether a source 'contributes to visibility impairment' may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 deciviews.'' The Guidelines affirm that states are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach.

Alabama used a contribution threshold of 0.5 deciview for determining which sources are subject to BART and concluded that the threshold of 0.5 deciview was appropriate in this situation. ADEM concluded that, considering the results of the visibility impacts modeling conducted, a 0.5 deciview threshold was appropriate and a lower threshold was not warranted since there is a clear spatial variability of sources across the State. ADEM notes that it does not have a technical justification for lowering the threshold based on consideration of multiple plume interaction. In addition, there are a limited number of BART-eligible sources in close proximity to Class I areas. The State also believes that 0.5 deciview is sufficiently stringent since it is half of the threshold established by EPA for causing visibility impairment. As stated in the BART Guidelines, where a state concludes that

[15] Note that EPA's reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (*e.g.*, the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer on the following Web site: *http://www.src.com/verio/download/download.htm.*

a large number of these BART-eligible sources within proximity of a Class I area justify a lower threshold, it may warrant establishing a lower contribution threshold. *See* 70 FR 39161–39162 (July 6, 2005). EPA proposes to agree with Alabama that the overall impacts of these sources are not sufficient to warrant a lower contribution threshold and that a 0.5 deciview threshold was appropriate in this instance.

3. Identification of Sources Subject to BART.

Alabama identified 43 facilities with BART-eligible sources. All of Alabama's 43 BART-eligible sources were required by the State to submit BART exemption modeling demonstrations. Alabama found that three of its BART-eligible sources, Solutia-Decatur, International Paper-Courtland, and Escambia Operating Co-Big Escambia Creek, had modeled visibility impacts of more than Alabama's 0.5 deciview threshold for BART exemption. Escambia took permit limits to no longer be subject to BART. Solution-Decatur and International Paper-Courtland are considered to be subject to BART and submitted State permit applications including their proposed BART determinations.

Of the 41 exempted sources, three were exempted because they emitted only VOC in excess of 250 tons per year, three accepted permit limits which reduced their potential to emit to below 250 tons per year of any affected pollutant, and one, Escambia, took permit limits that reduced its impact to below 0.5 deciview.

The 34 remaining sources are not subject to BART as they modeled visibility impacts less than a 0.5 deciview at the affected Class I areas. This modeling involved emissions of NO_X, SO_2, and PM_{10}, as applicable to individual facilities. Eight of the 34 sources are power plants (*i.e.,* Alabama Electric Coop—Lowman, Alabama Power Co—Barry, Alabama Power Co—EC Gaston, Alabama Power Co—Gorgas, Alabama Power Co—Greene Co, Alabama Power Co—Miller, TVA—Colbert, and TVA—Widows Creek). Only PM_{10} emissions were used in the modeling for EGU sources. The SO_2 and NO_X BART-eligible emissions were not modeled, because Alabama opted to have CAIR satisfy BART for SO_2 and NO_X for affected CAIR EGUs, as allowed under the regional haze regulations. The remaining 26 non-EGU sources demonstrated that they are not subject to BART since they modeled less than a 0.5 deciview visibility impact at the affected Class I areas. Table 5 identifies the 43 BART-eligible sources located in Alabama and identifies the two sources subject to BART.

TABLE 5—ALABAMA BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES

- Facilities With Unit(s) Subject to BART:
  - Solutia—Decatur
  - International Paper Co—Courtland
- Facilities With Unit(s) Not Subject to BART
  - EGU CAIR and BART Modeling (PM only) Exempt Sources[16]
    - Alabama Electric Coop—Lowman
    - Alabama Power Co—Barry
    - Alabama Power Co—EC Gaston
    - Alabama Power Co—Gorgas
    - Alabama Power Co—Greene Co
    - Alabama Power Co—Miller
    - TVA—Colbert
    - TVA—Widows Creek
  - Non-EGUs Exempt with Additional Model-Based Emissions Limits
    - Escambia Operating Co—Big Escambia Creek
  - Non-EGUs Exempt with Potential Emissions Limits below 250 Tons per Year
    - Mobile Energy Services
    - Rock Tenn (Gulf States Paper)
    - Tronox, LLC (Kerr McGee Chemical)
  - Non-EGU Exempt for VOC Only Emissions
    - 3M Company, Decatur Plant
    - Ciba Specialty Chemicals Corp
    - Wise Alloys LLC, Alloys Plant
  - Non-EGUs Exempt by BART Modeling
    - American Cast Iron Pipe
    - Boise White Paper
    - Bowater Inc.—Alabama
    - BP Amoco Chemicals
    - Carmeuse Lime & Stone
    - CEMEX, Inc.
    - Chemical Lime Co—Alabaster
    - Chemical Lime Co—Montevallo
    - ConocoPhillips Co—Chatom
    - Degussa Corporation
    - Ft James-Pennington—Naheola
    - Hunt Refining Co—Tuscaloosa
    - International Paper Co—Prattville
    - International Paper Co—Riverdale
    - JSC Brewton (Smurfit Stone)
    - Lehigh Cement
    - MeadWestvaco—Mahrt Mill
    - National Cement Co of Alabama
    - Oak Grove Resources
    - Sanders Lead Co
    - Shell Chemical Co—Saraland
    - Sloss Industries
    - US Pipe & Co—Bessemer

TABLE 5—ALABAMA BART-ELIGIBLE AND SUBJECT-TO-BART SOURCES—Continued

US Steel—Fairfield
Weyerhaeuser
Vintage Petroleum, Inc.—Flomaton

Prior to the CAIR remand, the State's reliance on CAIR to satisfy BART for NO_X and SO_2 for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). However, the BART assessments for CAIR EGUs for NO_X and SO_2 and other provisions in this SIP revision are based on CAIR. In a separate action, EPA has proposed a limited disapproval of the Alabama regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the D.C. Circuit to EPA of CAIR. See 76 FR 82219. Consequently, EPA is not taking action in this proposed rulemaking to address the State's reliance on CAIR to meet certain regional haze requirements.

C. BART Determinations

Three BART-eligible sources (*i.e.*, Solutia-Decatur, International Paper-Courtland, and Escambia-Big Escambia Creek) had modeled visibility impacts of more than Alabama's 0.5 deciview threshold for BART exemption. Escambia accepted permit limits to reduce its visibility impacts to below 0.5 deciview. Only Solutia-Decatur and International Paper-Courtland are therefore considered to be subject to BART. Consequently, they each submitted permit applications to the State that included their proposed BART determinations.

In accordance with the BART Guidelines, to determine the level of control that represents BART for each source, the State first reviewed existing controls on these units to assess whether these constituted the best controls currently available, then identified what other technically feasible controls are available, and finally, evaluated the technically feasible controls using the five BART statutory factors. The State's evaluations and conclusions, and EPA's assessment, are summarized below.

1. Solutia—Decatur.

Solutia—Decatur has five BART-eligible emissions units that comprise the BART-eligible source. Boiler No. 5 is a 290 MMBtu per hour (MMBtu/hr) coal-fired spreader-stoker boiler; Boiler No. 6 is a 320 MMBtu/hr coal-fired spreader-stoker boiler; Boiler No. 7 is a 536.1 MMBtu/hr pulverized coal-fired boiler; and Coking Boilers No. 1 and No. 2 are each 384 MMBtu/hr coal-fired stoker boilers. Each of the boilers is equipped with an electrostatic precipitator (ESP) for particulate control, and the boilers have SO_2 emissions limits to address modeled SO_2 NAAQS exceedances in the area. In addition, Solutia has installed a rotating opposed fired air system (ROFA) combustion control to reduce NO_X formation on Boiler No. 7. The manufacturer has guaranteed a NO_X reduction of 48 percent with the system. This unit is subject to New Source Performance Standards, Subpart D. As required by Subpart D, this boiler has limitations for particulate, SO_2, and NO_X emissions.

ADEM has concluded that no additional particulate controls would be reasonable for the BART units at Solutia. For Boilers No. 5 and 6, stack tests have shown an overall PM control efficiency for the ESPs to be 98.8 percent. For Boiler 7, the PM control efficiency has been estimated from stack tests as 99 percent. Although the coking boilers have not been tested, the particulate control efficiency from the ESPs has been estimated at 96 percent. ADEM evaluated the option of adding a baghouse to each of the boilers and coking units following the existing ESPs. The cost effectiveness of this control option ranged from $5,462 to $79,995 per ton of particulate and the visibility improvement for the 98th percentile day ranged from 0.19 to 0.52 deciview.

ADEM determined that no additional controls for Boiler 5, Boiler 6, and the coking boilers would be required for the control of NO_X emissions for BART. However, Boiler 7 would be required to meet an emission limit of 0.36 lb NO_X/MMBtu with the installation of a ROFA system or a comparable technology. Although the basis for the installation of the ROFA system for Boiler No.7 was the Boiler MACT, the system has been installed and was considered as existing equipment for this case-by-case BART analysis. Solutia evaluated additional control options for NO_X. The available combustion control options included low excess air, burners out of service, biased burner firing, overfire air, low NO_X burners, and reburn. Available post-combustion control options included selective non-catalytic reduction (SNCR) and selective catalytic reduction (SCR). Modeling for all of the additional NO_X control options evaluated indicated relatively small to no reduction in visibility impacts. No deciview improvements were modeled for the 98th percentile day and only 0.04–0.07 deciview improvement was modeled on the maximum high day.

For the control of SO_2, ADEM has determined BART for Boilers 5 and 6 to be an emissions limit of 1.40 lbs SO_2/MMBtu. Boiler 7, the largest of the emissions units subject to BART, would be required to meet a limitation of 0.47 lb SO_2/MMBtu with the installation of a flue solvent injection (FSI) system or a comparable technology. ADEM concluded that the addition of any controls for the coking units would negate the viability of the coking units; therefore, no additional controls were proposed for these units. Solutia evaluated the utilization of lower sulfur coals, and post-combustion flue gas desulfurization (which would include sorbent injection or wet scrubbers). The use of low sulfur coal (1.4 lbs SO_2/MMBtu) in Boilers 5 and 6 would provide a reduction of approximately 43 percent. Currently, Boiler No. 7 is already required to utilize low sulfur coal. Therefore, the utilization of lower sulfur coal would only provide a reduction of seven percent. In combination with the ROFA system, Solutia has a manufacturer guarantee that the use of a FSI system would reduce SO_2 by as much as 60 percent in Boiler No. 7.

EPA proposes to agree with Alabama's analyses and conclusions for the BART emissions units located at this Solutia facility. EPA has reviewed the ADEM analyses and concluded they were conducted in a manner that is consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* (*http://www.epa.gov/ttncatc1/products.html#cccinfo*). Therefore, the conclusions reflect a reasonable application of EPA's guidance to this source.

EPA reviewed the ADEM BART determination for Solutia—Decatur and proposes to concur with Alabama's analyses and conclusions for BART for this facility. EPA believes that the analyses were conducted consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* and

[16] EGUs were only evaluated for PM emissions. Alabama relied on CAIR to satisfy BART for SO_2 and NO_X for its EGUs in CAIR, in accordance with 40 CFR 51.308(e)(4). Thus, SO_2 and NO_X were not analyzed.

that they reflect a reasonable application of EPA's guidance to this source.

2. International Paper—Courtland Mill.

International Paper's Courtland Mill has seven BART-eligible emissions units that comprise the BART-eligible source. No. 1 Combination Boiler is a 398 MMBtu/hr combination fuel boiler that fires bark, natural gas, and fuel oil and is operated as a swing boiler. The boiler vents to a venturi scrubber where the gases are scrubbed with water to remove PM. No. 2 Combination Boiler is a 679 MMBtu/hr combination fuel boiler that fires coal, bark, and natural gas. The primary fuel for this boiler is bark. The other primary fuel for this boiler is coal. The No. 2 Combination Boiler is vented to two ESPs to remove PM. The flue gas is then vented to a high pressure venturi scrubber for the removal of SO_2. The Package Boiler is a 365 MMBtu/hr boiler that is utilized as a back-up boiler and is fired by natural gas. The Package Boiler has no external emissions control devices. The No. 2 Recovery Furnace is a 470 MMBtu/hr recovery furnace that is designed to fire black liquor with natural gas and fuel oil as supplemental fuels. The combustion gases from the furnace are vented to an ESP for PM control. The No. 2 Smelt Dissolving Tank is a recovery operation for the No. 2 Recovery Furnace. The No. 2 Smelt Dissolving Tank is vented through a separate scrubber system for PM control. No. 1 and No. 2 Lime Kilns convert lime mud to lime. Both the No. 1 and No. 2 Lime Kilns are fired with natural gas and/or fuel oil, have low NO_X burners, and are vented to a scrubber to control particulate emissions.

ADEM concluded that BART for PM is the current suite of installed add-on controls which control particulates at the International Paper-Courtland mill and have efficiencies of greater than 90 percent.

For SO_2, ADEM determined no additional controls to be BART. International Paper evaluated five control options for the No. 1 Combination Boiler and the No. 2 Recovery Boiler. For International Paper-Courtland, the 98th percentile 24-hour visibility improvement from the SO_2 controls evaluated for these two units ranged from 0.013 deciview to 0.063 deciview. The No.2 Combination Boiler is already well controlled for SO_2 and was not evaluated further. Although both the Package Boiler and the No. 2 Smelt Dissolving Tank are BART-eligible sources for SO_2, a control effectiveness review was not performed since both of these sources only emit approximately one ton per year of SO_2. The No. 1 and No. 2 Lime Kilns are also BART-eligible sources for SO_2. However, since both these lime kilns are subject to and are complying with MACT standard 40 CFR Part 63 Subpart MM through the use of wet scrubbers, and since the inherent nature of lime kilns minimize SO_2 emissions, the current approach to MACT compliance was considered BART for SO_2 for these lime kilns.

For NO_X ADEM concluded that the control of NO_X is only reasonable for the No. 2 Combination Boiler, which is required to install low NO_X burners to meet BART. Installation and operation of these burners is projected to result in a 30 percent reduction in the unit's emissions. For the No. 1 Combination Boiler, ADEM required International Paper Courtland to either install low NO_X Burners or only operate the No. 1 Combination Boiler when any of the No. 2 Combination Boiler, the No. 2 Recovery Furnace, the No. 3 Combination Boiler, or the No. 3 Recovery Furnace is either not operating or in periods of start-up of shutdown. International Paper reviewed seven additional NO_X control options for the No. 1 and No. 2 Combination boilers and the Package Boiler. For International Paper-Courtland, the 98th percentile 24-hour visibility improvement from the evaluated NO_X controls on these two units ranged from 0.013 deciview to 0.097 deciview. For NO_X, both the No. 1 and No. 2 Lime Kilns currently employ low NO_X burners in the form of combustion flame tuning to reduce NO_X emissions and no other controls where deemed feasible. No additional NO_X controls were identified as being available for the No. 2 Recovery Boiler or the package natural gas boiler.

EPA reviewed the ADEM BART determination for International Paper—Courtland and proposes to concur with Alabama's analyses and conclusions for BART for this facility. EPA believes that the analyses were conducted consistent with EPA's BART Guidelines and EPA's *Air Pollution Control Cost Manual* and that they reflect a reasonable application of EPA's guidance to this source.

3. Enforceability of Limits.

Alabama adopted the BART emissions limits for Solutia-Decatur and International Paper Co-Courtland Mill into the State's regional haze SIP (see Tables 6 and 7). ADEM incorporated the BART emissions limits into state operating permits and submitted copies of these BART permit provisions for information as part of the State's regional haze SIP (see Appendix H–5 of the Alabama regional haze submittal). The BART emissions limits will also be added to the facilities' title V permits according to the procedures established in 40 CFR part 70 or 40 CFR part 71.

TABLE 6—SUMMARY OF BART EMISSIONS LIMITS FOR SOLUTIA-DECATUR

Emissions unit	Emission limitations		
	NO_X	SO_2	PM_{10}
Boiler 5	101.22 lb/hr	1.40 lb/MMBtu & 406 lb/hr	0.12 lb/MMBtu & 34.8 lb/hr.
Boiler 6	109.72 lb/hr	1.40 lb/MMBtu & 448 lb/hr	0.12 lb/MMBtu & 38.4 lb/hr.
Boiler 7	0.36 lb/MMbtu & 193 lb/hr	0.47 lb/MMBtu & 252 lb/hr	0.10 lb/MMBtu & 64.33 lb/hr.
Coker 1	104.43 lb/hr	3.57 lb/MMBtu & 1,370.1 lb/hr.	0.12 lb/MMBtu.
Coker 2	104.43 lb/hr	3.57 lb/MMBtu & 1,370.1 lb/hr.	0.12 lb/MMBtu.

TABLE 7—SUMMARY OF BART EMISSIONS LIMITS FOR INTERNATIONAL PAPER-COURTLAND

Emissions unit	Emission limitations		
	NO_X	SO_2	PM_{10}
No. 1 Combination Boiler	93.15 lb/hr or operational limitations.	147.3 lb/hr	0.17 gr/SDCF[17] @ 50% Excess Air.
No. 2 Combination Boiler	338.13 lb/hr	1.20 lb/MMBtu & 65.5 lb/hr	0.10 lb/MMBtu.
Package Boiler	0.20 MMBtu & <1,200 million ft^3 of natural gas/12 month period.	1.80 lb/MMbtu	0.10 lb/MMBtu.
No. 2 Recovery Furnace	152 lb/hr	432 lb/hr	0.044 gr/SDCF* at 8% O_2 and 67 lb/hr.
No. 2 Smelt Dissolving Tank	Not Applicable	0.20 lb/hr	0.20 lb/ton of black liquor solids.
No. 1 Lime Kiln	3.5 lb/hr	0.10 lb/hr	1.0 lb/air dried ton of pulp.
No. 2 Lime Kiln	19.40 lb/hr	0.23 lb/hr	0.067 gr/sdcf at 10%.

ADEM also adopted BART exemption provisions for Rock-Tenn Mill Company, LLC (previously Gulf States Paper); Escambia Operating Company, LLC; Mobile Energy Services Company, LLC; and Tronox LLC (previously Kerr McGee Chemical), which were added to the operating permits of these four facilities. Copies of these operating permits were also included for information in Appendix H–5 of Alabama's regional haze SIP submittal.

The compliance date for the newly adopted limitations for Solutia-Decatur, International Paper Co-Courtland Mill, and Escambia Operating Company-Big Escambia Creek, is January 1, 2013. The BART exemption provisions were effective upon issuance of the state permit.

7. RPGs

The RHR at 40 CFR 51.308(d)(1) requires states to establish RPGs for each Class I area within the state (expressed in deciviews) that provide for reasonable progress towards achieving natural visibility. VISTAS modeled visibility improvements under existing Federal and state regulations for the period 2004–2018, and additional control measures which the VISTAS states planned to implement in the first implementation period. At the time of VISTAS modeling, some of the other states with sources potentially impacting visibility at the Alabama Class I area had not yet made final control determinations for BART and/or reasonable progress, and thus, these controls were not included in the modeling submitted by Alabama. Any controls resulting from those determinations will provide additional emissions reductions and resulting visibility improvement, which give further assurances that Alabama will achieve its RPGs. The modeling demonstrates that the 2018 base control scenario provides for an improvement in visibility better than the uniform rate of progress for the Sipsey Wilderness Area for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

As shown in Table 8 below, Alabama's RPG for the 20 percent worst days provide greater visibility improvement by 2018 than the uniform rate of progress for the State's Class I area (*i.e.,* 24.80 deciviews in 2018). Also, the RPG for the 20 percent best days provides greater visibility improvement by 2018 than current best day conditions. The modeling supporting the analysis of these RPGs is consistent with EPA guidance prior to the CAIR remand. The regional haze provisions specify that a state may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. 40 CFR 51.308(d)(1)(vi). Therefore, the CAIR states with Class I areas, like Alabama, took into account emissions reductions anticipated from CAIR in determining their 2018 RPGs.[18] Reliance on CAIR as part of a state's LTS to achieve the state-adopted RPGs is discussed in section IV.C of this action.

TABLE 8—ALABAMA 2018 RPGS

[In deciviews]

Class I Area	Baseline visibility—20 percent worst days	2018 RPG—20 percent worst days (improvement from baseline)	Uniform rate of progress at 2018—20 percent worst days	Baseline visibility—20 percent best days	2018 RPG—20 percent best days (improvement from baseline)
Sipsey Wilderness Area	29.03	23.53 (5.50)	24.80	15.57	14.22 (1.35)

The RPGs for the Class I area in Alabama are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was done. These projections can be expected to change as additional information regarding future conditions becomes available. For example, new sources may be built, existing sources may shut down or modify production in response to changed economic circumstances,

[17] The term, ''gr/SDCF,'' is the abbreviation used in the Alabama regional haze SIP submittal for ''grains per dry standard cubic foot.''

[18] Many of the CAIR states without Class I areas similarly relied on CAIR emission reductions within the state to address some or all of their contribution to visibility impairment in other states' Class I areas, which the impacted Class I area state(s) used to set the RPGs for their Class I area(s). Certain surrounding non-CAIR states also relied on reductions due to CAIR in nearby states to develop their regional haze SIP submittals.

and facilities may change their emissions characteristics as they install control equipment to comply with new rules. It would be both impractical and resource-intensive to require a state to continually revise the RPGs every time an event affecting these future projections changed.

EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions, and addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a mandatory standard which must be achieved by a particular date. *See* 64 FR at 35733. At the same time, EPA established a requirement for a midcourse review and, if necessary, correction of the states' regional haze plans. See 40 CFR 52.308(g). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emissions management strategies in meeting the RPGs and to provide an assessment of whether current implementation strategies are sufficient for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. See 40 CFR 52.308(h). The nature of the appropriate action will depend on the basis for the state's conclusion that the current strategies are insufficient to meet the RPGs. Alabama specifically committed to follow this process in the LTS portion of its submittal. Accordingly, EPA proposes to approve Alabama's RPGs for the Sipsey Wilderness Area.

D. Coordination of RAVI and Regional Haze Requirements

EPA's visibility regulations direct states to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in sections III.F and III.G of this action. Under EPA's RAVI regulations, the RAVI portion of a state SIP must address any integral vistas identified by the FLMs pursuant to 40 CFR 51.304. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I area of a specific landmark or panorama located outside the boundary of the mandatory Class I area.'' Visibility in any mandatory Class I area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in Alabama. In addition, the Class I area in Alabama is neither experiencing RAVI, nor are any of its sources affected by the RAVI provisions. Thus, the Alabama regional haze SIP submittal does not explicitly address the two requirements regarding coordination of the regional haze with the RAVI LTS and monitoring provisions. However, Alabama previously made a commitment to address RAVI should the FLM certify visibility impairment from an individual source.[19] EPA proposes to find that this regional haze submittal appropriately supplements and augments Alabama's RAVI visibility provisions to address regional haze by updating the monitoring and LTS provisions as summarized below in this section.

In its July 15, 2008, submittal, ADEM updated its visibility monitoring program and developed an LTS to address regional haze. Also in this submittal, ADEM affirmed its commitment to complete items required in the future under EPA's RHR. Specifically, ADEM made a commitment to review and revise its regional haze implementation plan and submit a plan revision to EPA by July 31, 2018, and every 10 years thereafter. *See* 40 CFR 51.308(f). In accordance with the requirements listed in 40 CFR 51.308(g) of EPA's regional haze regulations and 40 CFR 51.306(c) of the RAVI LTS regulations, ADEM made a commitment to submit a report to EPA on progress towards the RPGs for each mandatory Class I area located within Alabama and in each mandatory Class I area located outside Alabama which may be affected by emissions from within Alabama. The progress report is required to be in the form of a SIP revision and is due every five years following the initial submittal of the regional haze SIP. Consistent with EPA's monitoring regulations for RAVI and regional haze, Alabama will rely on the IMPROVE network for compliance purposes, in addition to any RAVI monitoring that may be needed in the future. See 40 CFR 51.305, 40 CFR 51.308(d)(4). Also, the Alabama new source review (NSR) rules, previously approved in the State's SIP, continue to provide a framework for review and coordination with the FLMs on new sources which may have an adverse impact on visibility in either form (i.e., RAVI and/or regional haze) in any federal Class I area.

The original Alabama visibility SIP submitted to EPA November 20, 1985, addressing the NSR and monitoring strategy requirements in 40 CFR 51.307 and 40 CFR 51.305, respectively, was supplemented by an EPA regulation (40 CFR 52.61) on November 24, 1987 (52 FR 45138), which incorporates 40 CFR 52.29 into the Alabama SIP and continues to be in effect. Because the July 15, 2008, submittal appropriately addresses the LTS requirements and supersedes these previous requirements, EPA is proposing to rescind the federal regulations in 40 CFR 52.61 and rely on the provisions in Alabama's regional haze SIP submittal to meet these requirements.

E. Monitoring Strategy and Other Implementation Plan Requirements

The primary monitoring network for regional haze in Alabama is the IMPROVE network. As discussed in section IV.B.2. of this action, there is currently one IMPROVE site in Alabama, which serves as the monitoring site for the Sipsey Wilderness Area. The IMPROVE measurements are central to Alabama's regional haze monitoring strategy. Each IMPROVE monitor represents a different airshed.

IMPROVE monitoring data from 2000–2004 serves as the baseline for the regional haze program, and is relied upon in the July 15, 2008, regional haze submittal. In the submittal, Alabama states its intention to rely on the IMPROVE network for complying with the regional haze monitoring requirement in EPA's RHR for the current and future regional haze implementation periods.

Data produced by the IMPROVE monitoring network will be used nearly continuously for preparing the five-year progress reports and the 10-year SIP revisions, each of which relies on analysis of the preceding five years of data. The Visibility Information Exchange Web System (VIEWS) Web site has been maintained by VISTAS and the other RPOs to provide ready access to the IMPROVE data and data analysis tools. Alabama is encouraging VISTAS and the other RPOs to maintain the VIEWS or a similar data management system to facilitate analysis of the IMPROVE data.

In addition to the IMPROVE measurements, there is long-term limited monitoring by FLMs which provides additional insight into progress toward regional haze goals. Such measurements include a $PM_{2.5}$ Federal Reference Method monitor.

F. Consultation With States and FLMs

1. Consultation With Other States

In December 2006 and May 2007, the State Air Directors from the VISTAS states held formal interstate

[19] Alabama submitted its visibility SIP revisions addressing RAVI on November 20, 1985, which EPA approved on February 10, 1986 (51 FR 4908).

consultation meetings. The purpose of the meetings was to discuss the methodology proposed by VISTAS for identifying sources to evaluate for reasonable progress. The states invited FLM and EPA representatives to participate and to provide additional feedback. The Directors discussed the results of analyses showing contributions to visibility impairment from states to each of the Class I areas in the VISTAS region.

Additionally, ADEM hosted a meeting amongst the States of Alabama, Florida, Mississippi, and Louisiana in January 2007 to discuss issues specific to the Breton Wilderness Area located in Louisiana. Also, Louisiana participated in a June 2007 FLM/EPA meeting hosted by VISTAS in Asheville, North Carolina, where each state discussed the process used to evaluate sources for reasonable progress. ADEM also participated in Central Regional Air Planning Association (CENRAP) meetings during development of its SIP to keep abreast of CENRAP's and Louisiana's analyses and plans for Breton with respect to regional haze.

ADEM has evaluated the impact of Alabama sources on Class I areas in neighboring states. The state in which a Class I area is located is responsible for determining which sources, both inside and outside of that state, to evaluate for reasonable progress controls. Because many of these states had not yet defined their criteria for identifying sources to evaluate for reasonable progress, Alabama applied its AOI methodology to identify sources in the State that have emissions units with evaluated visibility impacts large enough at Class I areas outside Alabama to potentially warrant further evaluation and analysis. Alabama identified three non-EGU emissions units at two facilities in the State as meeting its minimum threshold for a reasonable progress control evaluation at two Class I areas outside of the State, i.e., Breton Wilderness Area in Louisiana and St. Marks Wilderness Area in Florida. Based on an evaluation of the four reasonable progress statutory factors, Alabama determined that there are no additional control measures for these three Alabama non-EGU emissions units that would be reasonable to implement to mitigate visibility impacts in Class I areas in these neighboring states. Additionally, Alabama identified EGUs in the State impacting Class I areas in the Joyce-Kilmer Wilderness area in North Carolina (TVA-Widows Creek: Point ID 008); the Breton area in Louisiana (Alabama Power Company—Barry: Point ID 002, 003, 004, 005); and the Cohutta Wilderness Area in Georgia (TVA-Widows Creek: Point ID 009, 008). Since these EGUs are subject to CAIR, Alabama determined that no additional SO_2 controls beyond CAIR are reasonable for this implementation period for these EGUs. ADEM has consulted with these states regarding its reasonable progress control evaluations showing no cost-effective controls available for those emissions units in Alabama contributing at least one percent to visibility impairment at Class I areas in the states. The documentation for these formal consultations is provided in Appendix J of Alabama's SIP.

In addition to Alabama's independent evaluation of the impacts of its sources on neighboring states' Class I areas, the State received letters from the States of Florida, Georgia, and North Carolina, which are included in Appendix J of Alabama's regional haze SIP submittal. North Carolina's letter to Alabama, dated August 2, 2007, states that there are no emissions units in North Carolina that contribute one percent or greater to visibility impairment at the Sipsey Wilderness Area. North Carolina identified one Alabama emissions unit, TVA-Widows Creek (Point ID 008) in Jackson County, Alabama, as meeting North Carolina's threshold for a reasonable progress control evaluation, and requested that Alabama share its reasonable progress control evaluation for this unit. Because this unit is subject to CAIR and has a scrubber already installed, Alabama has determined that no additional controls beyond CAIR are reasonable for this unit for this first implementation period. The letter from Georgia asked Alabama to share its final list of emissions units for reasonable progress evaluation. Correspondence from Florida in May 2007 initially identified four emissions units at two Alabama facilities, Sanders Lead (Point ID 003 and 008) and Continental Carbon Company (Point ID 003 and 008), on its working list as meeting Florida's threshold for a reasonable progress control evaluation. In November 2007, Florida sent the final list of units meeting the State's threshold to evaluate for reasonable progress control, which did not identify any units in Alabama.

Regarding the impact of sources outside of the State on Class I areas in Alabama, the State identified two emissions units at Georgia Power Company-Plant Yates that contribute one percent or greater to visibility impairment at the Sipsey Wilderness Area. These two EGUs are subject to CAIR. Therefore, ADEM did not request further evaluation of these units from the State of Georgia.

As noted above, ADEM has consulted with Florida, Georgia, North Carolina, and Louisiana regarding the emissions units in Alabama contributing at least one percent to visibility impairment at Class I areas in those states. The documentation for these formal consultations is provided in Appendix J of Alabama's SIP and is also summarized in the SIP Narrative. EPA proposes to find that Alabama has adequately addressed the consultation requirements in the RHR and appropriately documented its consultation with other states in its SIP submittal.

2. Consultation With the FLMs

Through the VISTAS RPO, Alabama and the nine other member states worked extensively with the FLMs from the U.S. Departments of the Interior and Agriculture to develop technical analyses that support the regional haze SIPs for the VISTAS states. The proposed regional haze plan for Alabama was out for FLM and EPA discussions in the November to December 2007 period. Alabama subsequently modified the plan to address FLM comments received in 2007 and provided the revised plan for full public comment in the March to April 2008 time period. On the initial November 2007 draft plan, the FLM comments expressed concern regarding the State's proposal to use the glidepath data points as the RPGs for the best and worst days at the Sipsey Wilderness Area instead of the modeled levels, stating this does not meet the RHR. The State corrected this approach in the proposed plan issued for public comment. The FLMs requested that Alabama add more information from the appendices into the main body of the SIP submittal regarding the impacts of sources outside of the State on the Sipsey Wilderness Area and the impacts of Alabama sources on out-of-state Class I areas. The State augmented the SIP narrative with the requested information in the proposed plan issued for public comment. To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), ADEM made a commitment in the SIP to ongoing consultation with the FLMs on regional haze issues throughout implementation of its plan. ADEM also affirms in the SIP that FLM consultation is required for those sources subject to the State's NSR regulations.

G. Periodic SIP Revisions and Five-Year Progress Reports

As summarized in section IV.D of this action, consistent with 40 CFR 51.308(g), ADEM affirmed its commitment to submitting a progress

report in the form of a SIP revision to EPA every five years following the initial submittal of the Alabama regional haze SIP. The report will evaluate the progress made towards the RPGs for the mandatory Class I area located within Alabama and within each mandatory Class I area located outside Alabama which may be affected by emissions from within Alabama. ADEM also offered recommendations for several technical improvements that, as funding allows, can support the State's next LTS. These recommendations are discussed in detail in the Alabama submittal in Appendix K.

If another state's regional haze SIP identifies that Alabama's SIP needs to be supplemented or modified, and if, after appropriate consultation Alabama agrees, today's action may be revisited or additional information and/or changes will be addressed in the five-year progress report SIP revision.

V. What action is EPA taking?

EPA is proposing a limited approval of a revision to the Alabama SIP submitted by the State of Alabama on July 15, 2008, as meeting some of the applicable regional haze requirements as set forth in sections 169A and 169B of the CAA and in 40 CFR 51.300–308, as described previously in this action. Also in this action, EPA is proposing to rescind the federal regulations in 40 CFR 52.61 that were approved into the Alabama SIP on November 24, 1987, and to rely on the provisions in Alabama's July 15, 2008, SIP submittal to meet the LTS requirements for RAVI at 40 CFR 51.306.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co., v. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act (UMRA)

Under sections 202 of the UMRA of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's proposal does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve pre-existing requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal

governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: February 15, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–4689 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2012–0153, FRL–9638–3]

Approval and Promulgation of Air Quality Implementation Plans; State of Missouri; Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval of a revision to the Missouri State Implementation Plan (SIP) submitted by the State of Missouri through the Missouri Department of Natural Resources (MDNR) on August 5, 2009, and supplemental information submitted on January 30, 2012, that addresses regional haze for the first implementation period. This revision addresses the requirements of the Clean Air Act (CAA or ''Act'') and EPA's rules that require states to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of this SIP revision to implement the regional haze requirements for Missouri on the basis that the revision, as a whole, strengthens the Missouri SIP. In a separate action EPA has previously proposed a limited disapproval of the Missouri regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District Court of Columbia (DC Circuit) to the EPA of the Clean Air Interstate Rule (CAIR). *See* 76 FR 82219. Therefore, we are not taking action in this notice to address the State's reliance on CAIR to meet certain regional haze requirements.

DATES: Comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2012–0153 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: wolfersberger.chris@epa.gov.*

3. *Fax:* 913–551–7884 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments.

4. *Mail:* Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; attention Chrissy Wolfersberger.

5. *Hand Delivery or Courier:* Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; attention Chrissy Wolfersberger. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 5 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R07–OAR–2012–0153. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *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 email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or

viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 5 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chrissy Wolfersberger, Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. Chrissy Wolfersberger can be reached at telephone number (913) 551–7864 and by electronic mail at *wolfersberger.chris@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. What action is EPA proposing?

EPA is proposing a limited approval of Missouri's August 5, 2009, SIP revision, including supplemental information submitted on January 30, 2012, addressing regional haze under CAA sections 301(a) and 110(k)(6) because the revision as a whole strengthens the Missouri SIP. This proposed rulemaking and the accompanying Technical Support Document [1] (TSD) explain the basis for EPA's proposed limited approval action.[2]

In a separate action, EPA has proposed a limited disapproval of the Missouri regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. 76 FR 82219. We are not proposing to take action in today's rulemaking on issues associated with Missouri's reliance on CAIR in its regional haze SIP. Comments on our proposed limited disapproval of Missouri's regional haze SIP may be directed to the docket for that rulemaking, Docket ID No. EPA–HQ–OAR–2011–0729.

[1] EPA's TSD to this action, entitled, ''*Technical Support Document for Missouri Regional Haze Submittal,*'' is included in the public docket for this action.

[2] Under CAA sections 301(a) and 110(k)(6) and EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient and prevent EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range [3] in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [4] which impairment

[3] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[4] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks

Continued

results from man-made air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment''. 45 FR 80084. These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in Section III of this preamble. The requirement to submit a regional haze SIP applies to all 50 States, the District of Columbia and the Virgin Islands.[5] 40 CFR 51.308(b) requires States to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among States, tribal governments and various Federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the States and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their States and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of particulate matter (PM) and other pollutants leading to regional haze.

The Central Regional Air Planning Organization (CENRAP) RPO is a collaborative effort of State governments, tribal governments, and various Federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Central United States. Member State and tribal governments include: Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas, Oklahoma, Kansas, Nebraska, Leech Lake Band of Ojibwe, Mille Lacs Band of Ojibwe, Fond du Lac Reservation, Grand Portage Band of Chippewa Indians, Red Lake Band of Chippewa Indians, Lower Sioux Indian communities, Alabama-Coushatta Tribe of Texas, United Keetowah Band of Cherokee Indians, Eastern Shawnee Tribe of Oklahoma, Kialegee Triabal Town, Absentee Shawnee Tribe of Oklahoma, Qua Paw Tribe, Santee Sioux Nation, Prairie Band Potawatomi Nation, Sac and Fox Nation of Missouri, and the Winnebago Tribe of Nebraska.

III. What are the requirements for regional haze SIPs?

A. The CAA and the RHR

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require states to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determinations of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric or unit for expressing visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility expressed in dv is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The dv is a more useful measure for tracking progress in improving visibility than light extinction itself because each dv change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one dv.[6]

The dv is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, states must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each ten-year implementation period. To do this, the RHR requires States to determine the

that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[5] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

[6] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, States must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to States regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) ten-year implementation period. The RHR does not mandate specific milestones or rates of progress, but instead calls for States to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) ten-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in EPA's RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the ten-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which States are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each State with one or more Class I areas (''Class I state'') must also consult with potentially ''contributing states,'' i.e., other nearby States with emission sources that may be affecting visibility impairment at the Class I State's areas. 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs states to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [7] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the State. Under the RHR, states are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist States in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a State must use the approach set forth in the BART Guidelines. A State is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that States should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a

[7] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the State should not be higher than 0.5 dv.

In their SIPs, States must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a State has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP. CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows States to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than BART. Under regulations issued in 2005 revising the regional haze program, EPA made just such a demonstration for CAIR. 70 FR 39104 (July 6, 2005). EPA's regulations provide that States participating in the CAIR cap-and trade program under 40 CFR part 96 pursuant to an EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4). Because CAIR is not applicable to emissions of PM, States were still required to conduct a BART analysis for PM emissions from EGUs subject to BART for that pollutant. Challenges to CAIR, however, resulted in the remand of the rule to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008). EPA issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the States in which the Transport Rule applies. 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow States to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not taken final action on that rule. Also on December 30, 2011, the DC Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the DC Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer the CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that States include in their regional haze SIP a ten- to fifteen-year strategy for making reasonable progress, 40 CFR 51.308(d)(3) of the RHR requires that States include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a State will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the State. 40 CFR 51.308(d)(3).

When a State's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the RHR requires the impacted state to coordinate with the contributing States in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing State must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, States must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the State's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 40 CFR 51.308(b) and (c). On or before this date, the State must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze, and the State must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a State's LTS must report on both regional

haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

40 CFR 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the State. The strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a State with mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas both within and outside the State;
- Procedures for using monitoring data and other information in a State with no mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas in other States;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A State must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every ten years thereafter. Periodic SIP revisions must meet the core requirements of 40 CFR 51.308(d), with the exception of BART. The requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of 40 CFR 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that States consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least sixty days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a State must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of Missouri's regional haze submittal?

On August 5, 2009, MDNR's Air Pollution Control Program submitted revisions to the Missouri SIP to address regional haze in the State's Class I areas as required by EPA's RHR.

A. Affected Class I Areas

Missouri has identified two Class I areas within its borders: Hercules Glades Wilderness Area and Mingo National Wildlife Refuge. Because both areas lie within Missouri's geographic boundaries, Missouri is responsible for developing a regional haze SIP that addresses these Class I areas. EPA proposes to approve Missouri's identification of affected Class I areas. Missouri determined appropriate RPGs and consulted with other States that impact the two Class I areas. Missouri is responsible for developing long-term emission strategies, its role in the consultation process, and how the Missouri SIP meets the other requirements in EPA's regional haze regulations.

The Missouri regional haze SIP establishes RPGs for visibility improvement at each of these Class I areas and a LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the LTS for each area, Missouri considered both emission sources inside and outside of Missouri that may cause or contribute to visibility impairment in Missouri's Class I areas. The State also identified and considered emission sources within Missouri that may cause or contribute to visibility impairment in Class I areas in neighboring states as required by 40 CFR 51.308(d)(3). The CENRAP RPO worked with the State in developing the technical analyses used to make these determinations, including State-by-State contributions to visibility impairment in specific Class I areas, which included the two areas in Missouri and Caney Creek and Upper Buffalo Wilderness Areas in Arkansas.

B. Determination of Baseline, Natural, and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, Missouri calculated baseline/current and natural visibility conditions for each of its Class I areas, as summarized below (and as further described in sections III.B.1 and III.B.2. of EPA's TSD to this **Federal Register** action).

1. Estimating Natural Visibility Conditions

Natural background visibility, as defined in EPA's 2003 Natural Visibility Guidance, is estimated by calculating the expected light extinction using default estimates of natural concentrations of fine particle components adjusted by site-specific estimates of humidity. This calculation uses the IMPROVE equation, which is a formula for estimating light extinction from the estimated natural concentrations of fine particle components (or from components measured by the IMPROVE monitors). As documented in EPA's 2003 Natural Visibility Guidance, EPA allows states to use ''refined'' or alternative approaches to 2003 EPA guidance to estimate the values that characterize the natural visibility conditions of the Class I areas. One alternative approach is to develop and justify the use of alternative estimates of natural concentrations of fine particle components. Another alternative is to use the ''new IMPROVE equation'' that was adopted for use by the IMPROVE

Steering Committee in December 2005.[8] The purpose of this refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction. Missouri opted to use the default estimates for natural conditions for the 20 percent best days while using the ''new IMPROVE equation,'' for the 20 percent worst days for its two Class I areas described in Table 1 below. Using this approach, natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by CENRAP.

The new IMPROVE equation takes into account the most recent review of the science [9] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations.

2. Estimating Baseline Conditions

Missouri estimated baseline visibility conditions at the Hercules Glades Wilderness area (Hercules Glades) using monitoring data from the Hercules Glades IMPROVE monitoring site. Missouri estimated the baseline visibility conditions at the Mingo National Wildlife Refuge (Mingo) using the Mingo IMPROVE monitoring site. As explained in Section III. B., for the first regional haze SIP, baseline visibility conditions are the same as current conditions. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days at each Missouri Class I area. *See* page 2–8 of EPA's 2003 Tracking Progress Guidance. Table 1 below specifies the 20 percent best and worst days for the baseline period of 2000–2004 for Hercules Glades and Mingo.

3. Summary of Baseline and Natural Conditions

For the Hercules Glades Class I area, baseline visibility conditions on the 20 percent worst days are approximately 26.75 dv. For the Mingo Class I area, baseline visibility conditions on the 20 percent worst days are approximately 28.02 dv. Natural visibility conditions for the Mingo Class I area is best represented by 12.40 dv for the 20 percent worst days. The Hercules Glades Wilderness Class I area is best represented by 11.30 dv for the 20 percent worst days. The natural and baseline conditions for Missouri's Class I areas for both the 20 percent worst and best days are presented in Table 1 below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR THE MISSOURI CLASS I AREAS

Class I area	Average for 20% worst days (dv)	Average for 20% best days (dv)
Natural Background Conditions:		
Mingo	12.40	3.59
Hercules Glades	11.30	3.59
Baseline Visibility Conditions (2000–2004):		
Mingo	28.02	13.76
Hercules Glades	26.75	12.84

EPA proposes to approve Missouri's determination of baseline and natural conditions.

4. Uniform Rate of Progress

In setting the RPGs, Missouri considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glidepath.

The State's implementation plan presents two sets of graphs, one for the 20 percent best days, and one for the 20 percent worst days, for its two Class I areas. (Figures 8.1 and 8.2 of the Missouri SIP). Missouri constructed the graph for the worst days (i.e., the glidepath) in accordance with EPA's 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of visibility conditions representing no anthropogenic impairment in 2064 for its two areas. For the best days, the graph includes a horizontal, straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. Missouri's SIP shows that the State's RPGs for its areas provide for improvement in visibility for the 20

[8] The IMPROVE program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal agencies (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing anthropogenic visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[9] The science behind the revised IMPROVE equation is summarized in Appendix B.2 of the Missouri Regional Haze submittal and in numerous published papers. *See* for example: Hand, J.L., and Malm, W.C., 2006, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report.* March 2006. Prepared for Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, Colorado. *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm;* and Pitchford, Marc., 2006, *Natural Haze Levels II: Application of the New IMPROVE Algorithm to Natural Species Concentrations Estimates.* Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup. September 2006 *http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best days over the same period, in accordance with 40 CFR 51.308(d)(1).

For the Hercules Glades Class I area, the overall visibility improvement necessary to reach natural conditions is the difference between baseline visibility of 26.75 dv for the 20 percent worst days and natural conditions of 11.30 dv, i.e., 15.45 dv. Over the sixty-year period from 2004 to 2064, this would require an average improvement of 0.258 dv per year to reach natural conditions. Hence, for the first fourteen-year implementation period from 2004 to 2018, in order to achieve visibility improvements at least equivalent to the uniform rate of progress for the 20 percent worst days at Hercules Glades, Missouri would need to achieve at least 3.61 dv (i.e., 0.258 dv × 14 years = 3.61 dv) of visibility improvement from the 26.75 dv baseline in 2004, resulting in visibility levels at or below 23.14 dv in 2018. As discussed below in section IV. C, ''Reasonable Progress Goals,'' Missouri projects a 3.69 dv improvement to visibility from the 26.75 dv baseline to 23.06 dv in 2018 for the 20 percent most impaired days, and a 0.89 dv improvement to 11.95 dv from the baseline visibility of 12.84 dv for the 20 percent least impaired days.

For the Mingo Class I area, the overall visibility improvement necessary to reach natural conditions is the difference between baseline visibility of 28.02 dv for the 20 percent worst days and natural conditions of 12.40 dv, i.e., 15.62 dv. Over the sixty-year period from 2004 to 2064, this would require an average improvement of 0.260 dv per year to reach natural conditions. Hence, for the first fourteen-year implementation period from 2004 to 2018, in order to achieve visibility improvements at least equivalent to the uniform rate of progress for the 20 percent worst days at Mingo, the State would need to achieve at least 3.64 dv (i.e., 0.260 dv × 14 years = 3.64 dv) of visibility improvement from the 28.02 dv baseline in 2004, resulting in visibility levels at or below 24.37 dv in 2018. As discussed below in section IV. C, ''Reasonable Progress Goals,'' Missouri projects a 4.31 dv improvement to visibility from the 28.02 dv baseline to 23.71 dv in 2018 for the 20 percent most impaired days, and a 0.92 dv improvement to 12.84 dv from the baseline visibility of 13.76 dv for the 20 percent least impaired days.

EPA proposes to approve Missouri's determination of the uniform rate of progress for its Class I area.

C. Determination of Reasonable Progress Goals (RPGs)

Missouri has established RPGs for its Class I areas for the first ten year period of the plan. The RPGs provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. As described above in the Uniform Rate of Progress discussion and further detailed in the TSD for today's action, Missouri has determined that the modeled rate of visibility improvement by 2018, shown in Table 2 below, is reasonable and has adopted it as the RPG for the listed Class I areas. The RPGs demonstrate that Missouri's visibility impact will be below the uniform rate of progress necessary to achieve natural visibility for the 20 percent worst days by the year 2064. Additionally, the modeled impact on the 20 percent best days shows no degradation from baseline conditions. The modeling inputs, methodologies, and consideration of controls are further described in the Long-Term Strategy section under IV.E. below.

TABLE 2—2018 REASONABLE PROGRESS GOALS

Class I area	Baseline conditions, 20% worst days (dv)	2018 URP	2018 Modeled 20% worst days (goals)	Baseline conditions, 20% best days (dv)	2018 Modeled 20% best days
Mingo	28.02	24.37	23.71	13.76	12.84
Hercules Glades	26.75	23.14	23.06	12.84	11.95

NOTE: All units are in deciviews.

In establishing the RPGs for Missouri's Class I areas, the State took into consideration the four statutory factors identified from 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. Missouri demonstrates that these four factors were applied in determining control strategy options for all source categories including point sources, area sources, on-road mobile sources, and off-road mobile sources, which are also included in the State's Long-Term Strategy analysis described in section IV. E of this notice. That section identifies the control measures Missouri is relying upon to achieve the RPGs. In addition to these four factors, other related CAA related programs were evaluated to determine what effect these programs have had or will have on existing and future sources, and if any other control strategies would be reasonable in terms of the four factors described above. For most sources, the State determined that CAA programs or rules such as NSR permitting, NSPS standards, MACT standards, on-road and off-road engine standards, Clean Air Interstate Rule, fuel standards, and various State rules were reasonable, and for these sources no other measures were deemed appropriate based on the four factors. In addition, if other reasonable control strategies are identified for these sources that contribute to visibility impairment, beyond those implemented through this plan, the State has committed to incorporate such strategies into future SIP revisions to be considered along with the five-year progress reports.

To demonstrate that it properly analyzed the four factors, Missouri relies upon the following: (1) An independent analysis completed by Missouri; (2) a cost analysis by CENRAP; (3) a published report by the Minnesota Pollution Control Agency; and (4) a description of the cost-effectiveness and visibility impacts from the Clean Air Interstate Rule on Missouri's Class I areas. Further detailed information is provided in the TSD for today's action, as well as in the State's SIP.

Missouri's independent analysis primarily discusses the adequacy of its current New Source Review permitting process in addressing visibility impacts of new sources, and also provides a statewide point source emissions analysis in consideration of the four factors. Missouri describes that when the State performs a BACT analyses for

new sources, the State takes into account the same four factors that are required for developing control strategies under a Regional Haze State Implementation Plan. Additionally, all new stationary emission sources are required to obtain a construction permit prior to commencing construction and must ensure that no significant degradation to visibility in Class I areas will occur. For EGU sources, Missouri relies upon CAIR as part of its four factor analysis to demonstrate that ongoing air pollution control programs are sufficient to meet the 2018 Uniform Rate of Progress for the Missouri Class I areas. For existing non Electric Generating Units (non-EGU) sources, the State demonstrates through a four factor analysis that existing SIP requirements that cover broad non-EGU emission source categories adequately address visibility impacts in Missouri's Class I areas. Missouri reached this conclusion by analyzing non-EGU point sources emitting greater than 50 tons per year of NO_X, SO_2, and PM_{10}. Missouri removed from consideration sources that had already undergone a refined modeling BART analysis or were located in the St. Louis $PM_{2.5}$ nonattainment area, where sources had recently been subject to a RACT/RACM analysis as part of the development of the attainment plan. Missouri used two different methods to analyze the emissions from these remaining sources. The first was to demonstrate on a mass basis, that the level of emissions from these sources were not likely to have a significant impact on visibility impairment on Missouri's Class I areas. Thus, Missouri determined that researching and analyzing new control requirements for these sources would not be noticeably beneficial to visibility in either of Missouri's Class I areas. For the second, the State conducted a Q/D review of these sources, which is an acceptable screening tool for BART sources, that considers a source's annual emissions in relationship to the distance from Class I areas. As a result of this analysis, Missouri identified five sources that required further examination: Royal Oak Enterprises; Aqualon Division of Hercules; Lone Star Industries; Chemical Lime Company; and Natural Gas Pipeline Company. Missouri determined that additional controls for these sources were not warranted for one of the following reasons: (1) Recent permit revisions limit the pollutant of concern; (2) implementation of a compliance agreement that requires the shutdown of emissions units coupled with operation limits on remaining units; (3) a recent BACT analysis was undertaken; or (4) cost effective controls were not available and the units are nearing the end of their useful life. A more in-depth discussion of Missouri's approach is provided in the State's technical supplement and EPA's TSD.

In addition, the State also relied upon a cost analysis provide by the CENRAP RPO that examined the availability of controls in the CENRAP states that impact visibility in Hercules Glades and Mingo. The analysis primarily looked at controls on EGUs, industrial, commercial and institutional (ICI) boilers, internal combustion engines, and cement kilns. Most of the Missouri facilities identified in the analysis were EGUs already participating in federal CAIR rule. The State considered but did not adopt the recommendations for additional controls for non-EGUs due to one or more of the following reasons:

- Proposed controls are not cost effective
- Emissions from sources within the source category are below a threshold limit of 100 tons
- Sources passed the BART screening analysis
- Sources already installed controls required by the NO_X SIP Call.

In addition to the CENRAP analyses, the MRPO and the Minnesota Pollution Control Agency published a report on the four-factor analysis (referred to as the ''4-factor report'' in the docket). The report examined the factors in a nine-state area (Minnesota, Wisconsin, Michigan, Indiana, Illinois, Missouri, Iowa, North Dakota, and South Dakota.). The 4-factor report primarily reviewed controls on EGUs; ICI boilers; reciprocating engines and turbines, and mobile sources. Missouri has determined based on the cost of compliance and remaining useful life of these sources, that additional controls are not reasonably available for non-EGU sources in the development of RPGs in Missouri. Missouri specifically concludes from the report that additional controls from ICI boilers, reciprocating engines, combustion turbines and other point sources are not warranted based on cost of controls and visibility improvement. Missouri determined that for EGUs, emission reductions predicted to result from CAIR would be sufficient for ensuring reasonable progress during the first implementation period (between baseline and 2018).

EPA proposes to find that Missouri has appropriately established goals that provide for reasonable progress towards achieving natural visibility conditions. The goals provide for an improvement in visibility for the most impaired days over the period of the plan and ensure no degradation in visibility over the same period. In addition, the State has demonstrated consideration of the four statutory factors, consistent with EPA guidance, in developing the RPGs.

D. BART

BART is an element of Missouri's LTS for the first implementation period. The BART evaluation process consists of three components: (a) An identification of all the BART-eligible sources; (b) an assessment of whether the BART-eligible sources are subject to BART; and (c) a determination of the BART controls. These components as addressed by Missouri and Missouri's findings are discussed as follows.

1. BART-Eligible Sources

The first phase of a BART evaluation is to identify all the BART-eligible sources within the State's boundaries. Missouri identified its BART-eligible sources by utilizing the three eligibility criteria in the BART Guidelines (70 FR 39158) and EPA's regulations (40 CFR 51.301): (1) One or more emission units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) emission unit(s) was construction on or after August 6, 1962, and was in existence prior to August 6, 1977; and (3) potential emissions of any visibility-impairing pollutant from subject units are 250 tons or more per year.

The BART Guidelines also direct states to address SO_2, NO_X and direct PM (including both PM_{10} and $PM_{2.5}$) emissions as visibility-impairment pollutants, and to exercise judgment in determining whether VOC or ammonia emissions from a source impair visibility in an area. 70 FR 39160.

Missouri analyzed anthropogenic emissions for both VOC and NH_3 during their emission inventory review and determined that these pollutants from the State's point sources are not anticipated to cause or contribute significantly to any impairment of visibility in Class I areas and should be exempt for BART purposes. Missouri listed the following reasons for not performing a further analysis on these pollutants after the emission inventory review: (1) The majority of VOC emissions in Missouri are biogenic in nature and specifically the areas near Mingo and Hercules Glades are very rich in biogenic emissions (limited ability to reduce organic concentrations at the Class I areas); (2) the largest areas of anthropogenic VOC emissions in Missouri exist in the metropolitan areas (St. Louis and Kansas City) where VOC emission control has been undertaken to address ozone attainment issues

(meaning large VOC sources have already been controlled); (3) the other category that would have substantial, uncontrolled VOC emissions is charcoal kilns, Missouri required existing charcoal kilns to install afterburners or shutdown noncompliant kilns as a result of 10 CSR 10–6.330; (4) the overall ammonia inventory is very uncertain and the amount of anthropogenic emissions at the sources that were BART-eligible was relatively small; and (5) no additional sources were identified that had greater than 250 tons per year NH_3 and required a subsequent BART analysis. After reviewing their sources the State found 27 BART-eligible sources. These sources are listed in Table 3 below.

TABLE 3—FACILITIES WITH BART-ELIGIBLE UNITS IN THE STATE OF MISSOURI

BART source category name	SIC code	Facility ID	Facility name	BART-eligible emission units
Fossil-fuel fired steam electric plants of more than 250 MMBTU (1).*	4911	29–071–0003	Ameren-Labadie	Boiler 1—B1, Boiler 2—B2, Boiler 3—B3, and Boiler 4—B4
(1)*	4911	29–183–0001	Ameren-Sioux	Boiler 1—B1 and Boiler 2—B2
(1)*	4911	29–099–0016	Ameren-Rush Island	Boiler 1—B1 and Boiler 2—B2
(1)*	4911	29–095–0031	Aquila-Sibley	Boiler 3—5C
(1)*	4911	29–143–0004	Associated Electric-New Madrid	Boiler 1—EP–01 and Boiler 2—EP—02
(1)*	4911	29–077–0039	City Utilities Springfield-Southwest	Boiler 1—E09
(1)*	4911	29–077–0005	City Utilities Springfield-James River.	Utility Boiler #4—E07 and Utility Boiler #5—E08
(1)*	4911	29–097–0001	Empire District Electric-Asbury	Boiler—7
(1)*	4911	29–083–0001	Kansas City Power and Light-Montrose.	Boiler Unit 3—EP08
(1)*	4911	29–021–0004	Aquila-Lake Road	Boiler 6—EP06
(1)*	4911	29–175–0001	Associated Electric-Thomas Hill	Boiler 1—EP–01 and Boiler 2—EP–02
(1)	4911	29–095–0021	Trigen-Kansas City	Boiler 1A
(1)	4911	29–019–0002	City of Columbia Municipal Power Plant.	Boiler #7—EP02
(1)	4911	29–195–0010	Marshall Municipal Utilities	Coal-Fired Boiler—EP05
(1)	4911	29–095–0050	Independence Power and Light-Blue Valley.	Boiler #3—EP05
Portland cement plants (4)	3241	29–099–0002	RC Cement	4–K–02 (Kiln)
(4)	3241	29–173–0001	Continental Cement	KP01 (Kiln)
(4)	3241	29–163–0001	Holcim-Clarksville	Kiln—EP14 and a variety of supporting units
Primary aluminum ore reduction plants (7).	3334	29–143–0008	Noranda Aluminum	Potlines 1 & 2—EP–59, 60, & 61, Carbon Bake 1 and 2 Stacks—EP 98 & 99, and a variety of supporting units**
Hydrofluoric, sulfuric, and nitric acid plants (10).	2873	29–163–0031	Dyno Nobel-Lomo Plant	Ammonia Oxidation Process—E01
Lime plants (12)	3274	29–186–0001	Mississippi Lime	Peerless Rotary Kilns 3, 4, 5 & 6—EP–68–71
Primary lead smelters (17)	3339	29–099–0003	Doe Run-Herculaneum	Blast Furnace—EP059
(17)	3339	29–093–0008	Doe Run-Glover	Sinter Plant—EP–01 and Other Units at the facility
Secondary metal production facilities (20).	3341	29–087–0001	Exide Technologies	Main Stack—EP01
(20)	3339	29–093–0009	Doe Run-Buick	Main Stack—EP08
Chemical Process Plants (21)	2879	29–127–0001	BASF Corporation	PR08—HNO_3 Storage Tank, PR53/54 Incinerators, TC01 Incinerator, UTIL07—2 Gas-fired boilers
Fossil-fuel boilers >250 MMBTUs per hour (22).	4911	29–019–0004	University of Missouri-Columbia	Boiler 10

* BART-eligible EGU units included in the CAIR assumed to be BART for SO_2 and NO_X.

EPA is proposing to find that the State appropriately identified its BART-eligible sources in accordance with 40 CFR 51.308(e)(1)(i) of the Regional Haze Rule and the BART Guidelines.

2. BART-Subject Sources

The second phase of the BART evaluation is to identify those BART-eligible sources that may reasonably be anticipated to cause or contribute to visibility impairment at any Class I area, i.e. those sources that are subject to BART. The BART Guidelines allow States to consider exempting some BART-eligible sources from further BART review because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area. Consistent with the BART Guidelines, Missouri required each of its BART-eligible sources to develop and submit dispersion modeling to assess the extent of their contribution to visibility impairment at surrounding Class I areas or Missouri performed the analysis for the source.

a. Modeling Methodology

The BART Guidelines allow states to use the CALPUFF [10] modeling system or another appropriate model to predict the visibility impacts from a single source on a Class I area and to therefore, determine whether an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas, i.e., ''is subject to BART''. The Guidelines state that EPA believes CALPUFF is the best regulatory modeling application currently available for predicting a single source's contribution to visibility impairment (70 FR 39162). Missouri, in coordination with CENRAP, used the CALPUFF modeling system to determine whether individual sources in Missouri were subject to or exempt from BART.

The BART Guidelines also recommend that States develop a modeling protocol for making individual source attributions, and suggest that states may want to consult with EPA and their RPO to address any issues prior to modeling. The CENRAP States, including Missouri, developed a ''Protocol for the Application of CALPUFF for BART Analyses.'' Stakeholders, including EPA, FLMs, industrial sources, trade groups, and other interested parties, actively participated in the development and review of the CENRAP protocol.

Missouri performed an initial screening CALPUFF analysis for the BART-eligible sources on the two Class I area's within the State along with Upper Buffalo in Arkansas and Mammoth Cave in Kentucky, depending on the individual source location. The screening runs took the maximum visibility impacts and compared them to the contribution threshold discussed below. Those sources with a maximum impact below the contribution threshold were excluded from additional BART analysis based on their minimal visibility impacts.

b. Contribution Threshold

For States using modeling to determine the applicability of BART to single sources, the BART Guidelines note that the first step is to set a contribution threshold to assess whether the impact of a single source is sufficient to cause or contribute to visibility impairment at a Class I area. The BART Guidelines state that, ''A single source that is responsible for a 1.0 dv change or more should be considered to 'cause' visibility impairment.'' The BART Guidelines also state that ''the appropriate threshold for determining whether a source 'contributes to visibility impairment' may reasonably differ across states,'' but, ''[a]s a general matter, any threshold that you use for determining whether a source 'contributes' to visibility impairment should not be higher than 0.5 dv.'' The BART Guidelines affirm that States are free to use a lower threshold if they conclude that the location of a large number of BART-eligible sources in proximity of a Class I area justifies this approach.

Missouri used a contribution threshold of 0.5 dv for determining which sources are subject to BART as there are a limited number of BART-eligible sources in close proximity to each of the State's Class I areas. EPA agrees with the State's rationale for choosing this threshold value. For the Missouri sources that were shown to be impacting the Class I areas, Missouri demonstrated that they were located far from the Class I area and that the majority of the individual BART-eligible sources had visibility impacts well below 0.5 d.

c. Identification of Sources Subject to BART

Missouri initially identified twenty seven facilities with BART-eligible sources. Missouri chose to use multiple methods to exclude sources from a full BART demonstration. Missouri grouped their sources into four categories. The first category included the EGU sources that relied on CAIR to satisfy the BART requirements for SO_2 and NO_X, in accordance with 40 CFR 51.308(e)(4). Prior to the CAIR remand, the State's reliance on CAIR to satisfy BART for NO_X and SO_2 for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). As explained above, we are not proposing to take action in today's rulemaking on issues associated with Missouri's reliance on CAIR in its regional haze SIP, including BART for SO_2 and NO_X for EGUs. In a separate action, EPA has previously proposed a limited disapproval of Missouri's regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (DC Circuit) to EPA of CAIR *See,* 76 FR 82219.

Given Missouri's reliance on CAIR to address the BART requirements for SO_2 and NO_X, these facilities were only required to evaluate PM emissions in their BART determinations. These sources were modeled collectively for PM only and the modeling demonstrated that the group of EGU sources as a whole contributed less than the 0.5 dv contribution threshold for PM. Based on this analysis the State excluded this group of sources from being BART-subject for PM.

The second group of sources was those where the BART unit was permanently shut down or where the source no longer had an operating permit for the BART unit. These sources were excluded from further BART analysis because the units in question would have to perform a BACT analysis before resuming operations. The third group consisted of a single source that had undergone a recent permit that required a BACT review. Missouri performed a refined CALPUFF demonstration eliminating this source from further BART analysis based on modeled visibility impacts less than the 0.5 dv threshold. Missouri conducted a refined BART modeling analysis using CALPUFF for the fourth group of sources made up of the eight remaining sources. The sources are University of Missouri-Columbia, Noranda, BASF Corporation-Palmyra, Independence Power and Light-Blue Valley, Columbia Municipal Power Plant, Marshall Municipal Utilities, Doe Run Buick, and Holcim-Clarksville. Using the modeling methodology described above, Missouri excluded all but one source, Holcim-Clarksville, from being BART-subject based on modeled visibility impacts below 0.5 dv. The full description of the process Missouri used to identify BART-subject sources is included in section K of the TSD.

After review of the State's method for determining BART-subject sources and the refined analysis of those sources, EPA is proposing to find that the State appropriately identified all of the sources in the State that are BART-subject in accordance with 40 CFR 51.308(e)(1)(ii) the Regional Haze Rule and the BART Guidelines.

3. BART Determinations

In making BART determinations, CAA section 169A(g)(2) and 40 CFR 51.308(e)(1)(ii)(A) require that States consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of

[10] Note that our reference to CALPUFF encompasses the entire CALPUFF modeling system, which includes the CALMET, CALPUFF, and CALPOST models and other pre and post processors. The different versions of CALPUFF have corresponding versions of CALMET, CALPOST, etc. which may not be compatible with previous versions (e.g., the output from a newer version of CALMET may not be compatible with an older version of CALPUFF). The different versions of the CALPUFF modeling system are available from the model developer on the following Web site: *http://www.src.com/verio/download/download.htm.*

improvement in visibility which may reasonably be anticipated to result from the use of such technology. This five step analysis is commonly referred to as a ''five factor analysis.''

As stated above, Missouri only had one BART source, Holcim-Clarksville, that required a full five factor analysis. As described above and in detail in the TSD, the remaining subject to BART sources were either included in CAIR or have been exempted from a BART analysis due to lack of visibility impacts above the contribution threshold, eligible units were shutdown, or BACT had been applied.

For Holcim-Clarksville, Missouri required the source to submit a full BART analysis which considered the five factors. Holcim submitted three separate BART analyses, the first in April 2008 with revised submittals in June and July 2008. The submittals addressed the five factors including looking at the various available control options for SO_2 and NO_X control. For SO_2, three technically feasible options were identified, wet lime scrubbing, fuel substitution and dry lime scrubbing. For NO_X, two feasible control technologies were identified: mid-kiln firing and selective noncatalytic reduction.

For SO_2, wet lime scrubbing could provide reductions of 95 percent resulting in actual SO_2 reductions of 10,326 tons/yr at a cost of $2,428/ton of SO_2 removed. Visibility modeling of this control technology was performed assuming a 87.5 percent control efficiency resulting in modeled visibility improvements between 0.4–0.53 dv at the three Class 1 areas evaluated. Dry lime scrubbing (DLS) was also evaluated using control efficiencies estimated up to 30 percent resulting in actual reductions of 3,272 tons/yr at a cost of $4,500/ton of SO_2 removed. DLS was modeled assuming a control efficiency of 25 percent resulting in visibility improvements of 0.11–0.14 dv at the three Class 1 areas evaluated. Fuel substitution provided 23–50 percent control, depending on the substitute fuel chosen. Reductions of actual SO_2 emissions between 2,641 tons and 5,741 tons could be achieved at a cost of $1,489/ton to $4,741/ton SO_2 reduced. Visibility improvements at the three Class I areas ranged from 0.09–0.14 dv using the 23 percent reduction to 0.23–0.31 dv using a 45 percent reduction.

For NO_X both mid-kiln firing and selective noncatalytic reduction were identified as viable control options. Low-NO_X burners, Cement Kiln Dust Insufflation, and Synfuel were noted as controls already used at the plant. Both mid-kiln firing and selective noncatalytic reduction were estimated to provide emissions reductions of 20 percent resulting in actual NO_X reductions of 1,283 tons/yr. The mid-kiln firing was estimated to cost $464/ton while selective noncatalytic reduction was estimated to cost approximately $2,200/ton. With identical control efficiencies both options result in modeled visibility improvements of 0.01–0.09 dv at the three Class I areas evaluated.

Missouri comprehensively reviewed the source's three BART analyses and determined that the mid-kiln firing of tires (using 12 percent total heat input substitution) and a switch from petroleum coke as the primary kiln fuel to 3 percent sulfur coal (along with the tire derived fuel for NO_X control) would constitute BART for this source. For the SO_2 control, Missouri eliminated the two scrubbing options based on cost per ton of cement produced (~$15–20/ton produced.) The cost of the selected control for SO_2 reductions was calculated at $1,148/ton or about $3/ton cement produced. For NO_X the State was concerned with the use of SNCR on the wet kiln and the MKF option provided the same control effectiveness. Thus, Missouri decided the certainty of reductions associated with mid-kiln firing coupled with the existing controls at the facility was the best option after considering cost and certainty of available controls as provided by the kiln designer. As part of the BART analysis, Missouri required the source to pursue more aggressive emission limits than originally recommended based on the cost analysis of feasible controls. The required controls will result in a 20 percent reduction of NO_X and a 27 percent reduction of SO_2 from the maximum thirty-day average emissions using the CEM data. The full description of the BART analysis for Holcim-Clarksville is included in the TSD accompanying this notice.

To incorporate the emission rates, compliance schedule, monitoring, recordkeeping, reporting, and enforceability requirements, as defined by the CAA and Federal regulations promulgated at 40 CFR 51.308(e)(1)(iv) and (v) as well as the BART Guidelines, the State entered into a Consent Agreement with Holcim-Clarksville on April 19, 2009. The Consent Agreement was submitted to EPA for SIP approval as part of the State's RH SIP submittal (Appendix S), which EPA is proposing to approve in this notice. The Consent Agreement is enforceable by the State, and upon approval into the State's SIP, is enforceable by EPA. The emission rates, or work practices, included in the Consent Agreement are summarized below. The Consent Agreement requires the Holcim-Clarksville Plant kiln system (Emission Point ID EP–14 main kiln stack) to meet the following rates, or work practices, within four years after the EPA approves the State's RH SIP or expeditiously as practicable:

(1) NO_X—42,287 lb/day using a thirty day rolling average.

(2) SO_2—58,787 lb/day using a thirty day rolling average.

(3) The facility must monitor using existing CEMS.

(4) The facility must comply with 40 CFR, part 60, appendix F or an equivalent procedure for quality assurance demonstrations of the CEMS.

(5) The facility must retain records demonstrating compliance for a period of no less than five years.

(6) An annual report detailing daily and thirty day rolling average SO_2 and NO_X emission rates must be submitted to Missouri starting 1 year and 60 days after EPA SIP approval.

Missouri documented, via CALPUFF modeling, an improvement in visibility at affected Class I areas using the BART emissions limits for Holcim-Clarksville. While post-BART control modeled impacts at Mingo are still slightly above 0.5 dv, the overall modeled impairment has significantly improved with the proposed BART controls.

EPA is proposing to find that the State has met the requirements for establishing BART emission limitations and schedules for compliance with those emission limitations for each BART-eligible source that may reasonably be anticipated to cause or contribute to any impairment of visibility in any Class I area, in accordance with 40 CFR 51.308(e) and the BART Guidelines. EPA is proposing to approve all required elements of Missouri's Regional Haze SIP related to BART for non-EGU sources, including, specifically, the BART emission rates, compliance schedules, monitoring, recordkeeping and reporting as required by 40 CFR 51.308(e) and the BART Guidelines, and the Consent Agreement for Holcim-Clarksville.

E. Long-Term Strategy

1. Technical Basis for Long-Term Strategy

Missouri's plan adequately addresses the LTS requirements of 40 CFR 51.308(d)(3)(iii). Missouri's LTS analysis for the first implementation period addresses the emissions reductions from Federal, State, and local controls that take effect in the State from the end of the baseline period starting in 2004 until 2018. The Missouri LTS was developed by the State, in

coordination with the CENRAP RPO, through an evaluation of the following components: (1) Identification of the emission units within Missouri and in surrounding states that likely have the largest impacts currently on visibility at the State's two Class I areas; (2) estimation of emissions reductions for 2018 based on all controls required or expected under Federal and state regulations for the 2004–2018 period (including BART); (3) comparison of projected visibility improvement with the uniform rate of progress for the State's Class I areas; and (4) application of the four statutory factors in the reasonable progress analysis for the identified emission units to determine if additional reasonable controls were required. In this analysis the State demonstrates that the compilation of State-specific control measures relied on by the State achieves its RPGs.

The CENRAP applied the Comprehensive Air Quality Model with extensions (CAMx) and Community Multiscale Air Quality (CMAQ) models in the modeling simulation. CAMx is a computer modeling system for the integrated assessment of photochemical and particulate air pollution. CAMx incorporates all of the technical attributes demanded of state-of-the-art photochemical grid models, including two-way grid nesting, a subgrid-scale Plume-in-Grid module to treat early dispersion of chemistry of point source NO_X plumes, and a fast chemistry solver. The CMAQ model is an eulerian model that simulates the atmospheric surface processes affecting the transport, transformation and deposition of air pollutants and their precursors. An eulerian model computes the numerical solution of partial differential equations of plumes on a fixed grid. The use of these models to determine impacts from emissions within state on visibility impairment is approved by EPA. Missouri documented and EPA has reviewed the selection of the episodes, modeling domain, emissions inventories, emissions modeling, meteorological inputs, and model performance evaluation. More detailed information on methodologies is provided in Appendix F of the state's submittal.

2. Identification of Sources and Factors to be Considered

Missouri has met the requirements of 40 CFR 51.308(d)(3)(iv–v). The State is required to identify all anthropogenic sources of visibility impairment considered by the State in developing its LTS. The State should consider major and minor stationary sources, mobile sources, and area sources. The State must consider, at a minimum, the following factors in developing its long-term strategy: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the reasonable progress goal; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emission limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period.

The State's technical analysis identifies all anthropogenic sources of visibility impairment considered by the State in developing its LTS. In this analysis, the State considered the impacts from major and minor stationary sources, mobile sources, and area sources. The State documents the ''on the books'' ongoing emissions control strategies considered in the modeling that includes the following:

- Clean Air Interstate Rule
- Best Available Control Technology
- Tier 2 Federal Mobile Source Emission Standards
- Tier 4 Nonroad Emission Standards
- NO_X SIP Call
- St. Louis $PM_{2.5}$ SO_2 and NO_X RACT
- Illinois Multi-Pollutant Regulation

In a separate notice proposing limited disapproval of the regional haze SIPs of a number of States, EPA noted that these States relied on the trading programs of CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the State-adopted reasonable progress goals. (76 FR 82219, December 30, 2011). In that notice, we proposed a limited disapproval of Missouri's LTS insofar as it relied on CAIR. For that reason, we are not taking action on that aspect of the long-term strategy in this notice. Comments on that proposed determination may be directed to Docket ID No. EPA–HQ–OAR–2011–0729.

In development of the LTS, Missouri also took into account measures to mitigate the impacts of construction activities through the implementation of the NSR permitting program. Source retirement and replacement schedules of sources were included in the development of the future year inventory modeling scenario. Missouri has documented that emissions limitations and control measures utilized in the modeling are enforceable by Missouri law through section 643 of the Revised Statutes of Missouri. These rules can be found in Appendix V of the State's submittal.

The emission inventory utilized for Missouri takes into account the net effect on visibility resulting from projected changes to emissions including changes to point, area and mobile source inventories by the end of the first implementation period resulting from population growth; industrial, energy and natural resources development; land management; and air pollution control. The net effect on visibility in Missouri Class I areas resulting from these emission differences is discussed in the CENRAP Technical Support Document (Appendix F of the State's submittal).

Missouri has also met the requirement of 40 CFR 51.308(d)(3)(v)(E) to consider smoke management techniques for the purposes of agricultural and forestry management in developing the LTS. The purpose of the Smoke Management Plan (SMP) adopted by Missouri is to identify the responsibilities of MDNR, FLMs, and state land managers to coordinate procedures that mitigate the impacts on public health, safety, and visibility of prescribed fire and wildland fire used for resource benefits. This plan is designed to meet the policies of the EPA's Interim Air Quality Policy on Wildland and Prescribed Fires (April 1998) and addresses smoke management through various procedures and requirements in place at various agencies throughout the State.

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)

EPA's visibility regulations direct States to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in sections III.F. and III.G. of this action. Under EPA's RAVI regulations, the RAVI portion of a State SIP must address any integral vistas identified by FLMs pursuant to 40 CFR 51.304. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I Federal area includes any integral vista associated with that area. The FLMs did not identify any integral vistas in Missouri. In addition, none of the Class I areas in Missouri is experiencing RAVI, nor are any of its sources affected by the RAVI provisions. Therefore, the Missouri regional haze SIP submittal does not explicitly

address the two requirements regarding coordination of the regional haze SIP with the RAVI LTS and monitoring provisions. We propose to find that this submittal appropriately supplements and augments the Missouri's RAVI visibility provisions to address regional haze by updating the monitoring and LTS provisions as summarized in this notice.

G. Emissions Inventory

Missouri was required to develop a statewide emissions inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. This inventory must include baseline year emissions, emissions for the most recent year that data is available, and estimates of future year emissions. The State provided an inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. As required, the inventory includes emissions for a baseline year (2002), the most recent year for which data are available at the time, and estimates of future year (2018) projected emissions along with a commitment to update the inventory periodically.

As specified in the EPA guidance document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations* (August 2005), Missouri's regional haze emissions inventory includes carbon monoxide (CO), nitrogen oxides (NO_X), sulfur dioxide (SO_2), volatile organic compounds (VOCs), fine particulate ($PM_{2.5}$), coarse particulate (PM_{10}), and ammonia (NH_3). Missouri used the CENRAP Base G emissions inventory for both the baseline year of 2002 and future year of 2018 as described in Table 4 below. Missouri has committed to periodic updates to the emissions inventory and EPA believes that the State has met the requirements of 40 CFR 51.308(d)(4)(v). More detailed information regarding the methodologies used in the current emissions estimates including the future year projections are further described in Chapter 7.0 and Appendix H 1–8 of the State's plan.

TABLE 4—MISSOURI 2002–2018 INVENTORY

Source sector	NO_X (TPY*)	SO_2 (TPY)	PM_{10} (TPY)	$PM_{2.5}$ (TPY)	CO (TPY)	VOC (TPY)	NH_3 (TPY)
2002 Missouri Emissions Inventory Summary							
Point EGU**	145,437.9	272,128.1	4,093.2	2,523.2	11,357.0	1,796.4	19.2
Point NEGU***	36,143.8	97,117.0	15,092.2	7,045.3	107,756.3	38,473.6	6,233.9
Area	31,337.8	48,510.9	29,975.9	26,385.8	135,292.9	204,940.2	2,276.7
Offroad Mobile	99,305.6	9,350.5	13,063.5	11,985.3	754,272.8	141,183.3	73.9
Onroad Mobile	189,852.3	5,353.5	4,486.6	3,297.4	1,585,277.1	97,245.6	5,993.5
Fire	3,539.6	936.2	12,407.2	10,642.3	151,389.6	12,867.9	1,447.2
Ag and Soil Ammonia	0.0	0.0	0.0	0.0	0.0	0.0	152,904.1
Fugitive Dust	0.0	0.0	95,240.0	19,006.9	0.0	0.0	0.0
Road Dust	0.0	0.0	367,390.3	55,011.6	0.0	0.0	0.0
Biogenics	22,518.6	0.0	0.0	0.0	134,123.4	1,428,260.0	0.0
Totals	528,135.5	433,396.3	541,748.9	135,897.8	2,879,469.2	1,924,767.1	168,948.5
2018 Missouri Emissions Inventory Summary							
Point EGU	84,619.8	289,330.1	18,958.2	17,036.6	15,752.7	2,080.5	874.4
Point NEGU	49,290.8	66,731.1	23,598.8	10,171.7	184,350.9	54,908.6	8,600.2
Area	35,212.8	49,726.1	29,193.0	25,528.5	120,114.9	265,737.4	4,411.8
Offroad Mobile	59,624.9	565.2	8,371.3	7,675.0	739,932.9	72,794.1	84.8
Onroad Mobile	50,860.9	797.4	1,415.5	1,415.5	895,481.6	39,672.3	8,316.0
Fire	3,539.6	936.2	12,407.2	10,642.3	151,389.6	12,867.9	1,447.2
Ag and Soil Ammonia	0.0	0.0	0.0	0.0	0.0	0.0	182,451.5
Fugitive Dust	0.0	0.0	106,045.3	21,147.2	0.0	0.0	0.0
Road Dust	0.0	0.0	313,576.4	46,957.9	0.0	0.0	0.0
Biogenics	22,518.6	0.0	0.0	0.0	134,123.4	1,428,260.0	0.0
Totals	305,667.4	408,086.1	513,565.8	140,574.6	2,241,146.0	1,876,320.7	206,185.9

* Tons per Year.
** Electric Generating Unit.
*** Non-Electric Generating Unit.

H. Monitoring Strategy

The State's plan must include a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all Class I areas within the State and/or summarize monitoring strategy of States with affected Class I areas. Missouri demonstrates compliance with this requirement through participation in the IMPROVE network. In Missouri, IMPROVE sites are located at Hercules Glades and Mingo Class I areas. An IMPROVE protocol sampler is located at the site near El Dorado Springs. Missouri commits to meet the requirements under 40 CFR 51.308(d)(4)(iv) to report to EPA visibility data for each of Missouri's Class I areas annually. EPA proposes to find that Missouri's monitoring strategy meets all requirements of 40 CFR 51.308(d)(4).

I. Consultation

The State of Missouri has met the FLM consultation requirement. 40 CFR 51.308(i)(3) requires that States provide a description of how they addressed any comments provided by the FLMs. A description of the consultation process is provided in Appendix E of the State SIP, *United States Central Class I Areas Consultation Plan,* Missouri Department of Natural Resources, 2007. In addition, the minutes from those meetings are in

Appendix U of the State's plan. EPA believes that Missouri has adequately responded to the comments received from the FLMs and from EPA.

Regional haze SIPs must also provide procedures for continuing consultation between the State and FLMs on the implementation of 40 CFR 51.308, including development and review of SIP revisions and five-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. The State of Missouri has committed to continuing to coordinate and consult with the FLMs during the development of future progress reports and plan revisions, as well as during the implementation of programs having the potential to contribute to visibility impairment in the mandatory Class I Federal areas. EPA proposes to find that the State of Missouri has satisfied the consultation requirements of 40 CFR 51.308 (i).

As discussed in IV. E above, the as part of the long-term strategy requirements of the rule, provision 40 CFR 51.308(d)(3)(i) specifically describes that, where the State has emissions that are reasonably anticipated to contribute to visibility impairment in any Class I area located in another State or States, the State must consult with other State(s) in order to develop coordinated emissions management strategies. The State must consult with any other State having emissions that are regionally anticipated to contribute to visibility impairment in any mandatory Class I Federal area within the State. Further, 40 CFR 51.308(d)(3)(ii) states that where other States cause or contribute to impairment in a mandatory Class I Federal area, the State must demonstrate that it has included in its implementation plan all measures necessary to obtain its share of the emissions reductions needed to meet the progress goal for the area. If the State has participated in a regional planning process, the State must ensure it has included all measures needed to achieve its apportionment of emission reduction obligations agreed upon through that process.

EPA proposes that Missouri has met these requirements. Missouri has consulted with other States/tribes in CENRAP, Visibility Improvement State and Tribal Association of the Southeast (VISTAS), the Midwest Regional Planning Organization (MRPO), FLMs and EPA Regions 5, 6 and 7 on development of coordinated strategies for Central Class I areas that include Mingo, Hercules Glades, Upper Buffalo, and Caney Creek.

Technical analyses, such as Area of Influence (AOI) and source apportionment, were developed as part of consultation planning to determine contributing states and are documented in Appendix E of the State's plan. Missouri provided the Regional Haze Plan to the FLMs for review on August 23, 2007, and notified the FLMs that a public hearing would be held on this plan at a later date. The FLMs provided early comments on the draft plan and a conference call between Missouri, FLMs, and EPA Region 7 was conducted on September 2, 2007, to discuss the comments. Missouri considered all comments the FLMs provided on the early draft of the plan. Regional modeling and other findings were used to develop RPGs for the Arkansas and Missouri Class I areas based on the existing and proposed controls through both State and Federal requirements. It was also determined that these RPGs will meet the established URP goals by 2018. The consultation process determined which States significantly impacted the Arkansas and Missouri Class I areas. The State's coordination with FLMs on long-term strategy development is described in Chapter 11 of the State's plan. The consultation was completed based on a determination that reasonable progress was achieved by contributing states.

Additionally, the State entered into a consultation process with Oklahoma and Minnesota. The consultation processes for the Wichita Mountains (WIMO) Class I area in Oklahoma was completed prior to the August 5, 2009 submittal of this plan. The Oklahoma Department of Environmental Quality indicated their belief that Missouri sources impact WIMO. However, in response to the Oklahoma consultation letter, Missouri replied with a letter recommending that the rationale for determining States contributing to impact on WIMO deserved further examination. As further described in Chapter 4.2 of the State's plan, Missouri determined, in part, from a Particulate Matter Source Apportionment Technology (PSAT) analysis that it is not clear that additional controls in Missouri would be reasonable to address visibility in WIMO. Based on the PSAT analysis presented, Missouri described that over half the elevated point-source impacts to WIMO are due to sources in Oklahoma, Texas, and Louisiana and most of the area source impacts are due to Oklahoma and Texas sources. Missouri determined that controls appear likely to be more efficient in those states, on a cost-per-ton basis, than additional controls in Missouri. Therefore no additional controls on Missouri sources were required and Oklahoma and did not request any specific additional controls.

Minnesota identified Missouri as a contributing State based on Lake Michigan Air Directors Consortium (LADCO) 2002–2003 Trajectory analysis or LADCO 2018 PSAT modeling analysis which showed over a 5 percent total contribution to haze at either of Minnesota's Class I areas. Missouri noted that the criteria are met marginally at 5.2 percent for 2018 PSAT for the Boundary Waters area only. Missouri cited that separate analyses conducted as part of the Causes of Haze II Study, and affirmed by the CENRAP PSAT and Area of Influence analysis, indicate high impact from Minnesota sources, with only a small impact by out of state sources. Based on these analyses, Missouri concluded that additional controls on Missouri's sources are not necessary due to the expected minimal visibility impact at the Boundary Waters Class I area. EPA also notes that Minnesota did not request any specific additional controls from Missouri. EPA proposes that Missouri has met the consultation requirements of 40 CFR 51.308(d)(1)(iv) and has also demonstrated that its implementation plan includes all measures necessary to obtain its fair share of emission reductions needed to meet RPGs as required in 40 CFR 51.308(d)(3)(ii).

J. Periodic SIP Revisions and Five-Year Progress Reports

Missouri is required to commit to meet the SIP revision schedule as determined by the RHR. The State makes its commitment to meet this requirement in Chapter 11 and 12 of its plan. EPA believes the State's commitment to meet these schedules meets the requirements of 40 CFR 51.308(f) and (g) of the RHR.

The State affirmed its commitment to submitting a progress report in the form of a SIP revision to EPA every five years following the initial submittal of the Missouri regional haze SIP. The report will evaluate the progress made towards the RPGs each mandatory Class I area located within the State of Missouri and in each mandatory Class I area located outside of the State which may be affected by emissions from within Missouri.

If another State's regional haze SIP identifies that Missouri's SIP needs to be supplemented or modified, and if, after appropriate consultation Missouri agrees, today's action may be revisited, or additional information and/or

changes will be addressed in the five-year progress report SIP revision.

VI. What action is EPA proposing?

EPA is proposing a limited approval of a revision to the Missouri SIP submitted by the State of Missouri on August 5, 2009, and supplemented on January 30, 2012. In a separate action, EPA has proposed a limited disapproval of the Missouri regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. 76 FR 82219. We are not proposing to take action in today's rulemaking on issues associated with Missouri's reliance on CAIR in its regional haze SIP.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: February 15, 2012.

Karl Brooks,

Regional Administrator, Region 7.

[FR Doc. 2012–4681 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2012–0150, FRL–9638–1]

Approval and Promulgation of Implementation Plans; State of Iowa Regional Haze State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing a limited approval of a revision to the Iowa State Implementation Plan (SIP) submitted by the State of Iowa on March 25, 2008, that addresses regional haze for the first implementation period. This revision addresses the requirements of the Clean Air Act (CAA or ''Act'') and the EPA's rules that require States to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. EPA is proposing a limited approval of this SIP revision to implement the regional haze requirements for Iowa on the basis that the revision, as a whole, strengthens the Iowa SIP. In a separate action, EPA previously proposed a limited disapproval of the Iowa regional haze SIP because of deficiencies in the State's regional haze SIP arising from the remand by the U.S. Court of Appeals for the District of Columbia (D.C. Circuit) to EPA of the Clean Air Interstate Rule (CAIR). Therefore, we are not taking action in this notice to address the State's reliance on CAIR to meet certain regional haze requirements.

DATES: Comments must be received on or before March 29, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R07–OAR–2012–0150, by one of the following methods:

1. *Federal eRulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: wolfersberger.chris@epa.gov.*

3. *Fax:* (913) 551–7864 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).

4. *Mail:* Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N 5th Street, Kansas City, Kansas 66101; attention: Chrissy Wolfersberger.

5. *Hand Delivery or Courier:* Air Planning and Development Branch, U.S. Environmental Protection Agency, Region 7, 901 N. 5th Street, Kansas City, Kansas 66101; attention Chrissy Wolfersberger. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8 a.m. to 5 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No.: EPA–R07–OAR–2012–0150. 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Air Planning and Development Branch, EPA Region 7 Office, 901 N 5th Street, Kansas City, Kansas 66101. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. You may view the hard copy of the docket

Monday through Friday, 8 a.m. to 5 p.m. excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Chrissy Wolfersberger at 901 N 5th Street, Kansas City, Kansas 66101; by telephone at (913) 551–7864; or by email at *wolfersberger.chris@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

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I. What action is EPA proposing?

EPA is proposing a limited approval of Iowa's March 25, 2008, SIP revision addressing regional haze under CAA sections 301(a) and 110(k)(6) because the revision as a whole strengthens the Iowa SIP.[1] This proposed rulemaking and the accompanying Technical Support Document (TSD) explain the basis for EPA's proposed limited approval action.[2]

In a separate action, EPA has proposed a limited disapproval of the Iowa regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. 76 FR 82219. We are not proposing to take action in today's rulemaking on issues associated with Iowa's reliance on CAIR in its regional haze SIP. Comments on our proposed limited disapproval of Iowa's regional haze SIP may be directed to the docket for that rulemaking, Docket ID No. EPA–HQ–OAR–2011–0729.

II. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles ($PM_{2.5}$) (e.g., sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (e.g., SO_2, NO_X, and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter which impairs visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition and eutrophication.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range[3] in many Class I areas (i.e., national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

B. Requirements of the CAA and EPA's Regional Haze Rule (RHR)

In section 169A of the 1977 Amendments to the CAA, Congress set forth a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Federal Class I areas[4] in which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, i.e., ''reasonably attributable visibility impairment'' (45 FR 80084). These regulations represented the first phase in addressing visibility impairment; EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

In the 1990 Amendments to the CAA, Congress added section 169B to focus attention on regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35713), the RHR. The RHR revised the existing visibility regulations to integrate into

[1] Under CAA sections 301(a) and 110(k)(6) and the EPA's long-standing guidance, a limited approval results in approval of the entire SIP submittal, even of those parts that are deficient, and prevent the EPA from granting a full approval of the SIP revision. *Processing of State Implementation Plan (SIP) Revisions,* EPA Memorandum from John Calcagni, Director, Air Quality Management Division, OAQPS, to Air Division Directors, EPA Regional Offices I–X, September 7, 1992, (1992 Calcagni Memorandum) located at *http://www.epa.gov/ttn/caaa/t1/memoranda/siproc.pdf.*

[2] EPA's TSD to this action, entitled, ''*Technical Support Document for Iowa Regional Haze Submittal,*'' is included in the public docket for this action.

[3] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[4] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with Section 169A of the CAA, the EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and tribes may designate additional areas as Class I areas, which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in the Federal visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in Section III of this preamble. The requirement to submit a regional haze SIP applies to all 50 States, the District of Columbia and the Virgin Islands. 40 CFR 51.308(b) requires States to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among States, tribal governments and various Federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, the EPA has encouraged the States and tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated technical information to better understand how their States and tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of PM and other pollutants leading to regional haze.

III. What are the requirements for regional haze SIPs?

A. The CAA and the RHR

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and the EPA's implementing regulations require States to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install BART controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) [5] as the principal metric or unit for expressing visibility. Visibility expressed in deciviews is determined by using air quality measurements to estimate light extinction and then transforming the value of light extinction using a logarithm function. The dv is a more useful measure for tracking progress in improving visibility than light extinction itself because each dv change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one dv.[6]

The dv is used in expressing RPGs (which are interim visibility goals towards meeting the national visibility goal), defining baseline, current, and natural conditions, and tracking changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by anthropogenic air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, i.e., anthropogenic sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program (40 CFR 81.401–437), and as part of the process for determining reasonable progress, States must calculate the degree of existing visibility impairment at each Class I area at the time of each regional haze SIP submittal and periodically review progress every five years midway through each ten-year implementation period. To do this, the RHR requires States to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, States must also develop an estimate of natural visibility conditions for the purpose of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to States regarding how to calculate baseline, natural and current visibility conditions in documents titled, EPA's *Guidance for Estimating Natural Visibility conditions under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Natural Visibility Guidance''), and *Guidance for Tracking Progress Under the Regional Haze Rule* (EPA–454/B–03–004 September 2003 located at *http://www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf*), (hereinafter referred to as ''EPA's 2003 Tracking Progress Guidance'').

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of visibility impairment for the 20 percent least impaired days and 20 percent most impaired days for each calendar year from 2000 to 2004. Using monitoring data for 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area, based on the average of annual values over the five-year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that establish two RPGs (i.e., two distinct goals, one for the ''best'' and one for the ''worst'' days) for every Class I area for each (approximately) 10-year implementation period. The RHR does not mandate specific milestones or rates

[5] A deciview is defined in 40 CFR 51.301 as ''a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired.''

[6] The preamble to the RHR provides additional details about the deciview. 64 FR 35714, 35725 (July 1, 1999).

of progress, but instead calls for States to establish goals that provide for ''reasonable progress'' toward achieving natural (i.e., ''background'') visibility conditions. In setting RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in section 169A of the CAA and in the RHR at 40 CFR 51.308(d)(1)(i)(A): (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. States have considerable flexibility in how they take these factors into consideration, as noted in the EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to the EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glidepath'') and the emission reduction measures needed to achieve that rate of progress over the ten-year period of the SIP. Uniform progress towards achievement of natural conditions by the year 2064 represents a rate of progress which States are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each State with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing States,'' i.e., other nearby States with emission sources that may be affecting visibility impairment at the Class I State's areas. *See* 40 CFR 51.308(d)(1)(iv).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs States to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, section 169A(b)(2)(A) of the CAA requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing major stationary sources [7] built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the State. Under the RHR, States are directed to conduct BART determinations for such ''BART-eligible'' sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, the EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR Part 51 (hereinafter referred to as the ''BART Guidelines'') to assist States in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts, a State must use the approach set forth in the BART Guidelines. A State is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility-impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. EPA has stated that States should use their best judgment in determining whether VOC or NH_3 compounds impair visibility in Class I areas.

Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART-eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The State must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the State should not be higher than 0.5 dv.

In their SIPs, States must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance, (2) the energy and non-air quality environmental impacts of compliance, (3) any existing pollution control technology in use at the source, (4) the remaining useful life of the source, and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor.

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a State has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA's approval of the regional haze SIP. CAA section 169(g)(4); 40 CFR 51.308(e)(1)(iv). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source.

As noted above, the RHR allows States to implement an alternative program in lieu of BART so long as the alternative program can be demonstrated to achieve greater reasonable progress toward the national visibility goal than would BART. Under regulations issued in 2005 revising the regional haze program, the EPA made just such a demonstration for CAIR. 70 FR 39104 (July 6, 2005). EPA's regulations provide that States participating in the CAIR cap-and trade program under 40 CFR Part 96 pursuant to the EPA-approved CAIR SIP or which remain subject to the CAIR Federal Implementation Plan (FIP) in 40 CFR Part 97 need not require affected BART-eligible EGUs to install, operate, and maintain BART for emissions of SO_2 and NO_X. 40 CFR 51.308(e)(4). Because CAIR did not address direct emissions of PM, States were still required to conduct a BART analysis for PM

[7] The set of ''major stationary sources'' potentially subject to BART is listed in CAA section 169A(g)(7).

emissions from EGUs subject to BART for that pollutant.

Challenges to CAIR, however, resulted in the remand of the rule to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (DC Cir. 2008). EPA issued a new rule in 2011 to address the interstate transport of NO_X and SO_2 in the eastern United States. *See* 76 FR 48208 (August 8, 2011) (''the Transport Rule,'' also known as the Cross-State Air Pollution Rule). On December 30, 2011, EPA proposed to find that the trading programs in the Transport Rule would achieve greater reasonable progress towards the national goal than would BART in the States in which the Transport Rule applies. 76 FR 82219. Based on this proposed finding, EPA also proposed to revise the RHR to allow States to substitute participation in the trading programs under the Transport Rule for source-specific BART. EPA has not taken final action on that rule. Also on December 30, 2011, the DC Circuit issued an order addressing the status of the Transport Rule and CAIR in response to motions filed by numerous parties seeking a stay of the Transport Rule pending judicial review. In that order, the DC Circuit stayed the Transport Rule pending the court's resolutions of the petitions for review of that rule in *EME Homer Generation, L.P.* v. *EPA* (No. 11–1302 and consolidated cases). The court also indicated that EPA is expected to continue to administer the CAIR in the interim until the court rules on the petitions for review of the Transport Rule.

E. Long-Term Strategy (LTS)

Consistent with the requirement in section 169A(b) of the CAA that States include in their regional haze SIP a 10 to 15 year strategy for making reasonable progress, 40 CFR 51.308(d)(3) of the RHR requires that States include a LTS in their regional haze SIPs. The LTS is the compilation of all control measures a State will use during the implementation period of the specific SIP submittal to meet applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the State. *See* 40 CFR 51.308(d)(3).

When a State's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another State, the RHR requires the impacted State to coordinate with the contributing States in order to develop coordinated emissions management strategies. 40 CFR 51.308(d)(3)(i). In such cases, the contributing State must demonstrate that it has included, in its SIP, all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and area sources. At a minimum, States must describe how each of the following seven factors listed below are taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes; (6) enforceability of emissions limitations and control measures; and (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. 40 CFR 51.308(d)(3)(v).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment Long-Term Strategy

As part of the RHR, EPA revised 40 CFR 51.306(c), regarding the LTS for RAVI, to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the State's first plan addressing regional haze visibility impairment in accordance with 40 CFR 51.308(b) and (c). The State must revise its plan to provide for review and revision of a coordinated LTS for addressing RAVI and regional haze on or before this date. The State must also submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTSs, and periodic progress reports evaluating progress toward RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic review of a State's LTS must be submitted to EPA as a SIP revision and report on both regional haze and RAVI impairment.

G. Monitoring Strategy and Other Implementation Plan Requirements

40 CFR 51.308(d)(4) includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the State. The strategy must be coordinated with the monitoring strategy required in 40 CFR 51.305 for RAVI. Compliance with this requirement may be met through ''participation'' in the IMPROVE network, i.e., review and use of monitoring data from the network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a State with mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas both within and outside the State;
- Procedures for using monitoring data and other information in a State with no mandatory Class I areas to determine the contribution of emissions from within the State to regional haze visibility impairment at Class I areas in other States;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the State, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A State must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

The RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every ten years thereafter. Periodic SIP revisions must meet the core requirements of 40 CFR 51.308(d) with the exception of BART. The

requirement to evaluate sources for BART applies only to the first regional haze SIP. Facilities subject to BART must continue to comply with the BART provisions of 40 CFR 51.308(e), as noted above. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that States consult with FLMs before adopting and submitting their SIPs. 40 CFR 51.308(i). States must provide FLMs an opportunity for consultation, in person and at least sixty days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a State must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the State and FLMs regarding the State's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

IV. What is EPA's analysis of the State of Iowa's submittal?

EPA believes that the State has met the requirements of the CAA sections 110(*l*) and 110(a)(2) which require that the State adopt a SIP after reasonable notice and public hearing. EPA also believes that the State has met the requirements of the specific procedural requirements for SIP revisions promulgated at 40 CFR Part 51, subpart F. These requirements include publication of notices by prominent advertisement in the relevant geographic area of a public hearing on proposed revisions, at least a 30-day public comment period, and the opportunity for a public hearing, and that the State, in accordance with its laws, submit the revision to EPA for approval. Specific information on Iowa's rulemaking, regional haze SIP development and the public information process is included in Chapter 2, and Appendix 2.1, of the State of Iowa's regional haze SIP, which is included in the docket of this proposed rulemaking.

A. Affected Class I Areas

There are no Class I areas hosted by the State of Iowa, and no portion of land within the State of Iowa is within 300 kilometers (km) of a Class I area. However, States without Class I areas are still required to submit SIPs that address the apportionment of visibility impact from the emissions generated by sources within the State's borders at Class I areas hosted by other States.

The State of Iowa participated in the planning efforts of the CENRAP which is affiliated with the Central States Air Resource Agencies (CENSARA). This RPO includes nine States—Nebraska, Iowa, Oklahoma, Texas, Minnesota, Iowa, Missouri, Arkansas, and Louisiana. CENRAP and its contractors provided air quality modeling to the States to help them determine whether sources located within the State can be reasonably expected to cause or contribute to visibility impairment in a Class I area. The modeling conducted relied on baseline year (2002) and future planning year (2018) emissions inventories that were prepared with participation from each of the CENRAP States.

The State of Iowa relied upon the regional modeling work performed by CENRAP for determining the impact that sources within the State might have on Class I areas in the region and beyond. The modeling was based on PM Source Apportionment Technology (PSAT) for the Comprehensive Air Quality Model with extensions (CAMx) photochemical model. A detailed description of the source apportionment methods utilized by CENRAP is available in Appendix 7.1 of the SIP.

The following Class I areas were evaluated for contribution by the State of Iowa:

- Boundary Waters Canoe Area, Minnesota (BOWA).
- Voyageurs National Park, Minnesota (VOYA).
- Seney Wilderness Area, Michigan (SENE).
- Isle Royale National Park, Michigan (ISLE).
- Hercules Glades Wilderness Area, Missouri (HEGL).
- Mingo Wilderness Area, Missouri (MING).
- Caney Creek Wilderness, Arkansas (CACR).
- Upper Buffalo Wilderness, Arkansas (UPBU).
- Badlands National Park, South Dakota (BADL).
- Wind Cave National Park, South Dakota (WICA).

BOWA, VOYA, SENE and ISLE are known as the Northern Midwest Class I areas. According to the CENRAP PSAT results, the combined effect of all Iowa emissions upon the total modeled visibility impairment at the four Northern Midwest Class I areas is approximately 4 to 5 percent in both 2002 and 2018. The data were calculated in accordance with the new IMPROVE equation and are representative of those days with the worst 20 percent visibility conditions.

TABLE 1—PERCENT CONTRIBUTION OF IOWA, MINNESOTA, AND MICHIGAN TO VISIBILITY IMPAIRMENT AT THE NORTHERN MIDWEST CLASS I AREAS, 20 PERCENT WORST DAYS

	Iowa		Minnesota		Michigan	
	2002	2018	2002	2018	2002	2018
Boundary Waters	3.7	3.9	25.6	28.5	2.3	2.7
Voyagers	3.8	4.0	29.1	30.4	1.4	1.6
Isle Royale	4.5	4.9	11.5	12.5	11.1	12.8
Seney	4.2	4.8	3.9	4.4	9.6	12.7

The PSAT results provided above are in terms of percentages of total visibility impairment. The State of Iowa found them useful for determining the proportion of the State's contribution in relation to the total modeled visibility impairment at a Class I area. However, characterizing visibility impairment using just percentages can fail to identify the magnitude of the contribution. For example, Iowa's percent contributions increase between 2002 and 2018, but the actual light extinction values decrease between the same years.

TABLE 2—IOWA'S ABSOLUTE CONTRIBUTION TO VISIBILITY IMPAIRMENT, NORTHERN MIDWEST CLASS I AREAS

	Worst 20 percent days modeled extinction (Mm–1)			
	Iowa		Class I area total	
	2002	2018	2002	2018
Boundary Waters	2.39	2.08	64.87	53.44
Voyagers	2.60	1.97	56.45	48.84
Isle Royale	3.23	3.02	71.40	61.26
Seney	4.54	3.95	107.92	82.00

Iowa's contributions to visibility impairment, as calculated through light extinction using the new IMPROVE equation, are provided in Table 2. The total modeled visibility impairment for each Class I area are also shown in the table. Iowa emissions sources cumulatively contribute only 2.2–4.5 Mm–1 of the 56–107 Mm–1 total modeled visibility impairment at the Northern Midwest Class I areas in 2002. In tandem, Iowa's percentage and absolute contributions describe the impacts emissions sources in Iowa may have upon nearby Class I areas.

Another way to assess Iowa's contribution to visibility impairment is to use the dv metric. As shown by Table 3, modeling results show that visibility improvements resulting from the elimination of all Iowa sources yield impacts below 0.5 dv.

TABLE 3—ESTIMATED 2018 LEVEL OF VISIBILITY IMPAIRMENT IN THE ABSENCE OF ALL IOWA EMISSIONS SOURCES

	2018 Worst 20% (dv)	2018 Worst 20% less Iowa's contribution (dv)	Iowa's visibility & impacts (dv)
Boundary Waters	18.5	18.1	0.4
Voyagers	17.7	17.4	0.3
Isle Royale	19.6	19.2	0.4
Seney	22.2	21.8	0.4

The State determined that when considered collectively, the data in Tables 1, 2, and 3 show that Iowa sources were responsible for a minimal contribution to visibility impairment at the Northern Midwest Class I areas.

Iowa's contributions to the Arkansas and Missouri Class I areas (HEGL, UPBU, CACR, MING) in terms of percentage contribution to visibility extension were less than to the Northern Midwest Class I areas. PSAT analysis showed that Iowa sources contributed approximately 1.6–2.7 percent to the total visibility extinction on the 20 percent worst visibility days in 2018 at these Class I areas.

PSAT analysis showed that Iowa sources contributed approximately 1.6 percent to the total visibility extinction on the 20 percent worst visibility days in 2018 at the BADL and approximately 1.2 percent to the total visibility extinction on the 20 percent worst visibility days in 2018 at the Wind Cave National Park, an impact which Iowa determined to be insignificant.

EPA believes the State of Iowa adequately identified the Class I areas impacted by emissions from Iowa sources and the State adequately determined the apportionment of those pollutants from sources located within the State.

B. Determination of Baseline, Natural and Current Visibility Conditions

States that host Class I areas are required to estimate the baseline, natural and current visibility conditions of those Class I areas. As Iowa does not host a Class I area, it is not required to estimate these metrics.

C. Reasonable Progress Goals

States hosting Class I areas have established RPGs, and have made assessments regarding whether emission reductions are needed from sources in Iowa in order to meet their RPG. This consultation is described in Section IV. E of this rulemaking. EPA is proposing to determine that the State has met the requirement of 40 CFR 51.308(d)(3)(iii) of the RHR.

D. Long-Term Strategy

As discussed in greater detail in section IV. I. of this proposed rulemaking, the emissions inventory used in the State's regional haze technical analyses was developed by CENRAP. The 2018 emissions inventory was developed by projecting 2002 emissions and applying reductions expected from Federal and State regulations affecting the emissions of visibility-impairing pollutants. The emissions inventory for Iowa projects changes to point, area and mobile source inventories by the end of the first implementation period resulting from population growth, industrial, energy and natural resources development, land management, and air pollution control.

There are many Federal and State control programs being implemented that the State of Iowa anticipates will reduce emissions between the end of the baseline period and 2018. Emission reductions from these control programs are included in the modeling analysis and are projected to achieve substantial visibility improvement by 2018 in the CENRAP and MRPO Class I areas. Iowa considered the minor and major new source review programs (NSR), nonattainment new source review programs (NNSR), prevention of significant deterioration permits (PSD), CAIR, the heavy duty highway diesel rule, the clean air non-road diesel rule, other on-road and non-road mobile source programs, operating permits, pertinent new source performance standards (NSPS), national emissions standards for hazardous air pollutants (NESHAP), associated maximum achievable control technology (MACT) standards, and Integrated Planning Model (IPM)[8] results in developing its long-term strategy.

[8] *http://www.epa.gov/airmarkets/progsregs/epa-ipm/index.html.*

In a separate notice proposing limited disapproval of the regional haze SIPs of a number of States, including Iowa, EPA noted that these States relied on the trading programs of CAIR to satisfy the BART requirement and the requirement for a LTS sufficient to achieve the State-adopted reasonable progress goals. (76 FR 82219, December 30, 2011). In that notice, we proposed a limited disapproval of Iowa's LTS insofar as it relied on CAIR. For that reason, we are not taking action on that aspect of the long-term strategy in this notice. Comments on that proposed determination may be directed to Docket ID No. EPA–HQ–OAR–2011–0729.

In order to mitigate the impact of construction activities, the State of Iowa's rule on fugitive dust (567 IAC 23.3(2)''c'') states that reasonable precautions shall be taken to prevent the discharge of visible emissions of airborne dust beyond the lot line of the property from which the emissions originated. The State also requires minor NSR permits for aggregate processing plants, concrete batch plants, and asphalt plants. Portable aggregate, concrete, or asphalt plants must notify the Iowa Department of Natural Resources (IDNR) thirty days before transferring the equipment to a new location to allow for review of the emissions impacts on national ambient air quality standards (NAAQS). The IDNR would notify the portable plant if there are potential adverse impacts on the NAAQS. A more stringent emission standard and the installation of additional control equipment would be required if the relocation would prevent the attainment or maintenance of the NAAQS. Iowa determined that no additional measures were needed to mitigate the impacts of construction activities for purposes of visibility improvement, and EPA agrees with this determination.

Iowa demonstrated that source retirement and replacement schedules were taken into account, to the extent possible, when developing inputs for the IPM that was used in the CENRAP modeling analysis.

Iowa does not have a smoke management program at this time. Iowa notes that the CENRAP PSAT modeling indicates that fires in Iowa do not significantly contribute to visibility impairment in Class I areas, and therefore believes that a smoke management program is not needed for purposes of visibility improvement at this time.

The State has determined, and the EPA agrees, that the implementation of the on the books and on the way controls mentioned above are the control measures necessary for the State to achieve its apportionment of emission reductions agreed upon through the consultation process (discussed in greater detail below and in Section IV.E of this proposed rulemaking) as required by 40 CFR 51.308(d)(3)(ii).

E. Consultation With Other States

Iowa participated with the central consultation group, a subset of the CENRAP. This group was coordinated by the States of Missouri and Arkansas. Other participants include Ohio, Indiana, Illinois, Oklahoma, Texas, Kentucky, Tennessee, FLMs, other RPOs, and tribes. In addition to participation in the CENRAP regional planning process, the SIP indicates that Iowa also participated in the Midwest Class I area consultation group, coordinated by the States of Minnesota and Michigan, which included participation from the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin, as well as Tribal lands in the five States that are part of the Midwest Planning Organization (MRPO).

In a letter dated July 23, 2007,[9] the central consultation group determined that additional reductions beyond existing and proposed controls, through both State and Federal requirements, would not be necessary from the State of Iowa in order for the uniform rate of progress to be met at each of the Class I areas in the States of Missouri and Arkansas (HEGL, MING, CACR, and the UPBU). EPA believes that this satisfies the requirement for consultation between these States.

Iowa communicated directly with the State of South Dakota, via letters dated May 31, 2007, and June 18, 2007, regarding visibility impacts at Badlands and Wind Cave National Parks. The State of South Dakota asked the State of Iowa for any analysis that it conducted to determine impacts, if any, sources in Iowa may have on the South Dakota Class I areas. The State of Iowa responded that source PSAT analysis was available on the CENRAP Web site titled ''PSAT Viz Tool 27–April 2007.'' Iowa explained the analysis showed that sources in the State of Iowa contributed approximately 1.6 percent to the total visibility extinction on the 20 percent worst visibility days in 2018 at Badlands and approximately 1.2 percent to the total visibility extinction on the 20 percent worst visibility days in 2018 at Wind Cave, which Iowa considered to be an insignificant contribution. The State of Iowa did not receive a response or request for additional information from the State of South Dakota. EPA believes that this satisfies the requirement for consultation between these two States.

The State of Iowa also communicated directly with the State of Oklahoma regarding potential visibility impacts of Iowa sources on the Wichita Mountains Wildlife Refuge. In a letter dated February 25, 2008, the State of Oklahoma invited States that had a projected contribution of at least 1 Mm-1 in 2018 visibility impact at Wichita Mountains to participate in its consultation process. The letter goes on to determine that, after evaluation, in the 2018 modeling projections for the 20 percent worst visibility days at Wichita Mountains, anthropogenic emissions from the sources in the State of Iowa were not reasonably anticipated to contribute to visibility impairment at Wichita Mountains and that the State of Oklahoma was not requesting that the State of Iowa consider additional emission reductions. EPA believes that this satisfies the requirement for consultation between these two States.

In a letter dated September 19, 2007, the State of Minnesota determined that the State of Iowa (among other States), was a significant contributor to visibility impairment at Voyageurs National Park and Boundary Waters Canoe Area Wilderness. Attachments provided with the letter indicated that the State of Minnesota utilized Lake Michigan Air Directors Consortium (LADCO) trajectory analysis and CENRAP PSAT analysis (for baseline years) to determine if a State contributed 5 percent or more to visibility impairment at the two Minnesota Class I areas. A contribution of 5 percent was considered by the State of Minnesota to be significant. The LADCO trajectory analysis estimated contributions from emissions from the State of Iowa to be approximately 7.4 percent at Boundary Waters and approximately 10.2 percent at Voyageurs. The CENRAP PSAT modeling estimated contributions from emissions from the State of Iowa to be approximately 3.5 percent at Boundary Waters and approximately 3.8 percent at Voyageurs.

In its letter, the State of Minnesota asked the State of Iowa to: ''* * * evaluate further reductions of SO_2 from electric generating units (EGU) in order to reduce SO_2 emissions by 2018 to a rate that is more comparable to the emissions rate projected for 2018 for EGU sources in Minnesota, approximately 0.25 lbs/MMBtu.'' The State of Minnesota also asked the State of Iowa to make a commitment to

[9] State consultation letters are provided in Appendix 10 of the SIP.

review, by 2013, the potential emission reductions that could be gained from control of industrial, commercial, and institutional (ICI) boilers and other point sources (such as reciprocating engines and turbines). The State of Iowa responded to the State of Minnesota in a letter dated November 1, 2007, communicating that it would not commit to evaluate further reductions of SO_2 from EGUs because the State was participating in the CAIR and because the State of Iowa had concerns with the State of Minnesota's interpretations of the LADCO/Minnesota four-factor analysis for reasonable progress. The State of Minnesota relied upon information from its four-factor analysis as an appendix to its request letter. The State of Iowa considered the State of Minnesota's cost per deciview improvement figures, in a range of approximately $3 billion/dv to $3.3 billion/dv, to be unreasonable for SO_2 control beyond CAIR for EGUs in the State of Iowa. The State of Iowa also considered the State of Minnesota's dollar per deciview figures, in a range of approximately $2.8 billion/dv to $3.4 billion/dv, to be unreasonable for control of ICIs. The State explained that a similar argument could be made for reciprocating engines and combustion engines.

The State of Iowa also questioned the State of Minnesota's use of the LADCO trajectory analysis to determine significance of emissions from surrounding States because the trajectory analysis was based upon theoretical air flow and did not account for chemical reactions in the atmosphere that is accounted for in the CENRAP PSAT modeling. Because the CENRAP PSAT modeling indicated that emissions from the State of Iowa contribute less than 5 percent to impairment at Minnesota Class I areas, the State of Iowa did not consider emissions from sources within its boundaries to be significant (considering the State of Minnesota's significance threshold of 5 percent).

Iowa determined that additional controls were unsupported at this first stage of the regional haze rule, because Minnesota did not request that controls be installed on specific sources; did not provide justification on how such controls would lead to visibility improvement at the Minnesota Class I areas; did not provide documentation or otherwise consult with Iowa regarding any specific visibility improvement at the Minnesota Class I areas which would result from controlling Iowa sources; and because of the cost and visibility issues mentioned above. However on page 38 of the SIP, the State of Iowa does commit to continued consultation with Minnesota in the future on issues involving regional haze as requested and warranted. EPA believes that this satisfies the requirement for consultation between these two States.

The State of Michigan wrote the State of Iowa a letter, dated October 26, 2007, stating that it was not asking other States to reduce emissions for purposes of meeting the requirements of the RHR. EPA believes that this satisfies the requirement for consultation between these two States.

In summary, the State of Iowa consulted both directly and through the RPO process with the States on which Iowa sources may have an effect. EPA proposes to find that Iowa met the consultation requirements of 40 CFR 51.308(d)(1)(iv) and has addressed in its plan all measures necessary to obtain its share of emission reductions impacting visibility in Class I areas. 51.308(d)(3)(ii).

F. BART

In the BART determination process, States must address all significant visibility impairing pollutants. The most significant visibility impairing pollutants are SO_2, NO_X, and PM. As indicated by the BART Guidelines, a State should use its best judgment in determining whether VOCs, ammonia (NH_3) or ammonia compounds impair visibility in particular Class I areas.[10] Iowa conducted a quantitative analysis of emissions inventory data to show that Iowa point source NH_3 and VOC emissions do not cause or contribute to any visibility impairment in any Class I area. This analysis is described in the TSD for this rulemaking, and EPA agrees with this conclusion.

i. BART-Eligible Sources

For an emission source to be identified as BART-eligible, the State used these criteria from the BART Guidelines: (1) One or more emissions units at the facility fit within one of the 26 categories listed in the BART Guidelines; (2) the emission unit was in existence on August 7, 1977 and began operation at some point on or after August 7, 1962; and (3) the limited potential emissions from all emission units identified in the previous two items were 250 tons or more per year of any of these visibility-impairing pollutants: SO_2, NO_X, or PM_{10}.

To identify the sources that met the criteria above, Iowa required sources to self identify as BART-eligible by rule (Iowa Administrative Code 567–22.9 *Special Requirements for Visibility Protection*) on a form supplied by the State. The State reviewed all in-house permitting, Title V databases, and the submitted forms to determine if a source met the criteria explained above. This process is outlined in detail in Appendix 9 of the SIP. The twenty seven BART-eligible facilities identified are listed in Table 4. EPA proposes to find that the State appropriately identified the BART-eligible units in the State.

TABLE 4—FACILITIES WITH BART-ELIGIBLE UNITS IN THE STATE OF IOWA

Fossil Fuel-fired Steam Electric Plant Individually Greater than 250 MMBtu/hour.	Cedar Falls Utilities	07–02–005	Unit #7 (EU10, 1A).
	Central Iowa Power Cooperative (CIPCO)—Summit Lake Station.	88–01–004	Combustion turbines (EU1, EU1G, EU2, EU2G).
	Central Iowa Power Cooperative (CIPCO)—Fair Station.	70–08–003	Unit #2 (EU2 & EU 2G).
	City of Ames—Steam Electric Plant	85–01–006	Boiler #7 (EU2).
	Interstate Power and Light—Burlington	29–01–013	Main plant boiler.

[10] Appendix Y of 40 CFR Part 51-States should exercise judgment in deciding whether the following pollutants impair visibility in an area: (4) Volatile organic compounds (VOC), and (5) Ammonia and ammonia compounds. A state should use its best judgment in deciding whether VOC or ammonia emissions from a source are likely to have an impact on visibility in an area. Certain types of VOC emissions, for example, are more likely to form secondary organic aerosols than others. Similarly, controlling ammonia emissions in some areas may not have a significant impact on visibility. A state need not provide a formal showing of an individual decision that a source of VOC or ammonia emissions is not subject to BART review. Because air quality modeling may not be feasible for individual sources of VOC or ammonia, a state should also exercise its judgment in assessing the degree of visibility impacts due to emissions of VOC and emissions of ammonia or ammonia compounds. A state should fully document the basis for judging that a VOC or ammonia source merits BART review, including its assessment of the source's contribution to visibility impairment.

TABLE 4—FACILITIES WITH BART-ELIGIBLE UNITS IN THE STATE OF IOWA—Continued

	Interstate Power and Light—Lansing	03–03–001	Boiler #4 Sixteen units total.
	Interstate Power and Light—ML Kapp	23–01–014	Boiler #2. Six units total.
	Interstate Power and Light—Prairie Creek	57–01–042	Boiler #4. Fourteen units total.
	MidAmerican Energy Company—Council Bluffs.	78–01–026	Boiler #3 (EU003).
	MidAmerican Energy Company—Neal North.	97–04–010	Boiler #1–3 (EU001–EU003).
	MidAmerican Energy Company—Neal South.	97–04–011	Boiler #4 (EU003).
	Muscatine Power and Water	70–01–011	Boiler #8.
	Pella Municipal Power Plant	63–02–005	Boilers #6–8.
Chemical Process Plant	Equistar Chemicals	23–01–004	301 emission units.
	Koch Nitrogen Company	94–01–005	Ammonia vapor flares and primary reformer/auxiliary boiler. 8 units total.
	Monsanto Company Muscatine	70–01–008	Boilers #5–7. 57 emission units total.
	Terra Nitrogen Port Neal Comp	97–01–030	Boiler B & auxiliary boiler.
Petroleum Storage and Transfer Units with a Total Storage.	BP—Bettendorf Terminal	82–02–024	Truck loading.
	BP—Des Moines Terminal	77–01–158	Truck loading.
Portland Cement Plant	Holcim (US) Inc.	17–01–009	109 emission units.
Fossil Fuel-fired Boiler	ADM	23–01–006	#7 & 8 boilers. These boilers will permanently shut down by 9/13/08.
Iron and Steel Mills	Bloomfield Foundry, Inc	26–01–001	18 emission units.
	Griffin Pipe Products Co.	78–01–012	10 emission units.
	John Deere Foundry Waterloo	07–01–010	37 emission units.
	Keokuk Steel Casings, A Matrix Metals Company LLC.	56–01–025	67 emission units.
	The Dexter Company	51–01–005	Tumblers 5 & 6.
Secondary Metal Production	Alcoa, Inc.	82–01–002	Hot line mill. 87 emissions units total.

ii. BART-Subject Sources

Of the twenty seven BART-eligible facilities, thirteen are fossil-fuel fired EGUs, and as such, are subject to CAIR for NO_X and SO_2. As noted in EPA's separate notice proposing revisions to the regional haze rule (76 FR 82219, December 30, 2011) a number of States, including Iowa, relied on CAIR to satisfy the BART requirements for SO_2 and NO_X, in accordance with 40 CFR 51.308(e)(4). Prior to the CAIR remand, the State's reliance on CAIR to satisfy BART for NO_X and SO_2 for affected CAIR EGUs was fully approvable and in accordance with 40 CFR 51.308(e)(4). As explained above, we are not proposing to take action in today's rulemaking on issues associated with Iowa's reliance on CAIR in its regional haze SIP, including BART for SO_2 and NO_X for EGUs. In a separate action, EPA has previously proposed a limited disapproval of Iowa's regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the remand by the U.S. Court of Appeals for the District of Columbia (DC Circuit) to EPA of CAIR. 76 FR 82219. Comments on that proposed determination may be directed to Docket ID No. EPA–HQ–OAR–2011–0729. The PM BART evaluation for these sources is described in section V.F.2 below.

1. Non-EGUs

Iowa used three screening approaches to determine if the remaining fourteen non-EGU sources identified in table 4 were subject to BART:

- Q/d (''Q'' being allowable emissions, in tons per year, and ''d'' representing the distance in km to the nearest Class I area, multiplied by a prescribed constant);[11]
- A variety of assessments using CAMx photochemical model (a regional scale model); and
- An emissions inventory analysis.

The RHR established thresholds defining the terms ''cause'' and ''contribute''. A source is said to ''cause'' visibility impairment if its impact is equal to or greater than 1.0 dv at any Class I area. A source is said to ''contribute'' to visibility impairment if its impacts are equal to or greater than 0.5 dv at any Class I area. Although the RHR affords States the opportunity to adopt a more stringent deminimis threshold, the State of Iowa chose not to do so. However, for its three step BART-subject screening analyses, the State did utilize a threshold that considered the number of days a source's impact was equal to or greater than 0.5 dv. The State chose seven days for this threshold.[12] The State's ''Variegated Protocol in Support of Best Available Retrofit Technology Determinations—May 2006'' explains that if the State were to find no maximum delta-deciview (ddv) values greater than 0.5 dv from any of the three screening methods, it would provide a statewide exemption of the BART sources assessed in the given scenario. Should initial cumulative modeling quantify ddv impacts exceeding 0.5 dv, the State would refine its analyses. For each BART eligible source, information regarding Q/d analyses, CALPUFF model plant evaluation, and CAMx results were assembled and utilized in a weight-of-

[11] The method, originally developed by the North Carolina Department of Environment and Natural Resources, is a tool to eliminate distant, insignificant emission sources from ambient assessments submitted under the Prevention of Significant Deterioration (PSD) program. The Q/d method determines a source to be insignificant if the allowable emissions in tons per year (Q) divided by a constant times the distance in kilometers (d) is greater than a value of 1. For example, North Carolina uses a constant of 20, which was determined empirically. Therefore, a source could be considered insignificant if its emissions divided by 20 times its distance, in km, from the nearest Class I area is less than 1. For this application, for determining exemption from BART, the combined emissions of SO_2, NO_X, and $PM_{2.5}$ of a BART-eligible unit could be divided by 20 times the distance to the nearest Class I area. If that quotient is less than 1, the source would not be subject to BART. If a source is not found to be exempt under this approach, the CALPUFF screening analysis could still be used for an exemption determination. Page 25196 of 69 FR 25183.

[12] This is discussed on pages 3 and 11 of the State's ''Variegated Protocol in Support of Best Available Retrofit Technology Determinations''.

evidence approach in the final subject-to-BART determination. If a unit was not clearly identifiable as either BART-subject or exempt from the BART determination process, the State provided a case-by-case discussion.

Table 5 lists each of the fourteen non-EGU BART-eligible sources analyzed for Q/d estimates, where ''Q'' is the sum of NO_X, SO_2 and PM_{10} emissions ($PM_{2.5}$ direct emission estimates were not available at the time of the calculations were performed by the State) and ''d'' is the distance between the source and the nearest Class I area in km. The Q/d estimates were completed using both actual and potential emissions and were multiplied by three different constants (20, 10, and 5). Iowa used a 1.0 threshold as its Q/d screening threshold. Note that potential emissions include only BART-eligible units while actual emissions represent facility wide totals, thus in certain cases actual emissions may exceed potentials.

Based on the six Q/d calculations the State categorized each of the fourteen non-EGU BART-eligible sources into three categories: (1) Those sources that clearly exceed the 1.0 threshold, (2) sources well below the 1.0 threshold and 3) those sources with mixed results. Table 5 shows that only ADM-Clinton and Holcim, Inc. clearly exceed the 1.0 threshold in nearly each of the six Q/d calculations.

TABLE 5—NEAREST CLASS I AREA & Q/D VALUES FOR NON-EGU BART-ELIGIBLE SOURCES

Facility name	Nearest Class I	Distance (km)	BART Units potential emissions (tpy)						Facility wide actual emissions (tpy)					
			SO_2	NO_X	PM_{10}	Q/20d	Q/10d	Q/5d	SO_2	NO_X	PM_{10}	Q/20d	Q/10d	Q/5d
Equistar Chemical	MING	531.2	3,883	3,433	258	0.71	1.43	2.85	1	728	52	0.07	0.15	0.29
Koch Nitrogen Company	BOWA	615.4	40	1,399	23	0.12	0.24	0.48	0	442	20	0.04	0.08	0.15
Monsanto-Muscatine	MING	486.8	430	168	81	0.07	0.14	0.28	465	192	8	0.07	0.14	0.27
Terra Nitrogen-Port Neal	BADL	487.6	1	916	325	0.13	0.25	0.51	1	461	33	0.05	0.10	0.20
BP-Bettendorf	MING	499.9	0	0	0	0.00	0.00	0.00	0	0	0	0.00	0.00	0.00
BP-Des Moines	HEGL	547.0	0	0	0	0.00	0.00	0.00	0	0	0	0.00	0.00	0.00
Holcim, Inc.	BOWA	527.0	28,715	4,738	1,000	3.27	6.54	13.07	3,826	2,813	190	0.65	1.30	2.59
ADM-Clinton	MING	531.9	6,051	2,117	507	0.82	1.63	3.26	6,479	5,003	1,272	1.20	2.40	4.80
Bloomfield Foundry, Inc.	HEGL	448.8	136	68	605	0.09	0.18	0.36	1	0	22	0.00	0.01	0.01
Griffin Pipe Products	HEGL	563.6	190	235	211	0.06	0.11	0.23	2	88	111	0.02	0.04	0.07
John Deere Foundry-Waterloo	BOWA	588.8	0	0	285	0.02	0.05	0.10	9	21	99	0.01	0.02	0.04
Keokuk Steel Casing	MING	392.0	11	72	554	0.08	0.16	0.32	4	9	67	0.01	0.02	0.04
The Dexter Company	MING	468.9	0	0	541	0.06	0.12	0.23	29	3	112	0.02	0.03	0.06
Alcoa, Inc.	MING	501.8	15	400	1,092	0.15	0.30	0.60	2	137	209	0.03	0.07	0.14

A majority of the non-EGU facilities were well below the 1.0 screening threshold in all six Q/d tests. Eleven facilities, listed in table 6, yield Q/d values well below 1.0 at even the most stringent potential to emit Q/5d evaluation. The State subsequently determined that these sources were unlikely to be subject to BART. Iowa indicates, on page 13 of Appendix 9 to the SIP, that this conclusion is further supported through evaluation of the Q/d values using facility-wide actual emissions. The actual emission Q/5d values average 0.09, with the upper limit at Monsanto Company-Muscatine of only 0.27. The State determined that these low values suggested any emission reductions would be insignificant at the nearest Class I area to the source.

TABLE 6—NON-EGU BART-ELIGIBLE FACILITIES SIGNIFICANTLY BELOW ALL Q/D SCREENING TESTS

Koch Nitrogen Company
Monsanto- Muscatine
Terra Nitrogen-Port Neal
BP-Bettendorf
BP-Des Moines
Bloomfield Foundry, Inc.
Griffin Pipe Products
John Deere Foundry-Waterloo
Keokuk Steel Casing
The Dexter Company
Alcoa, Inc.

Equistar Chemical is the only facility listed in Table 5 above where the results are not clear cut. Considering potential emissions, the Q/20d value is 0.71 with Q/10d and Q/5d exceeding 1.0. Actual emissions reveal that the most conservative value, Q/5d, remains well below 1.0 at 0.29. Equistar Chemical reported facility wide SO_2 emissions in 2002 at one tpy, with NO_X emissions of 728 tpy. As shown in Table 5, the nearest Class I area receptor is located at Mingo, at a distance of approximately 531 km. The transport distance in combination with low actual emissions produced the low Q/d value for Equistar Chemical. Under these circumstances, Equistar Chemical is unlikely to be subject to BART. However, the State considered results from additional analyses, described below, before making any BART exemptions based solely on Q/d calculations.

The BART guidelines indicate that when determining if a source is BART-subject, CALPUFF, or other appropriate models, can be used to determine if an individual source is anticipated to cause or contribute to impairment of visibility in Class I areas.[13] The State explains in Appendix 9 to the SIP, and in its Variegated Protocol, that because each BART-eligible unit located within the State was an average of 516 km (with a minimum of 392 km) away from the nearest Class I area, it experienced difficulties using the CALPUFF model to determine if a unit was BART-subject, due to the tendency of CALPUFF to over-predict single source contributions. The State did use CALPUFF as the modeling tool for its model plant approach described below, in the TSD for this rulemaking, and in section 5.2 of Appendix 9 to the SIP.

For the model plant analysis, the State utilized combined (SO_2 and NO_X) emission rates of 5,000 tpy and 3,000 tpy per source because of the distance from the sources to the Class I areas. The State chose to use the following Class I areas based on their distance from Iowa sources: BADL, BOWA, VOYA, MING, HEGL, ISLE and SENE. Natural background concentrations were extracted from the EPA's *Guidance for Estimating Natural Visibility Conditions under the Regional Haze Program.*[14].

[13] CALPUFF is a multi-layer, multi-species non-steady-state puff dispersion model that simulates the effects of time- and space-varying meteorological conditions on pollution transport, transformation and removal. CALPUFF can be applied on scales of tens to hundreds of kilometers. It includes algorithms for subgrid scale effects (such as terrain impingement), as well as longer range effects (such as pollutant removal due to wet scavenging and dry deposition, chemical transformation, and visibility effects of particulate matter concentrations). *http://www.epa.gov/ttn/scram/dispersion_prefrec.htm#calpuff.*

[14] *http://www.epa.gov/ttn/oarpg/t1/memoranda/rh_envcurhr_gd.pdf.*

During the State's analyses, each model plant simulation required fourteen iterations: Two natural background scenarios across seven Class I areas. Results for each Class I area assessment were tabulated and ranked individually. Both maximum and 98th percentile values were considered when determining the levels at which emissions may cause (dv impacts greater than or equal to 1.0) or contribute (dv impacts greater than or equal to 0.5) to visibility impairment.

The results of the analysis (given on page 28 and 29 of Appendix 9 to the SIP) showed that the model plant, with 5,000 tpy of NO_X and SO_2 combined (and 50 tpy of $PM_{2.5}$) did not yield any dv impacts greater than 0.5 dv at the 98th percentile as compared against annually averaged natural background conditions. In the years 2002 and 2003, a maximum of five days exceed the 0.5 dv impact threshold, occurring at the BADL, likely due to utilization of the cleaner Western natural background conditions.[15] During 2004, six days exceed the 0.5 dv impact threshold. The remaining six Class I area evaluations yield counts less than or equal to five days with impacts greater than 0.5 dv. Considering individual daily maximum impacts, 2002 values remain near the 0.5 dv level; slightly higher maximum impacts occur in 2003. In 2004 maximum impacts were consistently above 1.0 dv. When compared against the 20 percent best natural background conditions, each year, for each site, had more than seven days with maximum impacts exceeding 0.5 dv. As expected, maximum individual daily impacts show a corresponding increase versus annually averaged natural background conditions.

The results of the model plant analysis with 3,000 tpy of NO_X and SO_2 combined (and 50 tpy of $PM_{2.5}$) showed that the 98th percentile is never exceeded, regardless of the natural background scenario. Additionally, at 3,000 tpy of NO_X and SO_2 emissions combined, maximum impacts for the years 2002 and 2003, as compared against annually averaged natural background conditions, do not exceed 0.5 dv. The year 2004 does produce impacts above 0.5 dv. Two days above 0.5 dv are modeled for the BADL, and one day above 0.5 dv are shown for the remaining Class I areas. The 20 percent best natural background conditions—maximum daily impacts remain below 0.5 dv for all but SENE in 2002. In 2003, impacts greater than 0.5 dv are found for each site, but occur on no more than two days. Again, emissions in 2004 result in the dv highest impacts, but the impacts do not exceed the 98th percentile.

Based upon these results, the State concluded that any BART-eligible source that emitted less than 3,000 tpy of combined NO_X, SO_2 and $PM_{2.5}$ would likely be exempt from being BART-subject. At the 3,000 tpy level, evaluation against the stringent 20 percent best natural background conditions yields no more than five days with impacts exceeding 0.5 dv. Utilizing the emissions data (provided in table 5), the State determined that eleven of the fourteen non-EGU BART-eligible sources would remain well below the 3,000 tpy combined potential to emit. These happen to be the same facilities already identified in table 6 as being below the Q/d screening thresholds.

As a final tool to help in the BART-subject screening process, the State utilized the CAMx regional modeling system to model cumulative impacts across all BART-eligible sources at Class I areas. As set forth in the BART guidelines, a State may consider exempting all its BART-eligible sources from BART by conducting analyses that show that all of the emissions from BART-eligible sources in the State, taken together, are not reasonably anticipated to cause or contribute visibility impairment. To make such a showing, a State could use CALPUFF or another appropriate dispersion model to evaluate the impacts of individual sources on downwind Class I areas, aggregating those impacts to determine the collective contribution from all-BART eligible sources in the State. A State with a sufficiently large number of BART-eligible sources could also make such a showing using a photochemical grid model.[16] EPA determined that the option of allowing a State to demonstrate that the full group of BART-eligible sources in the State does not contribute to visibility impairment would, by default, satisfy an individual source contribution assessment. As previously discussed, the State had concerns with the use of CALPUFF, so it elected to use the photochemical model CAMx to model cumulative impacts of all BART-eligible sources across Class I areas.

Similar to the Q/d analysis, the State utilized a 0.5 dv impact as screening a threshold of the CAMx modeling results. For all cumulative CAMx modeling scenarios, the scenario design involved zeroing the actual point source emissions of BART-eligible sources on a facility-wide basis. In zeroing BART-eligible facility emissions, emphasis was placed upon the elevated point source emissions. The BART-eligible source list included distinctions for CAIR versus non-CAIR units (in lieu of CAIR as BART). This analysis is described in detail in the TSD for this rulemaking and in appendix 9 of the SIP.

In summary, considering a 12 km grid, emissions from non-EGU BART-eligible sources and natural background conditions, the maximum impact modeled is 0.63 dv (BOWA) with a maximum of only two days above the 0.5 dv threshold (ISLE). Under the 20 percent best natural background conditions, the maximum impact increases to 0.93 dv (BOWA), and the maximum frequency of impacts greater than 0.5 dv is five days (ISLE). Because there were impacts greater than the 0.5 dv threshold, the State could not provide a blanket exemption for all non-EGU BART-eligible sources considering just the results of the CAMx modeling. The State did not consider these analyses to be definitive so it considered actual emissions of visibility impairing pollutants from the sources evaluated in the modeling. Because eleven of the non-EGU BART-eligible sources (the same eleven as previously identified in table 6) comprise approximately 11 percent (2,547 tpy of SO_2, NO_X and PM) of the total of actual emissions (22,911 tpy of SO_2, NO_X and PM) from all fourteen non-EGU BART-eligible sources, the State determined that these eleven sources were unlikely to play a significant role in the cumulative modeled visibility impacts.

Although Iowa did not strictly follow the guidelines for exempting a source, specifically with respect to modeling a BART-eligible source using maximum actual emissions, in this case EPA has determined that Iowa's alternative analysis should result in an acceptable conclusion to exempt these eleven sources for the following reasons. First, the State's analysis used both actual emissions on a facility-wide basis and potential emissions for the BART-eligible units. When looking at the

[15] Annual average natural background concentrations are not strictly Class I area specific. Alternatively, sites are assigned one of two datasets: Eastern or Western. Of the seven Class I areas examined within the Iowa domain, all are considered Eastern sites with the exception of the Badlands. Page 23 of Appendix 9 to the SIP.

[16] For regional haze applications, regional scale modeling typically involves use of a photochemical grid model that is capable of simulating aerosol chemistry, transport, and deposition of airborne pollutants, including particulate matter and ozone. Regional scale air quality models are generally applied for geographic scales ranging from a multistate to the continental scale. Because of the design and intended applications of grid models, they may not be appropriate for BART assessments, so States should consult with the appropriate EPA Regional Office prior to carrying out any such modeling.

actual emissions facility-wide, for many of the sources, it was clear that had the maximum actual emissions been modeled using CALPUFF, the results would indicate minimal visibility impacts. This was apparent when comparing the modeled plant analysis emission inputs with the actual emissions. In almost all cases the sum of the actual emissions of visibility impairing emissions were significantly less than those used in the model plant analysis. The same is also true when looking at the potential emissions for many of these sources. Given that most of these non-EGU units do not have continuous emission monitoring systems (CEMS) that can be used for an accurate calculation of actual maximum 24-hour emission rate, using both the actual annual emissions facility-wide and potential emissions for the BART-eligible units provides confidence that these sources can be excluded as BART sources. Second, the Q/d analysis Iowa used provided a good indication of those sources where additional analysis might be warranted. Although we have not specifically relied on the Q/d analysis for our approval of BART exemptions, we do believe it was informative and the use of Q/5d is fairly conservative for this type of an analysis. We believe that the State reasonably demonstrated that the eleven non-EGU BART-eligible sources (listed above in table 6) are not BART-subject. The remaining discussion of this section will focus on the three remaining non-EGU BART-eligible facilities that were not exempted: Equistar Chemical, Holcim, and ADM-Clinton.

Equistar Chemical's potential and actual emissions are dominated by VOCs, and not SO_2, NO_X or PM. While potential emissions of SO_2 and NO_X exceed the 5,000 tpy model plant threshold, the actual emissions are far below the 3,000 tpy threshold—729 tons per year of NO_X and SO_2 combined. As such, the State determined that Equistar Chemical would not contribute impacts exceeding 0.5 dv, and was therefore not BART-subject. EPA agrees with this determination.

Both Holcim and ADM-Clinton fail the Q/d and CALPUFF model plant analyses. Almost all Q/d metrics exceed the 1.0 significance level, while SO_2 and NO_X emissions (potentials and actual emissions) exceed both the 3,000 and 5,000 tpy scenarios examined with the CALPUFF model plant application. The State decided to look at both ADM-Clinton and Holcim on a case-by-case basis.

As mentioned previously, the State found the uncertainties of using the CALPUFF modeling system for determining single source visibility impacts from sources far removed from Class I areas very challenging. The State decided to use an alternative process, scaling the cumulative modeling impacts according to emission rates. The State utilized the maximum dv impacts from the most relevant CAMx modeling scenario, at the most stringent 20 percent best natural background conditions, a value of 0.93 dv to scale actual SO_2, NO_X and PM emissions for both sources. The State zeroed out the actual SO_2, NO_X and PM emissions in the following scenario. Because Holcim's SO_2, NO_X and PM emissions account for 6,828 tpy of the 22,911 tpy total non-EGU BART-eligible sources' SO_2, NO_X and PM emissions, Holcim's proportional share would account for 30 percent of the emissions. If ADM-Clinton's SO_2, NO_X and PM emissions account for 12,755 tpy of the 22,911 tpy total non-EGU BART-eligible sources' SO_2, NO_X and PM emissions, ADM-Clinton would account for 56 percent of the emissions. The State then scaled the visibility impact attributable to Holcim and ADM-Clinton. If the maximum visibility impact from all non-EGU BART-eligible sources was figured to be 0.93 dv, and Holcim was found to contribute approximately 30 percent to that impairment, it could be estimated that Holcim would contribute approximately 0.28 dv visibility impairment (below the 0.5 dv threshold). Using the same method, ADM-Clinton was found to contribute approximately 56 percent to the maximum visibility impairment, or approximately 0.52 dv, above the 0.5 dv threshold. The State found that this additional information supported a determination that Holcim did not cause or contribute to visibility impairment at any Class I area, and was not BART-subject, however, the same determination for ADM Clinton could not be made according to this analysis.

As described previously, from the three screening approaches the State used, ADM-Clinton could not be ruled out from contributing to visibility impairment at Class I areas. However, at the time the State drafted the SIP, ADM-Clinton was going through a PSD permitting activity to construct new boilers. In the permit for the new boilers (Permit 05–A–314), ADM-Clinton was required to shut down boilers 1–14 no later than 180 days after the startup of the new boilers.[17] This includes the two BART-eligible boilers, numbers 7 and 8. We have confirmed with the State that these boilers have indeed shut down. In the PSD permit for the new boilers that replaced boilers 7 and 8, the facility was required to install and operate a baghouse, selective non-catalytic reduction, and limestone injection flue gas desulfurization on the new boiler units (three coal burning and two natural gas; five in total). The construction permit limited the emissions of the replacement boiler units through an annual cap applicable across all five new units. SO_2 emissions are not to exceed 3,629 tpy and NO_X emissions are not to exceed 1,445 tpy. These limits represent best available control technology (BACT) emission rates as required under the PSD program.[18] Because the BART-eligible boilers were permanently shut down pursuant to an enforceable PSD permit, and the replacement boilers satisfy BACT, the State concluded that ADM-Clinton was not subject to BART. EPA agrees with this determination.

EPA believes the State's approach to the photochemical modeling analysis does not fully account for the non-linear aspects of photochemical modeling and does not fully acknowledge that modeled impacts will not necessarily be directly proportional to the modeled emissions. However, EPA believes it is unlikely that Holcim will have visibility impacts on a Class I area greater than 0.5 dv for the following reasons. First, all modeled sources, including Holcim, are located a significant distance from any Class I area, with Holcim being 527 km from the nearest Class I area. Second, the modeling inputs showed that emissions from Holcim constituted only 30 percent of total emissions from the modeled sources. Third, the maximum modeled impacts from this group of sources at any Class I area using average natural background conditions is 0.64 dv with at most 2 days of impacts over 0.5 dv. Fourth, looking at all the maximum modeled impacts at all seven Class I areas shows an average maximum impact of 0.44 dv, indicating that no single source is likely the cause for the majority of impacts at any single Class I area. Finally, ADM-Clinton represents 56 percent of the visibility impairing emissions of the modeled sources and this source's BART eligible units have been permanently shut down, thus EPA anticipates impacts from the remaining group of sources would have less than a 0.5 dv impact. Based on these factors, EPA believes that State adequately demonstrated that Holcim does not cause or contribute to

[17] *https://aqbweb.iowadnr.gov/data/23/2301006/05A314P.pdf.*

[18] The applicable State permit numbers are 05–A–313–P, 05–A–314–P, 05–A–315–P for the coal-fired boilers, and 05–A–316–P, 05–A–317–P for the natural gas fired boilers.

visibility impairment in any Class I areas, and therefore is not subject to BART.

2. EGU BART Evaluation for PM

As the State relied on CAIR to address NO_X and SO_2 emissions, only an evaluation for PM was conducted for BART-eligible EGUs. There is no PM presumptive emission rate for EGUs with a capacity of 750 MW or greater. The State again relied on its CALPUFF model plant analysis for analyzing EGU PM emissions. Model year 2004 was selected in order to generate maximum impacts (the State's analysis showed that 2004 data generated impacts that exceeded 2002 and 2003 data). Two scenarios were completed using emission rates of 10,000 and 5,000 tpy of PM, NO_X, or SO_2 emissions. The model plant configuration was modified to reflect idealized EGU stack parameters, obtained from the EPA's CALPUFF analysis in support of the June 2005 changes to the RHR. Graphical results are given on page 46 of Appendix 9 to the SIP.

No impacts above 0.5 dv were observed at any Class I area under annually averaged natural background conditions with PM emissions of 10,000 tpy. Under the 20 percent best natural background conditions no impacts exceeding the 98th percentile occur. Reducing the emissions to 5,000 tpy, no impacts above 0.5 dv were produced under annually averaged background conditions or 20 percent best natural background conditions. In terms of scale, Iowa's largest PM_{10} source (an EGU that is not BART-eligible) emits 3,174 tpy (based on a facility-wide value), approximately 36.5 percent below the emission rate which yielded no visibility impacts. Based upon these results the State concluded, and the EPA agrees, that PM emissions from BART-eligible EGUs in the State of Iowa would not cause or contribute to visibility impairment at any nearby Class I area, and are therefore not subject to BART for PM.

G. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI)

EPA's visibility regulations direct States to coordinate their RAVI LTS and monitoring provisions with those for regional haze, as explained in section III. F. of this action. Under EPA's RAVI regulations, the RAVI portion of a State SIP must address any integral vistas identified by FLMs pursuant to 40 CFR 51.304. An *integral vista* is defined in 40 CFR 51.301 as a ''view perceived from within the mandatory Class I Federal area of a specific landmark or panorama located outside the boundary of the mandatory Class I Federal area.'' Visibility in any mandatory Class I Federal area includes any integral vista associated with that area. Iowa has no Class I areas, and FLMs did not identify any integral vistas affected by Iowa sources. Therefore, the Iowa regional haze SIP submittal is not required to address the two requirements regarding coordination of the regional haze SIP with the RAVI LTS and monitoring provisions.

H. Monitoring Strategy

Because it does not host a Class I area, Iowa is not required to develop a monitoring strategy for measuring, characterizing, and reporting regional haze impairment that is representative of Class I areas within the State. However, Iowa is required to establish procedures by which monitoring data and other information is used to determine the contribution of emissions from within the State to regional haze impairment at Class I areas outside of the State.

There are two IMPROVE monitoring protocol sites (sites that are not managed directly by IMPROVE, but by the operating agency) which are operated in the State. One is located at Lake Viking State Park in southwestern Iowa, and the second is located at Lake Sugema Wildlife Management Area in southeastern Iowa. The monitors began operation in June 2002. Descriptions of these monitoring sites and methods for data validation can be found in Chapter 6 of the State's Regional Haze SIP. The State has provided a commitment in Chapter 6 of the SIP to maintain the IMPROVE protocol monitoring sites contingent upon continued national funding.

Data from IMPROVE protocol monitors is analyzed by a national laboratory (funded via an interagency agreement between the EPA and the National Park Service) and uploaded by the laboratory into two publicly available databases at *http://vista.cira.colostate.edu/improve* and *http://vista.cira.colostate.edu/views/.* Any supplemental monitoring data from additional monitoring equipment at each site is publicly available at *http://www.epa.gov/ttn/airs/airsaqs.*

EPA believes the State's commitments to utilize data from these sites, or any other EPA-approved monitoring network location, to characterize and model conditions within the State and to compare visibility conditions in the State to visibility impairment at Class I areas hosted by other States. EPA proposes that Iowa has satisfied the requirements of 40 CFR 51.308(d)(4).

I. Emissions Inventory

Iowa was required to develop a statewide emissions inventory of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. This inventory must include baseline year emissions, emissions for the most recent year that data is available, and estimates of future year emissions. The State provided an inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area: VOCs, NO_X, SO_2, $PM_{2.5}$, PM_{10}, and ammonia (NH_3). As required, the inventory includes emissions for a baseline year (2002), the most recent year for which data are available, and estimates of future year (2018) projected emissions along with a commitment to update the inventory periodically.

The 2002 point source inventory was derived from the 2002 National Emission Inventory (NEI).[19] All other source category emission inventories were developed by CENRAP and its contractors as part of the development of a baseline inventory for the 2002 modeling inventory.[20] A summary of the 2002 baseline emissions inventory can be found in Chapter 7 of the SIP. Methodologies for the development of the 2002 emissions inventories can be found in Appendix 7.1 of the SIP.

To estimate the 2018 future year emissions the State grew the 2002 emissions using the Economic Growth Analysis System (EGAS) 5, MOBILE 6 and NONROAD vehicle emissions software. The State also used the IPM to forecast EGU emissions.

As shown in table 7, the State made a modification to the estimated 2018 SO_2 emissions for the point source EGU source category. In tables 7 and 8, the 2002 and 2018 point source EGU SO_2 emissions are 135,833 and 160,733 tons per year (tpy), respectively. The State was concerned with the accuracy of the 2018 (160,733 tpy) value. CENRAP utilized the ''RPO version 2.1.9'' IPM (referred to as IPM v2.1.9) predictions to generate the 2018 BaseG scenario,[21] in which total Iowa EGU SO_2 emissions were forecast to be approximately 147,305 tpy. During review of the

[19] *http://www.epa.gov/ttn/chief/net/2002inventory.html.*

[20] *http://www.cenrap.org/html/projects.php.*

[21] The CENRAP modeling emissions inventory consists of several distinct datasets: the 2002 basecase for model performance evaluation, 2002 typical, 2018 basecase, and the 2018 control strategy scenario. The inventory was refined through several rounds of CENRAP workgroup review and revision, beginning with the initial BaseA version and culminating in the BaseG inventory.

CENRAP BaseE2 modeling, errors were identified in the 2018 Iowa EGU emissions. Among the errors, certain EGU emissions were overestimated when a growth methodology was applied twice, once with EGAS and then again within IPM. Following error identification, corrections were submitted for inclusion in the BaseF (and subsequent BaseG) modeling scenarios. After the corrections, 2018 EGU SO_2 emissions totaled 151,354 tpy. Thus, the State believed the value of 160,733 tpy provided through the emissions inventory report developed by a CENRAP contractor to be inaccurate.[22] The State found that the corrected EGU SO_2 emissions estimate of 151,354 tpy for 2018 is conservative, given updated results from IPM version 3.0 (discussed in Chapter 11 of the SIP) and Iowa's participation in CAIR.

TABLE 7—2002 IOWA EMISSIONS SUMMARY

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Ammonia	0	0	0	0	258,915	0
Area	106,712	6,782	11,540	12,182	6.560	3,184
Area Fire	1,120	138	4,681	4,893	0	160
Fugitive Dust	0	0	38,666	193,331	0	0
Off road	63,694	92,595	8,904	9,707	79	9,037
On road	87,392	120,621	1,747	2,373	3,064	3,200
Point EGU	1,075	81,761	4,527	9,424	0	135,833
Point Fire	545	33	594	700	48	35
Point NonEGU	41,184	35,812	7,651	17495	3,317	51,836
Road dust	0	0	19,525	127,882	0	0
Wildfire	5	29	218	224	0	8
Biogenic	408,291	25,732	.....	.....	.....	.....
Total	710,018	363,503	98,053	378,211	271,983	203,293

TABLE 8—2018 IOWA PROJECTED EMISSIONS SUMMARY

[Tons per year]

	VOC	NO_X	$PM_{2.5}$	PM_{10}	NH_3	SO_2
Ammonia	0	0	0	0	302,012	0
Area	127,849	7,476	10,677	11,510	13,304	3,224
Area Fire	1,120	138	4,681	4,893	0	160
Fugitive Dust	0	0	40,608	203,044	0	0
Off road	37,143	60,210	5,582	6,088	101	220
On road	36,404	33,975	708	708	4,225	400
Point EGU	1,802	65,629	9,578	11,232	713	151,354
Point Fire	547	33	596	702	49	36
Point NonEGU	56,714	40,964	10,151	21,737	5,763	42,862
Road dust	0	0	17,712	114,889	0	0
Wildfire	5	29	218	224	0	8
Biogenic	408,291	25,732	.....	.....	.....	.....
Total	669,875	234,186	100,511	375,027	326,167	198,264

EPA proposes that the 2002 and 2018 statewide emissions inventories and the State's method for developing the 2018 emissions inventory meets the requirements of 40 CFR 51.308(d)(4)(v) of the regional haze rule.

J. Reporting Requirements

EPA has reviewed and believes the State's reporting strategy meets the requirements of the regional haze rule. The State is required to maintain reporting, record keeping and other measures necessary to assess and report on visibility improvements. In communications with the EPA, Iowa asserts that by complying with the Air Emissions Reporting Rule, in addition to the State's commitment (page 56, Chapter 12 of the SIP) to complete the periodic review as required in 40 CFR 51.308(g), for which the most recent or most appropriate emissions data will be used, such as CEMS data, it has met the requirements of 40 CFR 51.308(d)(4)(v) and 40 CFR 51.308(d)(4)(vi) of the RHR. The EPA believes the State's methods of reporting and record keeping of emissions meet the requirement of 40 CFR 51.308(d)(4)(vi) of the RHR.

K. Consultation With Federal Land Managers

The State of Iowa met the FLM consultation requirement by sending the draft SIP to the FLMs on November 26, 2007, and notifying the FLMs of the public hearing on January 30, 2008. 40 CFR 51.308(i)(3) requires States to provide a description of how they addressed any comments provided by the FLMs. Iowa has provided this in Appendix 2.1 of the SIP. EPA believes that Iowa adequately responded to the comments received from the FLMs and from EPA.

[22] The ''Consolidation of Emissions Inventories''—Pechan Report No. 05.03.002/9500.003.

Regional haze SIPs must also provide procedures for continuing consultation between the State and FLMs on the implementation of 40 CFR 51.308, including development and review of SIP revisions and 5-year progress reports, and on the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas. The State of Iowa has committed to continuing to coordinate and consult with the FLMs during the development of future progress reports and plan revisions, as well as during the implementation of programs having the potential to contribute to visibility impairment in Class I areas.

EPA proposes to find that the State of Iowa has satisfied the consultation requirements of 40 CFR 51.308(i).

L. Periodic SIP Revisions and Five Year Progress Reports

Iowa acknowledged the requirement under 40 CFR 51.308(f) to submit periodic progress reports and regional haze SIP revisions, with the first report due by July 31, 2018, and revisions due every ten years thereafter. Iowa has committed to meeting this requirement.

Iowa also acknowledged the requirement under 40 CFR 51.308(g) to submit a progress report in the form of a SIP revision every five years following this initial SIP submittal. Iowa committed to submitting the required five year SIP revision, evaluating the progress made towards the RPGs for each mandatory Class I area which may be affected by emissions from Iowa sources. Iowa committed to addressing all the requirements of 40 CFR 51.308 (g), including a review of the changes in the emission inventory, a review of the periodic reporting requirements, and a determination of whether additional action is needed according to 40 CFR 51.308(h).

We propose to find that Iowa has satisfied the requirements to submit periodic SIP revisions and progress reports as required by 40 CFR 51.308(f)–(h).

V. Proposed Actions

We propose a limited approval of Iowa's March 25, 2008 SIP revision addressing regional haze. In a separate action, EPA has proposed a limited disapproval of the Iowa regional haze SIP because of deficiencies in the State's regional haze SIP submittal arising from the State's reliance on CAIR to meet certain regional haze requirements. 76 FR 82219. We are not proposing to take action in today's rulemaking on issues associated with Iowa's reliance on CAIR in its regional haze SIP.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* OMB must approve all ''collections of information'' by the EPA. The Act defines ''collection of information'' as a requirement for answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *. 44 U.S.C. 3502(3)(A). The Paperwork Reduction Act does not apply to this action.

C. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments. Thus, Executive Order 13175 does not apply to this rule. EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

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

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

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

Dated: February 15, 2012.

Karl Brooks,

Karl Brooks, Regional Administrator, Region 7.

[FR Doc. 2012–4684 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0027; FRL–9638–6]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District and Yolo-Solano Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Mojave Desert Air Quality Management District (MDAQMD) and Yolo-Solano Air Quality Management District (YSAQMD) portions of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from glass melting furnaces and biomass boilers. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 29, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0027, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov*.

3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248, *perez.idalia@epa.gov*.

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates when they were adopted or amended by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted/ Amended	Submitted
MDAQMD	1165	Glass Melting Furnaces	08/12/08	12/23/08
YSAQMD	2.43	Biomass Boilers	11/10/10	04/05/11

On April 20, 2009, EPA determined that the submittal for MDAQMD Rule 1165 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review. On May 6, 2011, EPA determined that the submittal for YSAQMD Rule 2.43 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of YSAQMD Rule 2.43. There are no previous versions of Rule 1165 in the SIP, although the MDAQMD adopted an earlier version of this rule on August 27, 2007, and CARB submitted it to us on March 7, 2008. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rules?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control NO_X and PM emissions. MDAQMD Rule 1165 limits emissions of NO_X, carbon monoxide (CO), volatile organic compounds (VOCs), and sulfur oxides (SO_X) from glass melting furnaces that produce at least 5 tons of glass per day. YSAQMD Rule 2.43 regulates emissions of NO_X and CO from boilers that use biomass as fuel and that have a heat input rating of greater than 5 MMBtu/hour. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(b)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). The MDAQMD regulates an ozone nonattainment area and a PM_{10} nonattainment area classified as moderate (see 40 CFR part 81), so Rule 1165 must implement RACT and RACM. The YSAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 2.43 must fulfill RACT.

Guidance and policy documents that we use to evaluate enforceability, RACT and RACM requirements consistently include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998 (August 16, 1994).
5. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.
6. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters,'' CARB, July 18, 1991.
7. ''Alternative Control Techniques Document— NO_X Emissions from Industrial/Commercial/Institutional (ICI) Boilers,'' US EPA 453/R–94–022, March 1994.
8. ''Alternative Control Techniques Document— NO_X Emissions from Utility Boilers,'' US EPA 452/R–93–008, March 1994.
9. ''State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, September 20, 1999.
10. ''Interim White Paper—Midwest RPO Candidate Control Measure: Glass Manufacturing,'' Lake Michigan Air Directors Consortium, December 12, 2005.
11. ''Alternative Control Techniques Document— NO_X Emissions from Glass Manufacturing,'' US EPA 453/R–94–037, June 1994.
12. ''Integrated Pollution Prevention and Control (IPPC) Reference Document on Best Available Techniques in the Glass Manufacturing Industry,'' European Commission, December 2001.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, RACM and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules but are not currently the basis for rule disapproval.

D. Public Comment and Final Action

Because EPA believes the submitted rules fulfill all relevant requirements, we are proposing to fully approve them as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 15, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–4729 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0089; FRL–9638–5]

Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Mojave Desert Air Quality Management District (MDAQMD) portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from stationary gas turbines. We are proposing action on a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 29, 2012.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0089, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

2. *Email: steckel.andrew@epa.gov.*

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Idalia Perez, EPA Region IX, (415) 972–3248.

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

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E. Proposed Action and Public Comment
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rule did the State submit?

Table 1 lists the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
MDAQMD	1159	Stationary Gas Turbines	09/28/09	05/17/10

On June 8, 2010, the submittal for MDAQMD Rule 1159 was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved an earlier version of Rule 1159 into the SIP on April 9, 1996 (61 FR 15719).

C. What is the purpose of the submitted rule?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_X emissions. Rule 1159 regulates emissions of NO_X and carbon monoxide (CO) from non-utility stationary gas turbine systems with ratings equal to or greater than 0.3 megawatts (MW). EPA's technical support document (TSD) has more information about this rule.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including RACT, in moderate PM nonattainment areas, and Best Available Control Measures (BACM), including Best Available Control Technology (BACT), in serious PM nonattainment areas (see CAA sections 189(a)(1) and 189(b)(1)). The MDAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1159 must fulfill RACT. In addition, the MDAQMD regulates a PM nonattainment area classified as moderate (see 40 CFR part 81), so Rule 1159 must implement RACM.

Guidance and policy documents that we use to evaluate enforceability, RACT and RACM requirements consistently include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
3. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
4. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
5. ''State Implementation Plans for Serious PM–10 Nonattainment Areas, and Attainment Date Waivers for PM–10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 59 FR 41998, August 16, 1994.
6. ''PM–10 Guideline Document,'' EPA 452/R–93–008, April 1993.
7. ''Alternative Control Technology Document, NO_X Emissions from Stationary Gas Turbines,'' U.S. EPA, 453/R–93–007, January 1993.
9. ''Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for the Control of Oxides of Nitrogen from Stationary Gas Turbines,'' California Air Resources Board, May 18, 1992.
10. ''Status Report on NO_X Controls for Gas Turbines, Cement Kilns, Boilers, and Internal Combustion Engines,'' Northeast States for Coordinated Air Use Management, December 2000.

B. Does the rule meet the evaluation criteria?

Rule 1159 improves the SIP by establishing more stringent emission limits and expanding the applicability of the rule to include units in the attainment area of the District. The rule is largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

The following provision conflicts with section 110 and part D of the Act and prevents full approval of the SIP revision. Section D.3 exempts the Southern California Gas Company General Electric Model Frame 3 turbine located in Kelso, California from testing requirements. This undermines enforceability of the rule which contradicts CAA requirements for enforceability.

D. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that we recommend for the next time the local agency modifies the rule.

E. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted rule to improve the SIP. If finalized, this action would incorporate the submitted rule into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rule under section 110(k)(3). Neither sanctions nor a Federal Implementation Plan (FIP) would be imposed should EPA finalize this limited disapproval. Sanctions would not be imposed under CAA 179(b) because the deficiency pertains

to provisions of Rule 1159 that are discretionary (i.e., not required to be included in the SIP), and EPA would not promulgate a FIP in this instance under CAA 110(c)(1) because the disapproval does not reveal a deficiency in the SIP for the area that such a FIP must correct. Specifically, the disapproval pertains to requirements only applicable in the portion of the MDAQMD that is classified as attainment for ozone and which thus does not have RACT requirements per CAA 182(a)(2) and 182(f). Accordingly, the failure of the MDAQMD to adopt revisions to Rule 1159 would not adversely affect the SIP's compliance with the CAA's mandated requirements, such as the requirements for section 182 ozone RACT, reasonable further progress, and attainment demonstrations.

Note that the submitted rule has been adopted by the MDAQMD, and EPA's final limited disapproval would not prevent the local agency from enforcing it. The limited disapproval also would not prevent any portion of the rule from being incorporated by reference into the federally enforceable SIP as discussed in a July 9, 1992 EPA memo found at: *http://www.epa.gov/nsr/ttnnsr01/gen/pdf/memo-s.pdf.*

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals or disapprovals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the State is already imposing. Therefore, because the proposed Federal SIP limited approval/limited disapproval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the limited approval/limited disapproval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve and disapprove pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

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

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely proposes to approve or disapprove a State rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045, because it proposes to approve a State rule implementing a Federal standard.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

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

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

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

Dated: February 15, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–4737 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 501 and 540

[Docket No. 11–16]

RIN 3072–AC45

Passenger Vessel Operator Financial Responsibility Requirements for Non-Performance of Transportation

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule: Request for additional comments and information.

SUMMARY: The Federal Maritime Commission requests additional comments and information in order to assist the Commission's determination whether passenger vessel operators may be deemed ''small entities'' under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act).

DATES: Submit comments on or before March 30, 2012.

ADDRESSES: Address all comments concerning this proposed rule to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5725, Email: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Vern W. Hill, Director, Bureau of Certification and Licensing, 800 North Capitol Street NW., Washington, DC 20573–0001, Phone: (202) 523–5787, Email: *bcl@fmc.gov.*

SUPPLEMENTARY INFORMATION:

Submit Comments

Non-confidential Comments and Information. For non-confidential comments submit an original and five (5) paper copies, and if possible, send a PDF of the document by email to *secretary@fmc.gov.* Include in the subject line: Docket No. 11–16 and [Company/Individual Name].

Confidential Comments and Information. Confidential filings must be submitted in the traditional manner on paper, rather than by email. Comments and information that are submitted for confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as ''confidential'' and describes the nature and extent of the confidential treatment requested. Responses to this Request that contain confidential information must consist of (1) the complete filing and (2) be marked by the filer as ''Confidential-Restricted,'' with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, ''confidential materials excluded.'' The Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

Questions regarding filing or treatment of confidential responses to this NPRM should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or email provided above.

Discussion

On September 13, 2011, the Commission issued its Notice of Proposed Rulemaking (NPRM) to update its financial responsibility requirements for nonperformance of passenger vessel service by passenger vessel operators that are subject to section 3 of Public Law 89–777, 46 U.S.C. 44101–44106. The NPRM was published in the **Federal Register** on September 20, 2011. 76 FR 58227–58236.

In the NPRM, the Commission relied upon the rebuttable presumption established in 2003[1] that PVOs are generally large companies with more than 500 employees and noted that there are no PVO small entities that would be affected by the proposed rule. NPRM, p. 12. In addition, the Commission also provided the factual basis under the Regulatory Flexibility Act (RFA),[2] as amended by the Small

[1] See, *FMC Policy and Procedures Regarding Proper Consideration of Small Entities in Rulemakings* (February 7, 2003). (Commission SBREFA Policy). See, *http://www.fmc.gov/assets/1/Page/SBREFA_Guidelines_2003.pdf.*

[2] Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164 (codified at 5 U.S.C. 601 *et seq.*).

Business Regulatory Enforcement Fairness Act (SBREFA),[3] for the Chairman's certification that the rule will not have a significant economic impact on a substantial number of small entities. It was noted that the proposed rule could result in significant reductions in the cost of financial responsibility coverage because of the use of alternative coverage options. However, the public was requested to comment on the certification and its underlying assumptions.[4]

American Cruise Lines, Inc. (ACL) requests in its comments that the Commission treat it as a small entity under the RFA and SBREFA. ACL informed the Commission that it has less than 500 employees, which is the maximum number a PVO can employ and be considered a small entity under SBA's current size standards.[5] ACL Comments, pp. 2–3. The Passenger Vessel Association (PVA) similarly asserts that four of its members would qualify as small entities under RFA and SBREFA and that a ''good faith analysis'' under those statutes should be made. PVA Comments, p. 3. In view of these comments, the Commission seeks additional information relevant to the Commission's analysis whether there will be significant economic impacts on a substantial number of small entities.

In its SBREFA Policy, the Commission adopted the small business size standards established by the Small Business Administration that are matched to industry classifications in the North American Industry Classification System (NAICS).[6] The Commission specifically identified industry code and title: 483112—Deep Sea Passenger Transportation. However, two additional code classifications in the NAICS may apply to passenger vessel operators: 483114—Coastal and Great Lakes Passenger Transportation; and, 483212 Inland Water Passenger Transportation. For each of these three code classifications, the same size standard applies. In other words, a PVO may have no more than 500 employees in order to be considered a small entity.

In order to determine the number and extent to which small entity PVOs may be affected by the proposed rule, the Commission invites response from all PVOs as to the number of employees employed by their companies.[7] The employee data sought includes full time and temporary employees, and the number of employees of each PVO's foreign and domestic affiliates.

In addition, the Commission's threshold analysis under RFA and SBREFA also involves estimating:

- The economic impacts upon those entities,
- Whether those impacts are significant (including whether such entities would be placed at a competitive disadvantage relative to larger entities), and
- Whether such effects will fall upon a substantial number of small entities.

In pursuing this analysis, the Commission needs information from large and small PVOs. The questions set forth below seek information related to: each PVO's estimated cost of compliance with the proposed rule; the company's total revenues, expenses and earnings; the average revenue per passenger; the number of passengers embarked at U.S. and foreign ports; and identification of direct competitors in the United States cruise markets in which the PVO is currently operating.

In view of the foregoing, the Commission requests written comments and responses to the following questions by interested parties, including those that previously filed comments in response to the proposed rulemaking.[8]

Questions

1. Please detail your estimated cost of compliance with the proposed rule's requirements pertaining to financial responsibility for nonperformance of passenger vessel transportation (i.e., premiums and fees by sureties; collateral required by credit card issuers; other costs):

(a) Based on current operations and costs for the past year (2011).

(b) Your estimated cost of compliance if alternative forms of protections as contained in the proposed rule are available.

2. Will the nonperformance requirements in the proposed rule change your type of coverage? If so, explain how.

3. How will the proposed changes to the requirements affect your continuing operations?

4. Estimated number of your company's staff hours required to comply with proposed changes to the application form (Form 131).

5. Estimated number of your company's staff hours required to comply with proposed changes to Unearned Passenger Revenue (UPR) reports.

6. What was your total revenue in 2011? These figures should reflect revenues obtained from all sources (not just from cruises under the Commission's program).

7. What were your total expenses in 2011? These figures should reflect expenditures incurred by all activities (not just by cruises under the Commission's program).

8. What were your earnings after taxes in 2011? These figures should reflect earnings after taxes from all operations (not just operations conducted under the Commission's program).

9. Please provide the following information regarding the number of employees your company employed in the most recent 12 calendar months (include any domestic and/or foreign affiliates in calculating number of employees):

(a) Full-time, permanent employees (head-count).

(b) Part-time, permanent employees (head-count and full-time equivalents).

(c) Full-time, seasonal or temporary employees (head-count).

(d) Part-time, seasonal or temporary employees (head-count and full-time equivalents).

(e) Staff obtained from temporary employment agencies (head-count and full-time equivalents). Do not include these totals in (a) through (d) above.

(f) Staff obtained from professional employee organizations (head-count and full-time equivalents). Do not include these totals in (a) through (d) above.

10. Which passenger vessel operators (brand(s)) do you consider your closest competitor(s) in U.S.-based markets?

11. What was the average revenue generated by each passenger who embarked on your U.S.-based cruises in 2011?

12. How many passengers did you embark in 2011 at:

(a) U.S. ports.

(b) Non-U.S. ports.

13. Please provide any other comments or information that you believe would assist the Commission in analyzing the economic or competitive impact of the proposed rule in this proceeding.

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[3] Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, 110 Stat. 857.

[4] The Commission SBREFA Policy also encourages small PVOs to ''submit a request for such treatment * * *, along with payroll * * * evidence * * *, to substantiate its claim and rebut the presumption.'' SBREFA Policy, p. 4.

[5] See *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.*

[6] SBREFA Policy, at p. 3.

[7] SBA regulations establish principles relative to the calculation of a business' total number of employees. For example ''the average number of employees of the concern is used * * * based upon the numbers of employees for each of the pay periods for the preceding completed 12 calendar months.'' 13 CFR 121.106(b).

[8] Comments were received from Congressman Andy Harris, M.D. (Maryland), The Surety & Fidelity Association of America, Lindblad Expeditions, Inc., Royal Caribbean Cruises Ltd., National Association of Surety Bond Producers, Cruise Lines International Association, Inc., American Cruise Lines, Inc., Passenger Vessel Association, Carnival Corporation & plc.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–4749 Filed 2–27–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 12–38 and 03–123; DA 12–208]

Consumer and Governmental Affairs Bureau Seeks To Refresh the Record Regarding Misuse of Internet Protocol Relay Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission, via the Consumer and Governmental Affairs Bureau (Bureau) seeks comment to refresh the record regarding misuse of Internet Protocol relay service. Further comments are requested to bring the record up to date on proposed additional rules that would have the intended effect of reducing or eliminating misuse of Internet Protocol Relay.

DATES: Submit comments on or before March 20, 2012.

ADDRESSES: You may submit comments, identified by CG Docket Nos. 12–38 and 03–123, by any of the following methods:

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the Commission's Electronic Comment Filing System (ECFS), through the Commission's Web site *http://fjallfoss.fcc.gov/ecfs2/.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal service mailing address, and CG Docket Nos. 12–38 and 03–123.
- *Paper filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial Mail sent by overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street SW., Washington, DC 20554.

In addition, parties must serve one copy of each pleading with the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, or via email to *fcc@bcpiweb.com.*

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Eliot Greenwald, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2235 (voice), (202) 418–2922 (TTY), or email at *Eliot.Greenwald@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Public Notice, document DA 12–208, released February 13, 2012. The full text of document DA 12–208 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. Document DA 12–208 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *www.bcpiweb.com*, or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 12–208 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html.* Pursuant to 47 CFR 1.415 and 1.419, interested parties may file comments on or before the date indicated in the **DATES** section of this document. Comments must include a short and concise summary of the substantive discussion and questions raised in the document DA 12–208. The Commission further directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments. Comments must otherwise comply with 47 CFR 1.48 and all other applicable sections of the Commission's rules.

- Pursuant to 47 CFR 1.1200 *et. seq.,* this matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must: (1) List all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made; and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b) of the Commission's rules. In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large

print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Initial Paperwork Reduction Act of 1995 Analysis

Document DA 12–208 does not contain any new proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Pub. L. 104–13. In addition, therefore, it does not contain any new proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis

In document DA 12–208, the Bureau seeks to refresh the record on several issues pertaining to misuse of Internet Protocol (IP) Relay Service, including issues that were initially raised in the Further Notice of Proposed Rulemaking (*2006 FNPRM*) released by the Commission on May 8, 2006 and published at 71 FR 31131, June 1, 2006. IP Relay is a form of text-based telecommunications relay service (TRS) that uses the Internet to allow individuals with hearing and/or speech disabilities to communicate with other individuals. The Bureau remains concerned that individuals who do not have a hearing or speech disability may be continuing to misuse IP Relay by, for example, calling merchants to place orders using fake, stolen, or otherwise invalid credit cards. Such abuse not only drains the TRS Fund that supports these services, but also harms legitimate consumers whose calls are rejected by individuals and businesses that have been the victims of such misuse. The Bureau believes that a refreshed record will better enable the Commission to take timely and appropriate action to address these problems.

As the *2006 FNPRM* explained, IP Relay affords users a degree of anonymity that can facilitate fraudulent activity. The *2006 FNPRM* sought comment on ways to curb fraudulent calls via IP Relay, including requiring user registration and permitting relay providers to screen and terminate fraudulent IP Relay calls.

Since the *2006 FNPRM* was adopted, the Commission has undertaken a number of measures to combat misuse of the IP Relay program. Most significantly, in June 2008, the Commission adopted a mandatory system in which users of iTRS, including IP Relay, are assigned ten-digit telephone numbers linked to the North American Numbering Plan and iTRS users with disabilities are registered with their provider of choice (default provider). The Commission expressed its expectation that the registration of iTRS users with a default provider and the requirement for each user to provide a ''Registered Location'' would reduce the misuse of IP Relay. *See* 73 FR 41286, July 18, 2008. The Commission also sought comment on whether additional steps were needed to curtail illegitimate calls made through this service. *See* 73 FR 41307, July 18, 2008.

In December 2008, the Commission adopted a second iTRS numbering Order, published at 73 FR 79683, December 30, 2008, addressing IP Relay and video relay service (VRS). Among other things, the Commission:

- Directed iTRS providers to ''implement a reasonable means of verifying registration and eligibility information,'' including the consumer's name and mailing address, before issuing the consumer a ten-digit telephone number. The Commission provided the following examples of what such verification could include: ''(1) Sending a postcard to the mailing address provided by the consumer, for return to the default Internet-based TRS provider; (2) in-person or on-camera ID checks during registration; or (3) other verification processes similar to those performed by voice telephone providers and other institutions (such as banks and credit card companies).''
- Directed that such registration be accompanied by consumer education and outreach efforts designed to inform iTRS users of the importance of providing accurate registration information.
- Limited eligibility to receive ten-digit numbers for iTRS use to people who have a hearing or speech disability and directed provider verification procedures to include a self-certification component requiring consumers to verify that they have a medically recognized hearing or speech disability necessitating their use of TRS.

In April 2011, the Commission adopted several additional measures to combat relay fraud and abuse. *See* 76 FR 24393, May 2, 2011 and 76 FR 24437, May 2, 2011. Among those measures that apply to IP Relay were a requirement for all TRS providers to submit to Commission-directed audits, a mandate for iTRS providers to retain, for five years, call detail records and other records supporting claims for payment, whistleblower protection rules for provider employees and contractors, and a requirement that a senior executive of a TRS provider certify, under penalty of perjury, to the validity of minutes and data submitted to the TRS Fund administrator.

Lastly, in July 2011, the Commission adopted new certification rules applicable to iTRS providers, authorized on-site visits to the premises of applicants for iTRS certification and certified iTRS providers to confirm compliance with Commission rules, and set forth new requirements for providers to submit documentary evidence of their ability to comply with the Commission's TRS rules, to provide annual updates to their certification application information, and to certify, under penalty of perjury, as to the accuracy of their certification applications and their annual compliance filings to the Commission. *See* 76 FR 47469, August 5, 2011 and 76 FR 47476, August 5, 2011.

Refreshing the Record. Title IV of the Americans with Disabilities Act (ADA) mandates the provision of TRS for individuals with hearing and speech disabilities that is functionally equivalent to voice telephone services. This functional equivalency standard has served as the touchstone for the Commission in determining how TRS providers must provide services to consumers: the goal is to have the features, functions, and capabilities of these services mirror voice telephone services as closely as possible. To this end, Commission rulings have characterized CAs as ''transparent conduits'' to a relay call, frequently equated the connection to a CA with accessing a dial tone, and mandated confidentiality protections. Calls that are not legitimate relay calls, however, are not entitled to these transparency and confidentiality protections. Moreover, when there is concern that fraud or misuse infects a relay service, the Commission has an obligation to consider actions necessary to preserve the integrity and sustainability of the service.

Despite the Commission's persistent efforts to combat the fraudulent use of IP Relay, the Bureau remains concerned that such misuse may persist. For example, although the Commission directed iTRS providers to implement reasonable methods to verify registration and eligibility information submitted by IP Relay users, the methods that providers currently are using may not be reasonable and may not be achieving the desired goal of ensuring that only eligible or qualified persons are using the service. Accordingly, the Commission may need to impose additional and more specific requirements with respect to both

authenticating initial registrants and verifying users of the service in order to ensure that providers are in fact taking reasonable steps needed to curb IP Relay misuse. Such steps are necessary to protect the integrity of the IP Relay program so that this service remains a viable and a valuable communication tool for Americans who wish to use it. Therefore, the Bureau believes it is necessary to refresh the record in this proceeding to help the Commission better understand what additional tools are needed to aid the Commission in these efforts.

To this end, the Bureau seeks additional comment to refresh the *2006 FNPRM* record and regarding IP Relay generally on the following matters:

- The effectiveness of current measures to verify eligibility information for registration. In this regard, the Bureau asks commenters to provide information about methods of verification currently in use to authenticate the identity and eligibility of an individual seeking to obtain a ten-digit number. The Bureau specifically seeks comment on the extent to which IP Relay providers are utilizing one or more of the following verification procedures when registering such individuals: (1) Sending a postcard to the mailing address provided by the consumer, for return to the default IP Relay provider; (2) utilizing in-person or on-camera ID checks during registration; (3) utilizing verification processes similar to those performed by voice telephone providers and other institutions (such as banks and credit card companies); or (4) utilizing an alternative means of verification approved in advance by the Commission. The Bureau asks providers to comment on the effectiveness of each of these or any other verification measures that they use to screen out illegitimate IP Relay users, as well as how they assess the effectiveness of such measures. The Bureau further asks whether individuals outside of the U.S. have been obtaining IP Relay access numbers or otherwise using this service unlawfully, as well as to what extent current provider practices enable or contribute to the registration of ineligible IP Relay users. The Bureau also seeks input on what additional steps should be taken, or technology implemented, to prevent the registration and use of IP Relay by these and other ineligible individuals?
- Other verification processes, such as commercial verification services, that are available and may be appropriate to more effectively screen out ineligible individuals who attempt to register as IP Relay users. For example, the Bureau notes that the Commission has in place verification procedures for other programs, such as those recently adopted for Lifeline assistance. Specifically, in light of evidence demonstrating that consumer self-certification of program-based eligibility does not effectively prevent ineligible consumers from enrolling in Lifeline, the Commission amended its rules to require providers to confirm a consumer's eligibility for Lifeline with documentation. Would utilization of similar or analogous procedures be appropriate and necessary to verify eligibility in the IP Relay context? The Bureau seeks specific comment on whether a database would be effective in this context, and on what types of documentation would be available and appropriate to establish the eligibility of registrants for IP Relay. Are there other governmental programs that may serve as a model for verifying the eligibility of individuals who seek to use IP Relay?
- Although the iTRS Numbering Implementation Public Notice directed providers to verify each caller's registration prior to completing non-emergency calls, it also directed providers to handle a call from a newly registered user immediately, even if the provider had not completed the process of verifying the caller's information, assigning the caller a new ten-digit number, and provisioning that number to the iTRS database. Should the Commission continue to permit temporary authorization for a user to place IP Relay calls while verification of the caller is taking place, in light of the apparent misuse of IP Relay? Or should the Commission prohibit temporary authorization for this service (other than for the handling of emergency calls)?
- To the extent the Commission adopts specific user verification procedures, should it require IP Relay providers to revalidate all of their currently registered users?
- Whether IP Relay providers and their CAs should be given the discretion to determine, on a case-by-case basis, that a call is not a legitimate TRS call, and to block, terminate, or refuse to handle the non-TRS call. Are there ways for an IP Relay provider and its CAs to determine when an IP Relay call is fraudulent through identifiable indicia? If an illegitimate call (*i.e.,* one that the CA has determined is not a TRS call) has been placed to a merchant, should the provider or CA be permitted to alert the merchant that the call is believed to be fraudulent, or take other steps to prevent the misuse of IP Relay?
- Whether advanced call tracking mechanisms—*e.g.,* geolocation systems—are available for the purpose of accurately determining whether a particular IP Relay call is originating from or terminating to an international location. If available, can such call-tracking mechanisms identify international IP Relay calls, even when a party to the IP Relay call is attempting to disguise the IP Relay call as a domestic U.S. call by, for example, re-directing the call through a domestic IP address? The Bureau also seeks comment on the extent to which providers are using tracking mechanisms to determine where IP Relay calls originate.
- At present, Commission rules require providers to maintain and submit various records of the relay calls for which they seek reimbursement. However, the Commission's rules also prohibit CAs from keeping records of the content of any conversation beyond the duration of a call. For calls placed with IP Relay providers that are determined by a provider to be illegitimate, what documentation, if any, should the provider be required to maintain and submit to the Commission regarding such calls to facilitate better program oversight?
- Whether more rigorous user authentication on a per-call basis should be employed to combat misuse of IP Relay. If so, what form would this take? Would such an approach enable providers to authenticate callers who dial-around to a different IP Relay provider more effectively? Would the use of a common resource, such as a third-party database or service, enable providers to authenticate dial-around callers more effectively? Would more rigorous user authentication on a per-call basis address current vulnerabilities to IP address spoofing? How could such an approach be extended to popular messaging services, such as AIM and Google Talk, that callers might use to access IP Relay?
- Under the Commission's iTRS registration process, IP Relay users select a default relay provider for the handling of their IP Relay calls, but are permitted to dial-around to a different IP Relay provider at any time. To what extent is this dial-around feature used or desirable for IP Relay calls? Under the Commission's rules, IP Relay providers must answer 85 percent of all calls within 10 seconds, averaged daily. Does this rapid response time negate the need for a dial-around feature? To what extent is the dial-around feature contributing to relay misuse? If the Commission discontinues allowing the dial-around feature, should an exception be made for emergency calls?
- Whether providers maintain lists of illegitimate users whose numbers are

blocked from using IP relay, and, if so, the approximate number of such users and the extent to which providers share this information with one another. Should the Commission require providers to share such information or to take additional measures to ensure that all providers have the same information, *e.g.,* by creating a central database of barred users and/or blocked numbers/addresses?

• The extent to which IP Relay fraud or misuse exists, and specifically, the extent to which it has worsened (or has been ameliorated) since the Commission adopted its iTRS numbering and user registration requirements. The Bureau also seeks updated information on any patterns associated with such misuse—for example, whether it is more prevalent at specific times of the day, week, month, and year—as well as the nature of this misuse.

• Whether specific audit procedures, in addition to those that the Commission has already authorized, are needed to identify and curb IP Relay misuse.

• The extent to which IP Relay is currently being used by consumers with and without disabilities, and whether it is meeting a need that is not fulfilled by other forms of relay, or other text-based services. When IP Relay was approved in 2002, IP-based captioned telephone relay service was not available to consumers and VRS was typically available in community settings only (*e.g.,* libraries, consumer organizations). In addition, purely text-based services such as on-line ordering and text messaging were not as commonly used as they are today. To what extent do other forms of relay services, as well as text messaging and other electronic messaging services, now serve as adequate or preferred alternatives to IP Relay?

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–4658 Filed 2–27–12; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 77, No. 39
Tuesday, February 28, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2011–0126]

Notice of Request for Approval of an Information Collection; Importation of Hams Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request approval of an information collection associated with regulations for the importation of hams into the United States.

DATES: We will consider all comments that we receive on or before April 30, 2012.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!documentDetail;D=APHIS-2011-0126-0001.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2011–0126, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2011-;0126* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of hams into the United States, contact Dr. Magde Elshafie, Staff Veterinarian, Technical Trade Services—Products, NCIE, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 734–3277. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

SUPPLEMENTARY INFORMATION:

Title: Importation of Hams Into the United States.

OMB Number: 0579–xxxx.

Type of Request: Approval of an information collection.

Abstract: Under the authority of the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) regulates the importation of certain animal and poultry products and byproducts to prevent the introduction of pests and diseases of livestock and poultry into the United States. These regulations are found at 9 CFR parts 94, 95, 96, and 122.

The regulations require a number of information collection activities to prevent the introduction of livestock and poultry diseases and pests via the importation of animal and poultry products and byproducts, including hams, into the United States. For hams, these include certifications for the hams, agreements regarding processing procedures, identification procedures (hot brand or ink seal), and recordkeeping.

These activities are currently approved by the Office of Management and Budget (OMB) under OMB control number 0579–0015, which also covers information collection activities for a variety of other animal and poultry products imported into the United States. We are proposing to separate the commodities previously approved under OMB control number 0579–0015 into individual collections to better reflect the commodities' specific collection activities and account for the information APHIS collects. Once approved by OMB, only information collection activities associated with the importation of nonfood animal and poultry products and byproducts will be under OMB control number 0579–0015. Information collection activities for hams and other commodities now covered under OMB control number 0579–0015 will receive new numbers when approved.

We are asking the Office of Management and Budget (OMB) to approve our use of the information collection activities related to importation of hams 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 1 hour per response.

Respondents: Foreign national governments, processing establishments, and slaughter establishments.

Estimated annual number of respondents: 93.

Estimated annual number of responses per respondent: 529.2473118.

Estimated annual number of responses: 49,220.

Estimated total annual burden on respondents: 49,220 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 22nd day of February 2012.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2012–4648 Filed 2–27–12; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Docket No. FCIC–12–0002]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Extension of approval of an information collection; comment request.

Note: With the renewal of this package, we are changing the title of the current information collection from General Administrative Regulations; Interpretations of Statutory and Regulatory Provisions to Interpretations of Statutory and Regulatory Provision and Written Interpretations of FCIC Procedures.

SUMMARY: This notice announces a public comment period on the information collection requests (ICRs) associated with the interpretation of statutory and regulatory provisions administered by Federal Crop Insurance Corporation (FCIC).

DATES: Written comments on this notice will be accepted until close of business April 30, 2012.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–12–0002, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *By Mail to:* Michael A. Alston, Deputy Administrator Insurance Services Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 1400 Independence Ave. SW., Stop 0805, Washington, DC 20250–0805.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov,* including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov.* If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submission. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by email at *rmaweb.content@rma.usda.gov.*

Privacy Act: Anyone is able to search the electronic form of all comments received for any 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 the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice.*

SUPPLEMENTARY INFORMATION:

Title: Interpretations of Statutory and Regulatory Provisions and Written Interpretations of FCIC Procedures.

OMB Number: 0563–0055.

Expiration Date of Approval: March 31, 2012.

Type of Request: Extension of a currently approved information collection.

Abstract: FCIC is proposing to renew the currently approved information collection, OMB Number 0563–0055. It is currently up for renewal and extension for three years. The information collection requirements for this renewal package are necessary for FCIC to provide an interpretation of statutory and regulatory provisions upon request. This data is used to administer the provisions of 7 CFR part 400, subpart X in accordance with the Federal Crop Insurance Act, as amended. In addition, FCIC has reevaluated the current package and included requests for written interpretation of FCIC procedures.

We are asking the Office of Management and Budget (OMB) to extend its approval of our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public concerning this information collection activity. These comments will help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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, 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 8.47 hours per response.

Respondents/Affected Entities: Parties affected by the information collection requirements included in this Notice are any producer with a valid crop insurance policy and approved insurance provider (agents, loss adjusters, employees, contractors or lawyers) with agreement with FCIC.

Estimated annual number of respondents: 95.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 95.

Estimated total annual burden hours on respondents: 805.

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.

Signed in Washington, DC on February 17, 2012.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2012–4467 Filed 2–27–12; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Mount Baker-Snoqualmie National Forest Site-Specific Invasive Plant Treatment Project and Forest Plan Amendment Number 28

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Invasive plants are currently damaging the ecological integrity of lands within and outside these administrative units. New tools and management techniques became available with the Pacific Northwest Region Invasive Plant Program, Preventing and Managing Invasive Plants, Final Environmental Impact Statement (USFS 2005a, R6 2005 FEIS),

and Record of Decision (USFS 2005b, R6 2005 ROD). The Proposed Action would allow for use of these tools, including additional herbicides and application methods to increase treatment effectiveness. A Forest Plan amendment is proposed to allow the use of aminopyralid (Milestone®).

DATES: Scoping input must be received by April 2, 2012, 30 days from the date of publication in the **Federal Register**. The draft environmental impact statement is expected to be published Summer 2012 and the final environmental impact statement is expected approximately January 2013.

ADDRESSES: Send written comments to Attn: Laura Potash, Mt. Baker-Snoqualmie National Forest, 2930 Wetmore Avenue, Suite 3A, Everett, Washington 98201. Comments may also be sent via email to *mbs_invasiveplantNEPA@fs.fed.us* (note underscore after mbs) or via facsimile to (425) 783–0212. Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, however. No public meetings concerning the project are scheduled at this time.

FOR FURTHER INFORMATION CONTACT: Laura Potash, Project Leader, at (425) 783–6043.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

There is a need for improved effectiveness in eradicating, controlling and containing invasive plants on the Mt. Baker-Snoqualmie National Forest. The current Forest-wide treatment approach pre-dates the Pacific Northwest Region Invasive Plant Program, Preventing and Managing Invasive Plants Record of Decision (R6 2005 ROD). The R6 2005 ROD amended the Mount Baker-Snoqualmie (MBS) Forest Plan by adding management direction for invasive plants and authorizing new tools to increase treatment efficacy and reduce potential adverse effects of treatment.

The current program needs to be updated so that goals for invasive plant management can be met.

As directed by the Forest Service Manual 2080, the Forests are applying the principles of Integrated Weed Management (IWM). IWM is an interdisciplinary pest management approach by which one selects and applies a combination of management techniques that, together, control a particular invasive plant species or infestation efficiently and effectively, with minimum adverse impacts to non-target organisms.

Since the publication of the R6 2005 ROD, a new chemical, aminopyralid, has been found to have lower risk to aquatic organisms than previously approved herbicides and higher effectiveness on particular invasive plants. Thus, a Forest Plan amendment is proposed to allow the use of aminopyralid. In addition, since 2005, invasive plant sites have been located in wilderness areas.

The purpose of the project is to control invasive plants in the most effective manner possible while minimizing adverse impacts to people and the environment.

In 2005, there were approximately 90 known target species sites, and most of the sites were smaller than 0.1 acre. The 2012 inventory estimates about 968 individual sites, totaling approximately 5,250 acres. The current program has not kept up with the treatment need.

The following site-specific examples demonstrate why additional herbicides, methods, and protocols are needed to improve treatment effectiveness:

1. The annual treatment planning process does not provide rapid enough response.

Example: A pit on Road SR 542 was used for a log deck and waste rock deposit site. Common comfrey spread into the area; the 5 stems discovered in 2008 nearly tripled in density in one year.

2. Additional herbicides would increase effectiveness for 30 of the 37 known target species on the Forest.

Example: Darrington end of Mountain Loop; over 100 gallons glyphosate has been applied in the five years from 2006 through 2010; 23 gallons were applied in 2010, and target species population continues to increase.

3. The ability to broadcast would increase effectiveness in continuous invaded areas where plant density is greater than about 70 percent.

4. New sites have been detected in wilderness areas. Three sites are located in the Wild Sky Wilderness along the un-decommissioned segment of the North Fork Skykomish Road 63, which is now part of the North Fork Skykomish Trail #1051. Another site is located on Scorpion Mountain within the Wild Sky Wilderness. An additional site occurs within the Glacier Peak Wilderness boundary, at an old trailhead beyond the junction with the Mill Creek Trail. This area was historically used to unload stock and a great amount of disturbance occurred here.

The alternatives will be evaluated for their ability to cost-effectively treat invasive plants.

The lower the average cost of a treated acre, the more acres that can be treated annually, and the more likely treatment goals will be met (less infestation over time). All of the alternatives are designed to follow R6 2005 ROD standards to minimize or eliminate adverse impacts of treatment. The intent is to increase treatment effectiveness without any significant risk to people or the environment.

Public Outreach

On 10/28/2010, the Mt. Baker-Snoqualmie National Forest (MBSNF) mailed government-to-government notices to local Tribes. On 11/1/2010, the MBSNF mailed public scoping notices to interested citizens, groups, industry, and agencies on the Forest SOPA mailing list. The notices summarized the Invasive Plant Management Project and invited comments. The January 1, 2011–March 31, 2011 Quarterly Schedule of Proposed Actions also included the proposal. The Forest Service received 7 comment letters and 2 telephone responses to the 11/1/2010 to 12/8/2010 scoping effort. Comments were received from 3 agencies, 3 organizations and 3 individuals. The scoping notice and comment letters are available in the Project Record and need not be repeated. Two key issues were identified in the scoping letters: concern about herbicide toxicity, and concern about cost-effectiveness of treatments. The scoping period will extend to April 2, 2012. No public meetings are planned at this time.

Proposed Action

The Proposed Action would allow for use of additional herbicides and application methods than currently available, to increase treatment effectiveness. A Forest Plan amendment is proposed to allow the use of aminopyralid (Milestone®). The Proposed Action also adds broadcasts application to the list of approved application methods for known sites and the new invader strategy. Broadcasting is required for a few dense infestations that cover large areas. Stream buffers and mitigation measures would apply to herbicide use, and certain herbicides would not be broadcast near streams and other water bodies. Treatments are proposed throughout the Forest, including within

wilderness areas. The Proposed Action would modify the current annual planning process for Early Detection, Rapid Response (EDRR) (new invader strategy) and require that sites be screened by appropriate interdisciplinary specialists, who would use the key questions to determine appropriateness of treatment under EDRR, and which Management Requirements and Mitigation Measures (MR/MM) applies at each new site. The review team would screen the new site(s) and prepare a file checklist demonstrating that treatment would be within the scope of the NEPA decision. Proposed control measures have been identified for each invasive species site (see *http://www.fs.usda.gov/projects/mbs/landmanagement/projects,* Invasive Plant Management). Treatments are often a combination of methods, such as herbicide/manual or cultural/manual. All treatments would be done according to Management Requirements and Mitigation Measures (MR/MM), intended to minimize risk and maximize effectiveness.

Possible Alternatives

The Forest Service is considering an alternative of treating without the use of aminopyralid and only using the 10 herbicides approved in the R6 2005 ROD. The Forest Service is also considering an alternative where not all treatments would be spot treatments and broadcast would be limited to existing treatments at Skyiou Island. The No Action alternative will also be considered, which would continue the current invasive plant management program on the MBS National Forest.

Responsible Official

The Responsible Official is the MBS National Forest Supervisor.

Nature of Decision To Be Made

The Forest Supervisor will make the following decisions based on the interdisciplinary analysis: (1) Whether or not to authorize site-specific invasive plant treatments using herbicides and other methods; (2) whether or not to implement an Early Detection and Rapid Response process for infestations that are detected over the next 5 to 15 years; (3) what MR/MM are required and (4) what monitoring and adaptive management will occur.

Permits or Licenses Required

Pesticide application licenses will be required for those implementing this project. Pesticide Use Proposals for wilderness herbicide applications need to be signed by the Regional Forester, otherwise Pesticide Use Proposals are signed by the Forest Supervisor. A National Pollutant Discharge Elimination System (NPDES) permit is required for herbicide use into waters of the United States or adjacent conveyances with a hydrologic surface connection to water at the time of application. Project design features and buffers are intended to minimize pollution discharge to the extent practicable and this project conforms to current permit requirements. A permit will be obtained before herbicide is used within 3 feet of waters of the United States or flowing ditches that are connected to the waters of the United States.

Dated: February 17, 2012.

Rodney Mace,

Acting Forest Supervisor.

[FR Doc. 2012–4628 Filed 2–27–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Stanislaus National Forest, CA; Notice of Intent To Prepare an Environmental Impact Statement for Candy Rock Quarry Management

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Stanislaus National Forest proposes to set permanent limitations on recreational target shooting at Candy Rock Quarry near Hathaway Pines, California. The purpose of this proposal is to determine if recreational target shooting is an appropriate activity at Candy Rock Quarry in the context of safety, public health, and applicable law, regulation and policy. If target shooting is found to be appropriate, determine the conditions under which shooting may continue.

DATES: Comments on the proposed action should be submitted within 45 days of the date of publication of this Notice of Intent. The Forest Service will hold a public meeting in March 2012. Completion of the draft environmental impact statement is expected in Fall 2012 and the final environmental impact statement is expected in Spring 2013.

ADDRESSES: Send written comments to: Stanislaus National Forest; Attn: Candy Rock; 19777 Greenley Road; Sonora, CA 95370; (209) 532–3671. Comments may be submitted by Fax [(209) 533–1890]; or, by hand-delivery to the address shown above, during normal business hours (Monday–Friday 8 a.m. to 4:30 p.m.). Oral comments must be submitted via telephone by calling (209) 532–3671 ext. 350.

Electronic comments, in acceptable [plain text (.txt), portable document format (.pdf), rich text (.rtf) or Word (.doc)] formats, may be submitted to: *comments-pacificsouthwest-stanislaus@fs.fed.us* with Subject: Candy Rock.

FOR FURTHER INFORMATION CONTACT: For additional information regarding this proposal, contact Sara Friberg, Stanislaus National Forest, 19777 Greenley Road; Sonora, CA 95370; phone: (209) 532–3671 ext. 475; or, *email: sfriberg@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

General Background

Candy Rock Quarry is located on the Stanislaus National Forest, Calaveras Ranger District in Calaveras County near Hathaway Pines, California (Section 20, T4N R15E). Forest Roads 4N73Y and 4N80Y provide access to the quarry from Highway 4.

The quarry is in a wildland urban intermix area, approximately one-third of a mile from the nearest private residential properties. It is presently used as a storage site for tunnel muck (loose rock ore fragmented during tunnel creation) deposited between 1986 and 1988 during the construction of the North Fork Stanislaus River Hydroelectric Project. The tunnel muck is used for road surfacing. Prior to being used as a tunnel muck storage site, the quarry produced an ornamental rhyolitic rock called ''candy rock.'' The quarry is one of the locations on the District that recreationists actively use for target shooting.

Recreational target shooting is considered a dispersed recreation activity on the Stanislaus National Forest. With no designated shooting ranges on the Forest, shooting is allowed as long it is conducted in a safe manner in compliance with Federal regulations at 36 CFR 261.10(d). Target shooting has taken place at the Candy Rock Quarry site since the early 1960s, predating the placement of the tunnel muck in the late 1980s, and the development of most of the nearby residential lots. Sheriff's Department and Forest Service law enforcement records indicate, over the past three years, no documented incidents involving vandalism, vegetation fires or reports of property damage resulting from the use of firearms at the quarry site. Records show one incident of a self-inflicted gunshot wound, and several noise complaints. The Calaveras

County Sheriff's office reported that the number of calls to the area increased substantially since 2009. These calls are primarily complaints about shooting from the roadway or from the quarry, expressing safety concerns.

The Calaveras Ranger District received several written and verbal complaints about shooting activity at and near the quarry. The complaints are about persistent shooting noise during daylight hours and into darkness, and concern for personal safety on both public lands and nearby private lands. In addition, the District received comments from other individuals expressing a desire to continue to enjoy the use of the site for responsible target shooting. After a public meeting on October 19, 2009 including the Forest Service, the Calaveras County Supervisor and Sheriff's offices, and concerned citizens, the Forest implemented several mitigation measures to increase safety in the area and reduce noise.

Since implementation of these mitigations, residents claim that the shooting activity is louder and more persistent than in previous years. As a result, nearby residents insist that the quarry be closed to target shooting due to the safety hazard and noise disturbance. Conversely, individuals who actively shoot at Candy Rock Quarry express their desire to continue using the quarry site for target shooting. As a result, the Calaveras Ranger District sought advice from National Rifle Association (NRA) Range Technical Team Advisors regarding safety concerns at the quarry site. The NRA Range Technical Team found that if target shooters follow accepted safety rules and shoot into the backstop, Candy Rock Quarry should be a safe area for recreational target shooting.

The Center for Collaborative Policy (CCP), California State University in Sacramento, California, conducted an assessment of stakeholders concerns in order to suggest options for resolving the conflict associated with recreational shooting at the quarry. The CCP interviewed members of stakeholders groups (Community for Respectful Firearms Use; and, Concerned Citizens for Safe Shooting), noting a divided community of individuals, with little progress towards resolving the conflict. The CCP report concluded that feelings of community alienation, emotional distress and declining health resulted from the shooting activity at the quarry.

Purpose and Need for Action

The Stanislaus National Forest Plan Direction (USDA 2010) provides goals, objectives, standards and guidelines, and management area direction that apply to the Candy Rock Quarry. The Quarry is situated within the Scenic Corridor management area, due to its proximity to State Highway 4 (USDA 2010, p. 156).

On April 29, 2011, the Forest Service issued Forest Order STF–2011–04 (Candy Rock Quarry Shooting Restriction Area) due to concerns from the public about health and safety. This Forest Order limits hours for target shooting at the quarry from 10 a.m. to 6 p.m. Monday–Friday, and 10 a.m. to 3 p.m. on Saturday (the quarry is closed to shooting on Sundays). The Forest Order also prohibits the use of explosives within the quarry.

That Forest Order expires on April 28, 2013 so there is a need to provide for the long-term management of the Candy Rock Quarry, including changes to the National Forest Transportation System for Forest Road 4N73Y. As such, the purpose of this initiative is to determine if recreational target shooting is an appropriate activity at Candy Rock Quarry in the context of safety, public health, and applicable law, regulation and policy. If target shooting is found to be appropriate, determine the conditions under which shooting may continue.

Proposed Action

In response to the purpose and need, the Forest Service proposes to:

1. Issue a permanent Forest Order with the following conditions:

a. Set hours for target shooting from 10 a.m. to 6 p.m. Monday–Friday; 10 a.m. to 3 p.m. on Saturday; and, closed on Sundays.

b. Prohibit the use of explosives.

c. Prohibit the use of firearms larger than 0.50 caliber.

d. Prohibit trap and skeet shooting.

2. Modify the existing National Forest Transportation System (NFTS):

a. Change vehicle class on Forest Road 4N73Y from All Vehicles to Highway Legal Only.

b. Change season of use on Forest Road 4N73Y from April 15 to December 15 to year round.

3. Install site design elements:

a. Post signs displaying hours of use and site prohibitions.

Possible Alternatives

In addition to the Proposed Action, the EIS will evaluate the required No Action alternative and may consider other alternatives such as those listed below.

1. *No Action:* this required alternative would allow Forest Order STF–2011–04 to expire on April 28, 2013 with no new shooting restrictions, as long as shooting occurs in a safe manner in compliance with Federal regulations at 36 CFR 261.10(d). On Forest Road 4N73Y, the vehicle class would remain as All Vehicles and the season of use would remain as April 15 to December 15.

2. *No Shooting:* this alternative, based on comments submitted by the public prior to scoping, would close Candy Rock Quarry to all shooting. It would include a permanent Forest Order prohibiting shooting, physical closure of the site with a gate or rocks, signs displaying the closure, and law enforcement activity ensuring compliance. On Forest Road 4N73Y, the vehicle class would change from All Vehicles to Administrative Use Only (closed to public motorized use) and the season of use would change from April 15 to December 15 to no season of use (closed to public motorized use).

3. *Continue Current Management:* this alternative would continue current management by replacing Forest Order STF–2011–04 with a permanent order making no changes to on-site prohibitions. On Forest Road 4N73Y, the vehicle class would remain as All Vehicles and the season of use would remain as April 15 to December 15.

Responsible Official

Susan Skalski, Forest Supervisor, Stanislaus National Forest, Supervisor's Office, 19777 Greenley Road, Sonora, CA 95370.

Nature of Decision To Be Made

The responsible official will decide whether to adopt and implement the proposed action, and alternative to the proposed action, or take no action with respect to the management of the Candy Rock Quarry.

Scoping Process

Public participation is important at numerous points during the analysis. The Forest Service seeks information, comments, and assistance from the federal, state, and local agencies and individuals or organizations that may be interested in or affected by the proposed action.

Scoping identifies issues which are a point of discussion, dispute, or debate with the Proposed Action. An issue is an effect on a physical, biological, social, or economic resource. An issue is not an activity; instead, the predicted effects of the activity create the issue. Issues are then separated into the two groups shown below. The Council on Environmental Quality (CEQ) NEPA regulations require this delineation in Sec. 1501.7, ''* * * identify and eliminate from detailed study the issues which are not significant or which have

been covered by prior environmental review (Sec. 1506.3) * * *''

1. *Significant Issues* are used to formulate alternatives, prescribe mitigation measures, or analyze environmental effects. Issues are significant because of the extent of their geographic distribution, the duration of their effects, or the intensity of interest or resource conflicts.

2. *Non-Significant Issues* are: (1) Outside of the scope of the proposed action; (2) already determined through law, regulation, Forest Plan, or other higher level decision; (3) irrelevant to the decision to be made; (4) conjectural and not supported by scientific fact; (5) a comment, opinion, or position statement; or, (6) a question for clarification or information.

Although non-significant issues are not used to formulate alternatives or prescribe mitigation measures, the EIS will disclose all significant environmental effects including any related to non-significant issues.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement. Comments on the proposed action should be submitted within 45 days of the date of publication of this Notice of Intent. The Forest Service will hold a public meeting in March 2012.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: February 22, 2012.

Susan Skalski,

Forest Supervisor.

[FR Doc. 2012–4608 Filed 2–27–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: West Coast Groundfish Trawl Economic Data.

OMB Control Number: 0648–0618.

Form Number(s): NA.

Type of Request: Regular submission (revision of a current information collection).

Number of Respondents: 252.

Average Hours per Response: 8 hours.

Burden Hours: 2,016.

Needs and Uses: This request is for a revision of a current information collection.

This information collection is needed in order to meet the monitoring requirements of the Magnuson-Stevens Act (MSA). In particular, the Northwest Fisheries Science Center (NWFSC) needs economic data on all harvesters, first receivers, shorebased processors, catcher processors, and motherships participating in the West Coast groundfish trawl fishery.

The currently approved collection covers collection of data for the 2009, 2010, and 2011 operating years. Data from the 2009 and 2010 operating years provides information on the economic condition of the fishery prior to the implementation of catch share management in January 2011, and has been collected by the NWFSC. Data for the 2011 operating year, which will provide information on the first year of operation under the catch share regime, will be collected from all catcher vessels registered to a limited entry trawl endorsed permit, catcher processors registered to catcher processor permits, and motherships registered to mothership permits, first receivers, and shorebased processors that received round or head-and-gutted Individual Fishing Quota (IFQ) groundfish or whiting from a first receiver.

Based on review of the completed economic data collection (EDC) forms submitted for the 2009 and 2010 operating years as well as discussions with survey respondents, the NWFSC seeks to modify the four forms which are used in this information collection. These modifications clarify instructions, make the requests for information more consistent with the accounting/bookkeeping systems used by survey recipients, and continue to facilitate meeting MSA requirements for evaluation of the economic effect of catch share management on the West Coast groundfish limited entry trawl fishery.

As stated in 50 CFR 660.114, the EDC forms due on September 1, 2012 will provide data for the 2011 operating year.

The definition of the survey population is different for 2011 data, to account for differences between the requirements for the baseline collection and ongoing collections as defined in the regulations. To capture vessel improvements and repairs to vessels that did not harvest any groundfish or were operated by lessees, in the 2011 data collection, as well as to collect more complete information about shoreside operations that do not process fish, completion of each form in its

entirety will be required for all owners of vessels registered to a limited entry trawl endorsed permit, a mothership permit, or a catcher processor permit, owners of a first receiver site license, and owners or lessees of a shorebased processor that received round or headed-and-gutted IFQ species groundfish or whiting from a first receiver. This is in contrast to the 2009 and 2010 data collection which allowed entities that did not harvest or process any groundfish to complete only the first four pages of the forms.

Other minor modifications to the catcher vessel forms include asking for information about lease dates of the vessel, and the addition of several expense categories based on feedback from the 2009 and 2010 data collections. The first receiver and shorebased processor form was modified to better align with accounting practices and to clarify the information required for reporting fish purchases. There were no other changes to the mothership or catcher processors forms.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: February 23, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–4605 Filed 2–27–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms tor Determination of Eligibility to Apply For Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[12/29/2011 through 02/21/2012]

Firm name	Address	Date accepted for investigation	Products
Cuisine Holdings Unlimited, LLC..	1997 Surgi Dr., Mandeville, LA 70448.	12/29/2011	The firm manufactures food for human consumption.
Custom Service Printer, Inc. ...	916 E. Keating Avenue, Muskegon, MI 49442.	2/8/2012	The firm manufactures printed products and provides design/mailing services.
Peterson Jig and Fixture Company, Inc..	301 Rockford Park Drive, Rockford, MI 49341.	2/16/2012	The firm manufactures inspection jigs and fixtures.
Distinctive Foods, LLC.	654 South Wheeling Road, Wheeling, IL 60090.	2/16/2012	The firm manufactures high quality baked goods including flatbread crackers, brownies, pretzels, and other baked goods.
Lyle Industries, Inc.	4144 Lyle Road, Beaverton, MI 48612.	2/16/2012	The firm manufactures thermoforming machines for processing plastic or rubber.
Oakworks, Inc.	923 E. Wellspring Road, New Freedom, PA 17349.	2/21/2012	The firm manufactures massage, spa, and medical tables, chairs and accessories.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 7106, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: February 21, 2012.

Miriam Kearse,

Eligibility Certifier.

[FR Doc. 2012–4626 Filed 2–27–12; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket T–6–2011]

Foreign-Trade Zone 7, Temporary/Interim Manufacturing Authority, Baxter Healthcare of Puerto Rico, (Pharmaceutical and Nutritional Intravenous Bags and Administration Sets); Notice of Approval

On December 6, 2011, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board filed an application submitted by the Puerto Rico Industrial

Development Company, grantee of FTZ 7, requesting temporary/interim manufacturing (T/IM) authority, on behalf of Baxter Healthcare of Puerto Rico, to manufacture pharmaceutical and nutritional intravenous bags and administration sets under FTZ procedures within FTZ 7—Site 5, in Aibonito and Jayuya, Puerto Rico.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Orders 1347 (69 FR 52857, 8/30/04) and 1480 (71 FR 55422, 9/22/06), including notice in the **Federal Register** inviting public comment (76 FR 77479, 12/13/2011). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. Pursuant to the authority delegated to the FTZ Board Executive Secretary in the above-referenced Board Orders, the application is approved, effective this date, until February 15, 2014, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: February 15, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–4649 Filed 2–27–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Extension of Time Limit for the Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave. NW., Washington, DC 20230; telephone: (202) 482–5973.

Background

On August 26, 2011, the Department of Commerce (''Department'') published a notice of initiation of the administrative review of the antidumping duty order on certain pasta from Italy, covering the period July 1, 2010, to June 30, 2011. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 53404 (August 26, 2011). The preliminary results of this review are currently due no later than April 1, 2012.

Extension of Time Limit of Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires that the Department make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested. Section 751(a)(3)(A) of the Act further states that if it is not practicable to complete the review within the time period specified, the administering authority may extend the 245-day period to issue its preliminary results to up to 365 days.

We determine that completion of the preliminary results of this review within the 245-day period is not practicable. Additional time is needed to gather and analyze a significant amount of information pertaining to sales practices, manufacturing costs and corporate relationships pertaining to both companies participating in the review. In addition, one of these companies is requesting revocation. Given the number and complexity of issues in this case, in accordance with section 751(a)(3)(A) of the Act, we are fully extending by 120 days the time period for issuing the preliminary results of review. Therefore, the preliminary results are now due no later than July 30, 2012. The final results continue to be due 120 days after publication of the preliminary results.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: February 17, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–4355 Filed 2–27–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee Public Meeting

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the Civil Nuclear Trade Advisory Committee (CINTAC).

DATES: The meeting is scheduled for Monday, March 12, 2012, at 9 a.m. Eastern Daylight Time (EDT). The public session is from 3 p.m.–4 p.m.

ADDRESSES: The meeting will be held in Room 4830, U.S. Department of Commerce, Herbert Clark Hoover Building, 1401 Constitution Ave. NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. David Kincaid, Office of Energy & Environmental Industries, ITA, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. (Phone: 202–482–1706; Fax: 202–482–5665; email: *david.kincaid@trade.gov*).

SUPPLEMENTARY INFORMATION:

Background: The CINTAC was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.), in response to an identified need for consensus advice from U.S. industry to the U.S. Government regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, including advice on how U.S. civil nuclear goods and services export policies, programs, and activities will affect the U.S. civil nuclear industry's competitiveness and ability to participate in the international market.

Topics to be considered: The agenda for the March 12, 2012 CINTAC meeting is as follows:

Closed Session (9 a.m.–3 p.m.)

1. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3).

Public Session (3 p.m.–4 p.m.)

1. International Trade Administration's Civil Nuclear Trade Initiative Update.

2. Civil Nuclear Trade Promotion Activities Discussion.

3. Public comment period.

The open session will be disabled-accessible. Public seating is limited and available on a first-come, first-served basis. Members of the public wishing to attend the meeting must notify Mr. David Kincaid at the contact information below by 5 p.m. EDT on Friday, March 2, 2012 in order to pre-register for clearance into the building. Please specify any requests for reasonable accommodation at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

A limited amount of time will be available for pertinent brief oral comments from members of the public

attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of 30 minutes. Individuals wishing to reserve speaking time during the meeting must contact Mr. Kincaid and submit a brief statement of the general nature of the comments and the name and address of the proposed participant by 5 p.m. EDT on Friday, March 2, 2012. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, ITA may conduct a lottery to determine the speakers. Speakers are requested to bring at least 20 copies of their oral comments for distribution to the participants and public at the meeting.

Any member of the public may submit pertinent written comments concerning the CINTAC's affairs at any time before and after the meeting. Comments may be submitted to the Civil Nuclear Trade Advisory Committee, Office of Energy & Environmental Industries, Room 4053, 1401 Constitution Ave. NW., Washington, DC 20230. For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5 p.m. EDT on Friday, March 2, 2012. Comments received after that date will be distributed to the members but may not be considered at the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 22, 2012, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App. § 10(d)), that the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3). The portion of the meeting dealing with matters requiring disclosure of trade secrets and commercial or financial information as described in 5 U.S.C. 552b(c)(4) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

Copies of CINTAC meeting minutes will be available within 90 days of the meeting.

Man K. Cho,

Team Leader for Energy, Office of Energy and Environmental Industries.

[FR Doc. 2012–4610 Filed 2–27–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB033

Marine Mammals; File No. 16991

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that James T. Harvey, Ph.D., Moss Landing Marine Laboratories, 8272 Moss Landing Road, Moss Landing, CA 95039, has applied in due form for a permit to conduct scientific research on harbor seals (*Phoca vitulina*).

DATES: Written, telefaxed, or email comments must be received on or before March 29, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16991 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices: (See **SUPPLEMENTARY INFORMATION**).

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov*. Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Joselyd Garcia-Reyes or Amy Sloan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to examine the biology and ecology of harbor seals and monitor health and condition of coastal populations of harbor seals in California, Oregon, Washington, and Alaska over a 5-year period. The types of research that would be conducted under this permit would include but are not limited to: (1) Abundance and distribution surveys; (2) movements, survival, and causes of mortality; (3) effects of human disturbance; (4) fisheries interactions and diet; (5) toxicant levels and the effects of these toxicants on health; and (6) reproductive strategies and success. Researchers would capture a maximum of 1,770 harbor seals annually near haul-out sites in California, Oregon, Washington, and Alaska using tangle, salmon, and set nets. Animals captured would have some or all of the following procedures done: mass, sex, morphometrics, blubber depth and biopsy, lavage/enema, flipper and PIT tagged, blood, swabs, skin and hair samples, and attachment of RFID (radio-frequency identification), acoustic, radio, GPS (Global Positioning System), or satellite tags, and video or still cameras. An additional 1,065 individuals may be incidentally captured and released without sampling, and 15,190 individuals may be taken annually via level B harassment by incidental disturbance during capture or scat collection and exposure to playbacks of vocalizations. Annually, up to 55 California sea lions (*Zalophus californianus*) and 35 northern elephant seals (*Mirounga angustirostris*) could be disturbed during activities conducted under this permit. The applicant requests up to ten incidental mortalities of harbor seals per year with a five-year maximum of 25.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Dated: February 22, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–4703 Filed 2–27–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB011

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of revision of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ad-Hoc Atlantic Sturgeon Committee will hold a meeting.

DATES: The meeting will be held on March 19, 2012, from 10 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at Four Points by Sheraton BWI Airport, 7032 Elm Road, Baltimore, MD 21240; telephone: (410) 859–3300.

Council address: Mid-Atlantic Fishery Management Council, 800 N. State Street Suite 201, Dover, DE 19901; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, 800 N. State Street Suite 201, Dover, DE 19901; telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The original notice published in the **Federal Register** on February 17, 2012 (77 FR 9628). The date of the meeting changed from March 6, 2012 to March 19, 2012. All other previously published information remains unchanged.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to M. Jan Saunders at the Mid-Atlantic Council Office (302) 526–5251 at least 5 days prior to the meeting date.

Dated: February 23, 2012.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–4642 Filed 2–27–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB040

Marine Mammals; File Nos. 1076–1789 and 14502

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of permit amendments.

SUMMARY: Notice is hereby given that the Alliance of Marine Mammal Parks and Aquariums (The Alliance), 2850 Ranch Reserve Lane, Westminster, Colorado 80234 (Kristi West, Ph.D., Principal Investigator) and Russell Fielding, Ph.D., Department of Geography, University of Denver, 2050 E. Iliff Avenue, Denver, CO 80208, have been issued minor amendments to Scientific Research Permit Nos. 1076–1789 and 14502.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore, Amy Sloan or Kristy Beard, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The requested amendments have been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 1076–1789: This permit, issued on March 13, 2007 (72 FR 13092), authorized the receipt, import and export of marine mammal specimens (cetaceans and pinnipeds, except for walrus) under the jurisdiction of NMFS to study and document the health and biology of wild marine mammals as well as those marine mammals maintained in public display, research, or stranding facilities or from samples taken during other permitted research through February 29, 2012. This minor amendment (No. 1076–1789–01) extends the duration of the permit through February 28, 2013, but does not change any other terms or conditions of the permit.

Permit No. 14502: This permit, issued on June 17, 2011 (72 FR 13092), authorized the importation of samples from Risso's (*Grampus griseus*), spinner (*Stenella longirostris*), and spotted (*S. frontalis*) dolphins and short-finned pilot whales (*Globicephala macrorhynchus*) for the purpose of scientific research through June 17, 2012. This minor amendment (No. 14502–01) extends the duration of the permit through June 17, 2013, but does not change any other terms or conditions of the permit.

Dated: February 22, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA950

Takes of Marine Mammals Incidental to Specified Activities; Navy Research, Development, Test and Evaluation Activities at the Naval Surface Warfare Center Panama City Division

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the U.S. Navy (Navy) for an Incidental Harassment Authorization (IHA) to take marine mammals, by harassment, incidental to

conducting research, development, test and evaluation (RDT&E) activities at the Naval Surface Warfare Center Panama City Division (NSWC PCD). Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to the Navy to incidentally harass, by Level B Harassment only, marine mammals during the specified activity.

DATES: Comments and information must be received no later than March 29, 2012.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *itp.guan@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as: ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

The National Defense Authorization Act of 2004 (NDAA) (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

(i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or

(ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny the authorization.

Summary of Request

NMFS received an application on December 28, 2011, from the Navy for the taking, by harassment, of marine mammals incidental to conducting testing of the AN/AQS–20A Mine Reconnaissance Sonar System (hereafter referred to as the Q–20) in the Naval Surface Warfare Center, Panama City Division (NSWC PCD) testing range in the Gulf of Mexico (GOM) from April 2012 through April 2013. The Q–20 sonar test activities are proposed to be conducted in the non-territorial waters of the United States (beyond 12 nautical miles) in the Gulf of Mexico (GOM, see Figure 2–1 of the Navy IHA application).

Description of the Specific Activity

The purpose of the Navy's activities is to meet the developmental testing requirements of the Q–20 system by verifying its performance in a realistic ocean and threat environment and supporting its integration with the Remote Multi-Mission Vehicle (RMMV) and ultimately the Littoral Combat Ship (LCS). Testing would include component, subsystem-level, and full-scale system testing in an operational environment.

The need for the proposed activities is to support the timely deployment of the Q–20 to the operational Navy for Mine Countermeasure (MCM) activities abroad, allowing the Navy to meet its statutory mission to deploy naval forces equipped and trained to meet existing and emergent threats worldwide and to enhance its ability to operate jointly with other components of the armed forces.

The proposed activities are to test the Q–20 from the RMMV and from surrogate platforms such as a small surface vessel or helicopter. The RMMV or surrogate platforms will be deployed from the Navy's new LCS or its surrogates. The Navy is evaluating potential environmental effects associated with the Q–20 test activities proposed for the Q–20 Study Area (see below for detailed description of the Study Area), which includes non-territorial waters of Military Warning Area 151 (W–151; includes Panama City Operating Area). Q–20 test activities occur at sea in the waters present within the Q–20 Study Area. No hazardous waste is generated at sea during Q–20 test activities. There are two components associated with the Q–20 test activities, which are addressed below.

Surface Operations

A significant portion of Q–20 test activities rely on surface operations to successfully complete the missions. The Proposed Action includes up to 420 hours of surface operations during active sonar testing per year in the Q–20 Study Area. Other surface operations occur when sonar is not active. Three subcategories make up surface operations: support activities; tows; and deployment and recovery of equipment. Testing requiring surface operations may include a single test event (one day

of activity) or a series of test events spread out over several days. The size of the surface vessels varies in accordance with the test requirements and vessel availability. Often multiple surface craft are required to support a single test event.

Acting as a support platform for testing, surface vessels would be utilized to carry test equipment and personnel to and from the test sites and are also used to secure and monitor the designated test area. Normally, these vessels remain on site and return to port following the completion of the test; occasionally, however, they remain on station throughout the duration of the test cycle for guarding sensitive equipment in the water.

Additional vessels would be used for support activities that include tows, and deployment and recovery of equipment. Tows involve either transporting the system to the designated test area where it is deployed and towed over a pre-positioned inert minefield or towing the system from ashore for operation in the designated test area. Surface vessels are also used to perform the deployment and recovery of the RMMV, mine-like objects, and other test systems. Surface vessels that are used in this manner normally return to port the same day. However, this is test dependent, and under certain circumstance the surface vessel may be required to remain on site for an extended period of time.

Sonar Operations

For the proposed action, the Navy would test the Q–20 for up to 420 hours of active sonar use for 12 months starting in April 2012. Q–20 sonar operations involve the testing of various sonar systems at sea as a means of demonstrating the systems' software capability to detect, locate, and characterize mine-like objects under various environmental conditions. The data collected is used to validate the sonar systems' effectiveness and capability to meet its mission.

As sound travels through water, it creates a series of pressure disturbances. Frequency is the number of complete cycles a sound or pressure wave occurs per unit of time (measured in cycles per second, or hertz (Hz)). The Navy has characterized low, mid, or high frequency active sonars as follows:

- Low-frequency active sonar (LFAS)—Below 1 kilohertz (kHz) (low-frequency sound sources will not be used during any Q–20 test operations)
- Mid-frequency active sonar (LFAS)—From 1 to 10 kHz (mid-frequency source sources will not be used during any Q–20 test operations)
- High-frequency active sonar (HFAS)—Above 10 kHz (only high-frequency sound sources would be used during Q–20 test operations)

The Q–20 sonar systems proposed to be tested within the Q–20 Study Area range in frequencies from 35 kHz to > 200 kHz, therefore, these are HFAS systems. Those systems that operate at very high frequencies (i.e., > 200 kHz), well above the hearing sensitivities of any marine mammals, are not considered to affect marine mammals. Therefore, they are not included in this document. The source levels associated with Q–20 sonar systems that could affect marine mammals range from 207 decibels (dB) re 1 micro pascal (μPa) at 1 meter (m) to 212 dB re 1 μPa at 1 m. Operating parameters of the Q–20 sonar systems can be found in Appendix A, Supplemental Information for Underwater Noise Analysis of the Navy's IHA application.

The Q–20 Study Area includes Target and Operational Test Fields located in W–151, an area within the Gulf of Mexico (GOM) subject to military operations which also encompasses the Panama City Operating Area (Figure 2–1 of the Navy's IHA application). The Q–20 test activities will be conducted in the non-territorial waters off the United States (beyond 12 nautical miles) in the GOM. The locations and environments include:

- Wide coastal shelf to 183 meters (m) [600 feet (ft)].
- Water temperature range of 27 degrees Celsius (°C) [80 degrees Fahrenheit (°F)] in summer to 10 °C (50 °F) in winter.
- Mostly sandy bottom and good underwater visibility.
- Seas less than 0.91 m (3 ft) 80 percent of the time in summer and 50 percent of the time in winter.

The Navy requests an IHA for a time period of one year beginning April, 2012. A total of 42 Q–20 test days will be conducted with a maximum sonar operation of 10 hours in a single day.

Description of Marine Mammals in the Area of the Specified Activity

There are 29 marine mammal species under NMFS' jurisdiction that may occur in the Q–20 Study Area (Table 1). These include 7 mysticetes (baleen whales) and 22 odontocetes (toothed whales). Table 1 also includes the Federal status of these marine mammal species. Six of these marine mammal species under NMFS' jurisdiction are also listed as federally endangered under the Endangered Species Act (ESA) and could potentially occur in the Study Area: the humpback whale, North Atlantic right whale, sei whale, fin whale, blue whale, and sperm whale. Of these 29 species with occurrence records in the Q–20 Study Area, 22 species regularly occur there. These 22 species are: Bryde's whale, sperm whale, pygmy sperm whale, dwarf sperm whale, Cuvier's beaked whale, Gervais' beaked whale, Sowerby's beaked whale, Blainville's beaked whale, killer whale, false killer whale, pygmy killer whale, short-finned pilot whale, Risso's dolphin, melon-headed whale, rough-toothed dolphin, bottlenose dolphin, Atlantic spotted dolphin, pantropical spotted dolphin, striped dolphin, spinner dolphin, Clymene dolphin, and Fraser's dolphin. The remaining 7 species (i.e., North Atlantic right whale, humpback whale, sei whale, fin whale, blue whale, minke whale, and True's beaked whale) are extralimital and are excluded from further consideration of impacts from the NSWC PCD Q–20 testing analysis.

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY FOUND IN THE Q–20 STUDY AREA

Family and scientific name	Common name	Federal status
Order Cetacea		
Suborder Mysticeti (baleen whales)		
Eubalaena glacialis	North Atlantic right whale	Endangered
Megaptera novaeangliae	Humpback whale	Endangered.
Balaenoptera acutorostrata	Minke whale..	
B. brydei	Bryde's whale..	
B. borealis	Sei whale	Endangered.
B. physalus	Fin whale	Endangered.

TABLE 1—MARINE MAMMAL SPECIES POTENTIALLY FOUND IN THE Q–20 STUDY AREA—Continued

Family and scientific name	Common name	Federal status
B. musculus	Blue whale	Endangered.
Suborder Odontoceti (toothed whales)		
Physeter macrocephalus	Sperm whale	Endangered.
Kogia breviceps	Pygmy sperm whale.	
K. sima	Dwarf sperm whale.	
Ziphius cavirostris	Cuvier's beaked whale.	
Mesoplodon europaeus	Gervais' beaked whale.	
M. Mirus	True's beaked whale.	
M. bidens	Sowerby's beaked whale.	
M. densirostris	Blainville's beaked whale.	
Steno bredanensis	Rough-toothed dolphin.	
Tursiops truncatus	Bottlenose dolphin.	
Stenella attenuata	Pantropical spotted dolphin.	
S. frontalis	Atlantic spotted dolphin.	
S. longirostris	Spinner dolphin.	
S. clymene	Clymene dolphin.	
S. coeruleoalba	Striped dolphin.	
Lagenodephis hosei	Fraser's dolphin.	
Grampus griseus	Risso's dolphin.	
Peponocephala electra	Melon-headed whale.	
Feresa attenuata	Pygmy killer whale.	
Pseudorca crassidens	False killer whale.	
Orcinus orca	Killer whale.	
Globicephala macrorhynchus	Short-finned pilot whale.	

The information contained herein relies heavily on the data gathered in the Marine Resource Assessments (MRAs). The Navy Marine Resources Assessment (MRA) program was implemented by the Commander, United States Fleet Forces Command, to collect data and information on the protected and commercial marine resources found in the Department of the Navy's (DON's) operating areas. Specifically, the goal of the MRA program is to describe and document the marine resources present in each of the Navy's Operating Areas. As such, an MRA has been completed for the GOM Testing and Training Areas, which comprise three adjacent Operating Areas, one of which is the Panama City Operating Area (DON, 2007). The DON 2007 is the most current MRA for the GOM.

The MRA represents a compilation and synthesis of available scientific literature (e.g., journals, periodicals, theses, dissertations, project reports, and other technical reports published by government agencies, private businesses, or consulting firms) and NMFS reports, including stock assessment reports (SARs), recovery plans, and survey reports. The MRAs summarize the physical environment (e.g., marine geology, circulation and currents, hydrography, and plankton and primary productivity) for each test area. In addition, an in-depth discussion of the biological environment (marine mammals, sea turtles, fish, and EFH), as well as fishing grounds (recreational and commercial) and other areas of interest (e.g., maritime boundaries, navigable waters, marine managed areas, recreational diving sites) are also provided. Where applicable, the information contained in the MRA was used for analyses in this document.

A detailed description of marine mammal density estimates and their distribution in the Q–20 Study Area is provided in the Navy's Q–20 IHA application.

A Brief Background on Sound

An understanding of the basic properties of underwater sound is necessary to comprehend many of the concepts and analyses presented in this document. A summary is included below.

Sound is a wave of pressure variations propagating through a medium (for the sonar considered in this proposed rule, the medium is marine water). Pressure variations are created by compressing and relaxing the medium. Sound measurements can be expressed in two forms: intensity and pressure. Acoustic intensity is the average rate of energy transmitted through a unit area in a specified direction and is expressed in watts per square meter (W/m^2). Acoustic intensity is rarely measured directly, it is derived from ratios of pressures; the standard reference pressure for underwater sound is 1 μPa; for airborne sound, the standard reference pressure is 20 μPa (Urick, 1983).

Acousticians have adopted a logarithmic scale for sound intensities, which is denoted in decibels (dB). Decibel measurements represent the ratio between a measured pressure value and a reference pressure value (in this case 1 μPa or, for airborne sound, 20 μPa). The logarithmic nature of the scale means that each 10 dB increase is a tenfold increase in power (e.g., 20 dB is a 100-fold increase, 30 dB is a 1,000-fold increase). Humans perceive a 10-dB increase in noise as a doubling of sound level, or a 10 dB decrease in noise as a halving of sound level. The term ''sound pressure level'' implies a decibel measure and a reference pressure that is used as the denominator of the ratio. Throughout this document, NMFS uses 1 μPa as a standard reference pressure unless noted otherwise.

It is important to note that decibels underwater and decibels in air are not the same and cannot be directly compared. To estimate a comparison between sound in air and underwater, because of the different densities of air and water and the different decibel standards (i.e., reference pressures) in water and air, a sound with the same intensity (i.e., power) in air and in water would be approximately 63 dB lower in air. Thus, a sound that is 160 dB loud underwater would have the same approximate effective intensity as a sound that is 97 dB loud in air.

Sound frequency is measured in cycles per second, or Hertz (abbreviated Hz), and is analogous to musical pitch;

high-pitched sounds contain high frequencies and low-pitched sounds contain low frequencies. Natural sounds in the ocean span a huge range of frequencies: from earthquake noise at 5 Hz to harbor porpoise clicks at 150,000 Hz (150 kHz). These sounds are so low or so high in pitch that humans cannot even hear them; acousticians call these infrasonic and ultrasonic sounds, respectively. A single sound may be made up of many different frequencies together. Sounds made up of only a small range of frequencies are called ''narrowband,'' and sounds with a broad range of frequencies are called ''broadband;'' airguns are an example of a broadband sound source and tactical sonars are an example of a narrowband sound source.

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Based on available behavioral data, audiograms derived using auditory evoked potential, anatomical modeling, and other data, Southall *et al.* (2007) designate ''functional hearing groups'' and estimate the lower and upper frequencies of functional hearing of the groups. Further, the frequency range in which each group's hearing is estimated as being most sensitive is represented in the flat part of the M-weighting functions developed for each group. The functional groups and the associated frequencies are indicated below:

- Low-frequency cetaceans (13 species of mysticetes): Functional hearing is estimated to occur between approximately 7 Hz and 22 kHz.
- Mid-frequency cetaceans (32 species of dolphins, six species of larger toothed whales, and 19 species of beaked and bottlenose whales): Functional hearing is estimated to occur between approximately 150 Hz and 160 kHz.
- High-frequency cetaceans (eight species of true porpoises, six species of river dolphins, *Kogia,* the franciscana, and four species of cephalorhynchids): Functional hearing is estimated to occur between approximately 200 Hz and 180 kHz.
- Pinnipeds in Water: Functional hearing is estimated to occur between approximately 75 Hz and 75 kHz, with the greatest sensitivity between approximately 700 Hz and 20 kHz.
- Pinnipeds in Air: Functional hearing is estimated to occur between approximately 75 Hz and 30 kHz.

Because ears adapted to function underwater are physiologically different from human ears, comparisons using decibel measurements in air would still not be adequate to describe the effects of a sound on a whale. When sound travels away from its source, its loudness decreases as the distance traveled (propagates) by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound a kilometer distant. Acousticians often refer to the loudness of a sound at its source (typically measured one meter from the source) as the source level and the loudness of sound elsewhere as the received level. For example, a humpback whale three kilometers from an airgun that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound propagates. As a result, it is important not to confuse source levels and received levels when discussing the loudness of sound in the ocean.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

Metrics Used in This Document

This section includes a brief explanation of the two sound measurements (sound pressure level (SPL) and sound exposure level (SEL)) frequently used in the discussions of acoustic effects in this document.

SPL

Sound pressure is the sound force per unit area, and is usually measured in microPa, where 1 Pa is the pressure resulting from a force of one newton exerted over an area of one square meter. SPL is expressed as the ratio of a measured sound pressure and a reference level. The commonly used reference pressure level in underwater acoustics is 1 µPa, and the units for SPLs are dB re: 1 µPa.

SPL (in dB) = 20 log (pressure/reference pressure)

SPL is an instantaneous measurement and can be expressed as the peak, the peak-peak, or the root mean square (rms). Root mean square, which is the square root of the arithmetic average of the squared instantaneous pressure values, is typically used in discussions of the effects of sounds on vertebrates and all references to SPL in this document refer to the root mean square. SPL does not take the duration of a sound into account. SPL is the applicable metric used in the risk continuum, which is used to estimate behavioral harassment takes (see Level B Harassment Risk Function (Behavioral Harassment) Section).

SEL

SEL is an energy metric that integrates the squared instantaneous sound pressure over a stated time interval. The units for SEL are dB re: 1 microPa^2-s.

SEL = SPL + 10 log(duration in seconds)

As applied to tactical sonar, the SEL includes both the SPL of a sonar ping and the total duration. Longer duration pings and/or pings with higher SPLs will have a higher SEL. If an animal is exposed to multiple pings, the SEL in each individual ping is summed to calculate the total SEL. The total SEL depends on the SPL, duration, and number of pings received. The thresholds that NMFS uses to indicate at what received level the onset of temporary threshold shift (TTS) and permanent threshold shift (PTS) in hearing are likely to occur are expressed in SEL.

Potential Impacts to Marine Mammal Species

The Navy considers that the proposed Q–20 sonar testing activities in the Q–20 Study Area could potentially result in harassment to marine mammals. Although surface operations related to sonar testing involve ship movement in the vicinity of the Q–20 test area, NMFS considers it unlikely that ship strike could occur as analyzed below.

Surface Operations

Typical operations occurring at the surface include the deployment or towing of mine countermeasures (MCM) equipment, retrieval of equipment, and clearing and monitoring for non-participating vessels. As such, the potential exists for a ship to strike a

marine mammal while conducting surface operations. In an effort to reduce the likelihood of a vessel strike, the mitigation and monitoring measures discussed below would be implemented.

Collisions with commercial and U.S. Navy vessels can cause major wounds and may occasionally cause fatalities to marine mammals. The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (e.g., the sperm whale). Laist *et al.* (2001) identified 11 species known to be hit by ships worldwide. Of these species, fin whales are struck most frequently; followed by right whales, humpback whales, sperm whales, and gray whales. More specifically, from 1975 through 1996, there were 31 dead whale strandings involving four large whales along the GOM coastline. Stranded animals included two sei whales, four minke whales, eight Bryde's whales, and 17 sperm whales. Only one of the stranded animals, a sperm whale with propeller wounds found in Louisiana on 9 March 1990, was identified as stranding as a result of a possible ship strike (Laist *et al.,* 2001). In addition, from 1999 through 2003, there was only one stranding involving a false killer whale in the northern GOM (Alabama 1999) (Waring *et al.,* 2006). According to the 2010 Stock Assessment Report (NMFS 2011), during 2009 there was one known Bryde's whale mortality as a result of a ship strike. Otherwise, no other marine mammal that is likely to occur in the northern GOM has been reported as either seriously or fatally injured as a result of a ship strike from 1999 through 2009 (Waring *et al.,* 2007).

It is unlikely that activities in non-territorial waters will result in a ship strike because of the nature of the operations and size of the vessels. For example, the hours of surface operations take into consideration operation times for multiple vessels during each test event. These vessels range in size from small Rigid Hull Inflatable Boat (RHIB) to surface vessels of approximately 420 feet. The majority of these vessels are small RHIBs and medium-sized vessels. A large proportion of the timeframe for the Q–20 test events include periods when ships remain stationary within the test site.

The greatest time spent in transit for tests includes navigation to and from the sites. At these times, the Navy follows standard operating procedures (SOPs). The captain and other crew members keep watch during ship transits to avoid objects in the water. Furthermore, with the implementation of the proposed mitigation and monitoring measures described below, NMFS believes that it is unlikely vessel strikes would occur. Consequently, because of the nature of the surface operations and the size of the vessels, the proposed mitigation and monitoring measures, and the fact that cetaceans typically more vulnerable to ship strikes are not likely to be in the project area, the NMFS concludes that ship strikes are unlikely to occur in the Q–20 Study Area.

Acoustic Effects: Exposure to Sonar

For activities involving active tactical sonar, NMFS's analysis will identify the probability of lethal responses, physical trauma, sensory impairment (permanent and temporary threshold shifts and acoustic masking), physiological responses (particular stress responses), behavioral disturbance (that rises to the level of harassment), and social responses that would be classified as behavioral harassment or injury and/or would be likely to adversely affect the species or stock through effects on annual rates of recruitment or survival. In this section, we will focus qualitatively on the different ways that exposure to sonar signals may affect marine mammals. Then, in the Estimated Take of Marine Mammals section, NMFS will relate the potential effects on marine mammals from sonar exposure to the MMPA regulatory definitions of Level A and Level B Harassment and attempt to quantify those effects.

Direct Physiological Effects

Based on the literature, there are two basic ways that Navy sonar might directly result in physical trauma or damage: Noise-induced loss of hearing sensitivity (more commonly-called ''threshold shift'') and acoustically mediated bubble growth. Separately, an animal's behavioral reaction to an acoustic exposure might lead to physiological effects that might ultimately lead to injury or death, which is discussed later in the Stranding section.

Threshold Shift (Noise-Induced Loss of Hearing)

When animals exhibit reduced hearing sensitivity (i.e., sounds must be louder for an animal to recognize them) following exposure to a sufficiently intense sound, it is referred to as a noise-induced threshold shift (TS). An animal can experience temporary threshold shift (TTS) or permanent threshold shift (PTS). TTS can last from minutes or hours to days (i.e., there is recovery), occurs in specific frequency ranges (e.g., an animal might only have a temporary loss of hearing sensitivity between the frequencies of 1 and 10 kHz)), and can be of varying amounts (for example, an animal's hearing sensitivity might be reduced by only 6 dB or reduced by 30 dB). PTS is permanent (i.e., there is no recovery), but also occurs in a specific frequency range and amount as mentioned in the TTS description.

The following physiological mechanisms are thought to play a role in inducing auditory TSs: Effects on sensory hair cells in the inner ear that reduce their sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output (Southall *et al.,* 2007). The amplitude, duration, frequency, temporal pattern, and energy distribution of sound exposure all affect the amount of associated TS and the frequency range in which it occurs. As amplitude and duration of sound exposure increase, so, generally, does the amount of TS. For continuous sounds, exposures of equal energy (the same SEL) will lead to approximately equal effects. For intermittent sounds, less TS will occur than from a continuous exposure with the same energy (some recovery will occur between exposures) (Kryter *et al.,* 1966; Ward, 1997). For example, one short but loud (higher SPL) sound exposure may induce the same impairment as one longer but softer sound, which in turn may cause more impairment than a series of several intermittent softer sounds with the same total energy (Ward, 1997). Additionally, though TTS is temporary, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985) (although in the case of Navy sonar, animals are not expected to be exposed to levels high enough or durations long enough to result in PTS).

PTS is considered auditory injury (Southall *et al.,* 2007). Irreparable damage to the inner or outer cochlear hair cells may cause PTS, however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007).

Although the published body of scientific literature contains numerous theoretical studies and discussion

papers on hearing impairments that can occur with exposure to a loud sound, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. For cetaceans, published data are limited to the captive bottlenose dolphin and beluga whale (Finneran *et al.,* 2000, 2002b, 2005a; Schlundt *et al.,* 2000; Nachtigall *et al.,* 2003, 2004).

Marine mammal hearing plays a critical role in communication with conspecifics, and interpreting environmental cues for purposes such as predator avoidance and prey capture. Depending on the frequency range of TTS degree (dB), duration, and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present.

Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. Also, depending on the degree and frequency range, the effects of PTS on an animal could range in severity, although it is considered generally more serious because it is a long term condition. Of note, reduced hearing sensitivity as a simple function of development and aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost. There is no empirical evidence that exposure to Navy sonar can cause PTS in any marine mammals; instead the probability of PTS has been inferred from studies of TTS (see Richardson *et al.,* 1995).

Acoustically Mediated Bubble Growth

One theoretical cause of injury to marine mammals is rectified diffusion (Crum and Mao, 1996), the process of increasing the size of a bubble by exposing it to a sound field. This process could be facilitated if the environment in which the ensonified bubbles exist is supersaturated with gas. Repetitive diving by marine mammals can cause the blood and some tissues to accumulate gas to a greater degree than is supported by the surrounding environmental pressure (Ridgway and Howard, 1979). The deeper and longer dives of some marine mammals (for example, beaked whales) are theoretically predicted to induce greater supersaturation (Houser *et al.,* 2001). If rectified diffusion were possible in marine mammals exposed to high-level sound, conditions of tissue supersaturation could theoretically speed the rate and increase the size of bubble growth. Subsequent effects due to tissue trauma and emboli would presumably mirror those observed in humans suffering from decompression sickness.

It is unlikely that the short duration of sonar pings would be long enough to drive bubble growth to any substantial size, if such a phenomenon occurs. Recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at sound exposure levels and tissue saturation levels that are improbable to occur in a diving marine mammal. However, an alternative but related hypothesis has also been suggested: Stable bubbles could be destabilized by high-level sound exposures such that bubble growth then occurs through static diffusion of gas out of the tissues. In such a scenario the marine mammal would need to be in a gas-supersaturated state for a long enough period of time for bubbles to become of a problematic size. Yet another hypothesis (decompression sickness) has speculated that rapid ascent to the surface following exposure to a startling sound might produce tissue gas saturation sufficient for the evolution of nitrogen bubbles (Jepson *et al.,* 2003; Fernandez *et al.,* 2005). In this scenario, the rate of ascent would need to be sufficiently rapid to compromise behavioral or physiological protections against nitrogen bubble formation. Collectively, these hypotheses can be referred to as ''hypotheses of acoustically mediated bubble growth.''

Although theoretical predictions suggest the possibility for acoustically mediated bubble growth, there is considerable disagreement among scientists as to its likelihood (Piantadosi and Thalmann, 2004; Evans and Miller, 2003). Crum and Mao (1996) hypothesized that received levels would have to exceed 190 dB in order for there to be the possibility of significant bubble growth due to supersaturation of gases in the blood (i.e., rectified diffusion). More recent work conducted by Crum *et al.* (2005) demonstrated the possibility of rectified diffusion for short duration signals, but at SELs and tissue saturation levels that are highly improbable to occur in diving marine mammals. To date, Energy Levels (ELs) predicted to cause in vivo bubble formation within diving cetaceans have not been evaluated (NOAA, 2002). Although it has been argued that traumas from some recent beaked whale strandings are consistent with gas emboli and bubble-induced tissue separations (Jepson *et al.,* 2003), there is no conclusive evidence of this (Hooker *et al.,* 2011). However, Jepson *et al.* (2003, 2005) and Fernandez *et al.* (2004, 2005) concluded that in vivo bubble formation, which may be exacerbated by deep, long duration, repetitive dives may explain why beaked whales appear to be particularly vulnerable to sonar exposures. A recent review of evidence for gas-bubble incidence in marine mammal tissues suggest that diving mammals vary their physiological responses according to multiple stressors, and that the perspective on marine mammal diving physiology should change from simply minimizing nitrogen loading to management of the nitrogen load (Hooker *et al.,* 2011). This suggests several avenues for further study, ranging from the effects of gas bubbles at molecular, cellular and organ function levels, to comparative studies relating the presence/absence of gas bubbles to diving behavior. More information regarding hypotheses that attempt to explain how behavioral responses to Navy sonar can lead to strandings is included in the Behaviorally Mediated Bubble Growth section, after the summary of strandings.

Acoustic Masking

Marine mammals use acoustic signals for a variety of purposes, which differ among species, but include communication between individuals, navigation, foraging, reproduction, and learning about their environment (Erbe and Farmer, 2000; Tyack, 2000; Clark *et al.,* 2009). Masking, or auditory interference, generally occurs when sounds in the environment are louder than, and of a similar frequency to, auditory signals an animal is trying to receive. Masking is a phenomenon that affects animals that are trying to receive acoustic information about their environment, including sounds from other members of their species, predators, prey, and sounds that allow them to orient in their environment. Masking these acoustic signals can disturb the behavior of individual animals, groups of animals, or entire populations.

The extent of the masking interference depends on the spectral, temporal, and spatial relationships between the signals an animal is trying to receive and the

masking noise, in addition to other factors. In humans, significant masking of tonal signals occurs as a result of exposure to noise in a narrow band of similar frequencies. As the sound level increases, though, the detection of frequencies above those of the masking stimulus also decreases. This principle is also expected to apply to marine mammals because of common biomechanical cochlear properties across taxa.

Richardson *et al.* (1995) argued that the maximum radius of influence of an industrial noise (including broadband low frequency sound transmission) on a marine mammal is the distance from the source to the point at which the noise can barely be heard. This range is determined by either the hearing sensitivity of the animal or the background noise level present. Industrial masking is most likely to affect some species' ability to detect communication calls and natural sounds (i.e., surf noise, prey noise, etc.; Richardson *et al.,* 1995).

The echolocation calls of odontocetes (toothed whales) are subject to masking by high frequency sound. Human data indicate low-frequency sound can mask high-frequency sounds (i.e., upward masking). Studies on captive odontocetes by Au *et al.* (1974, 1985, 1993) indicate that some species may use various processes to reduce masking effects (e.g., adjustments in echolocation call intensity or frequency as a function of background noise conditions). There is also evidence that the directional hearing abilities of odontocetes are useful in reducing masking at the high frequencies these cetaceans use to echolocate, but not at the low-to-moderate frequencies they use to communicate (Zaitseva *et al.,* 1980).

As mentioned previously, the functional hearing ranges of mysticetes (baleen whales) and odontocetes (toothed whales) all encompass the frequencies of the sonar sources used in the Navy's Q–20 test activities. Additionally, almost all species' vocal repertoires span across the frequencies of the sonar sources used by the Navy. The closer the characteristics of the masking signal to the signal of interest, the more likely masking is to occur. However, because the pulse length and duty cycle of the Navy sonar signals are of short duration and would not be continuous, masking is unlikely to occur as a result of exposure to these signals during the Q–20 test activities in the designated Q–20 Study Area.

Impaired Communication

In addition to making it more difficult for animals to perceive acoustic cues in their environment, anthropogenic sound presents separate challenges for animals that are vocalizing. When they vocalize, animals are aware of environmental conditions that affect the ''active space'' of their vocalizations, which is the maximum area within which their vocalizations can be detected before it drops to the level of ambient noise (Brenowitz, 2004; Brumm *et al.,* 2004; Lohr *et al.,* 2003). Animals are also aware of environmental conditions that affect whether listeners can discriminate and recognize their vocalizations from other sounds, which are more important than detecting a vocalization (Brenowitz, 1982; Brumm *et al.,* 2004; Dooling, 2004; Marten and Marler, 1977; Patricelli *et al.,* 2006). Most animals that vocalize have evolved an ability to make vocal adjustments to their vocalizations to increase the signal-to-noise ratio, active space, and recognizability of their vocalizations in the face of temporary changes in background noise (Brumm *et al.,* 2004; Patricelli *et al.,* 2006). Vocalizing animals will make one or more of the following adjustments to their vocalizations: Adjust the frequency structure; adjust the amplitude; adjust temporal structure; or adjust temporal delivery.

Many animals will combine several of these strategies to compensate for high levels of background noise. Anthropogenic sounds that reduce the signal-to-noise ratio of animal vocalizations, increase the masked auditory thresholds of animals listening for such vocalizations, or reduce the active space of an animal's vocalizations impair communication between animals. Most animals that vocalize have evolved strategies to compensate for the effects of short-term or temporary increases in background or ambient noise on their songs or calls. Although the fitness consequences of these vocal adjustments remain unknown, like most other trade-offs animals must make, some of these strategies probably come at a cost (Patricelli *et al.,* 2006). For example, vocalizing more loudly in noisy environments may have energetic costs that decrease the net benefits of vocal adjustment and alter a bird's energy budget (Brumm, 2004; Wood and Yezerinac, 2006). Shifting songs and calls to higher frequencies may also impose energetic costs (Lambrechts, 1996).

Stress Responses

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg, 2000; Sapolsky *et al.,* 2005; Seyle, 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune response.

In the case of many stressors, an animal's first and most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the autonomic nervous system and the classical ''fight or flight'' response, which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effects on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine or sympathetic nervous systems; the system that has received the most study has been the hypothalmus-pituitary-adrenal system (also known as the HPA axis in mammals or the hypothalamus-pituitary-interrenal axis in fish and some reptiles). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg, 1987; Rivier, 1995) and altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha, 2000) and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not

pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic functions, which impair those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (sensu Seyle, 1950) or ''allostatic loading'' (sensu McEwen and Wingfield, 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Although no information has been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds, studies of other marine animals and terrestrial animals would lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to mid-frequency and low-frequency sounds.

For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b) identified noise induced physiological transient stress responses in hearing-specialist fish that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses cetaceans use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on cetaceans remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC, 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg, 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

Behavioral Disturbance

Behavioral responses to sound are highly variable and context-specific. Exposure of marine mammals to sound sources can result in (but is not limited to) the following observable responses: Increased alertness; orientation or attraction to a sound source; vocal modifications; cessation of feeding; cessation of social interaction; alteration of movement or diving behavior; habitat abandonment (temporary or permanent); and, in severe cases, panic, flight, stampede, or stranding, potentially resulting in death (Southall *et al.,* 2007).

Many different variables can influence an animal's perception of and response to (nature and magnitude) an acoustic event. An animal's prior experience with a sound type affects whether it is less likely (habituation) or more likely (sensitization) to respond to certain sounds in the future (animals can also be innately predisposed to respond to certain sounds in certain ways) (Southall *et al.,* 2007). Related to the sound itself, the perceived nearness of the sound, bearing of the sound (approaching vs. retreating), similarity of a sound to biologically relevant sounds in the animal's environment (i.e., calls of predators, prey, or conspecifics), and familiarity of the sound may affect the way an animal responds to the sound (Southall *et al.,* 2007). Individuals (of different age, gender, reproductive status, etc.) among most populations will have variable hearing capabilities, and differing behavioral sensitivities to sounds that will be affected by prior conditioning, experience, and current activities of those individuals. Often, specific acoustic features of the sound and contextual variables (i.e., proximity, duration, or recurrence of the sound or the current behavior that the marine mammal is engaged in or its prior experience), as well as entirely separate factors such as the physical presence of a nearby vessel, may be more relevant to the animal's response than the received level alone.

There are only a few empirical studies of behavioral responses of free-living cetaceans to military sonar being conducted to date, due to the difficulties in implementing experimental protocols on wild marine mammals.

An opportunistic observation was made on a tagged Blainville's beaked whale (*Mesoplodon densirostris*) before, during, and after a multi-day naval exercises involving tactical mid-frequency sonars within the U.S. Navy's sonar testing range at the Atlantic Undersea Test and Evaluation Center (AUTEC), in the Tongue of the Ocean near Andros Island in the Bahamas (Tyack *et al.,* 2011). The adult male whale was tagged with a satellite transmitter tag on May 7, 2009. During the 72 hrs before the sonar exercise started, the mean distance from whale to the center of the AUTEC range was approximately 37 km. During the 72 hrs sonar exercise, the whale moved several tens of km farther away (mean distance approximately 54 km). The received sound levels at the tagged whale during sonar exposure were estimated to be 146 dB re 1 μPa at the highest level. The tagged whale slowly returned for several days after the exercise stopped (mean distance approximately 29 km) from 0–72 hours after the exercise stopped (Tyack *et al.,* 2011).

In the past several years, controlled exposure experiments (CEE) on marine mammal behavioral responses to military sonar signals using acoustic tags have been started in the Bahamas, the Mediterranean Sea, southern California, and Norway. These behavioral response studies (BRS), though still in their early stages, have provided some preliminary insights into

cetacean behavioral disturbances when exposed to simulated and actual military sonar signals.

In 2007 and 2008, two Blainville's beaked whales were tagged in the AUTEC range and exposed to simulated mid-frequency sonar signals, killer whale (*Orcinus orca*) recordings (in 2007), and pseudo-random noise (PRN, in 2008) (Tyack *et al.,* 2011). For the simulated mid-frequency exposure BRS, the tagged whale stopped clicking during its foraging dive after 9 minutes when the received level reached 138 dB SPL, or a cumulative SEL value of 142 dB re 1 μPa^2-s. Once the whale stopped clicking, it ascended slowly, moving away from the sound source. The whale surfaced and remained in the area for approximately 2 hours before making another foraging dive (Tyack *et al.,* 2011).

The same beaked whale was exposed to killer whale sound recording during its subsequent deep foraging dive. The whale stopped clicking about 1 minute after the received level of the killer whale sound reached 98 dB SPL, just above the ambient noise level at the whale. The whale then made a long and slow ascent. After surfacing, the whale continued to swim away from the playback location for 10 hours (Tyack *et al.,* 2011).

In 2008, a Blainville's beaked was tagged and exposed with PRN that has the same frequency band as the simulated mid-frequency sonar signal. The received level at the whale ranged from inaudible to 142 dB SPL (144 dB cumulative SEL). The whale stopped clicking less than 2 minutes after exposure to the last transmission and ascended slowly to approximately 600 m. The whale appeared to stop at this depth, at which time the tag unexpectedly released from the whale (Tyack *et al.,* 2011).

During CEEs of the BRS off Norway, social behavioral responses of pilot whales and killer whales to tagging and sonar exposure were investigated. Sonar exposure was sampled for 3 pilot whale (*Globicephala* spp.) groups and 1 group of killer whales. Results show that when exposed to sonar signals, pilot whales showed a preference for larger groups with medium-low surfacing synchrony, while starting logging, spyhopping and milling. While killer whales showed the opposite pattern, maintaining asynchronous patterns of surface behavior: decreased surfacing synchrony, increased spacing, decreased group size, tailslaps and loggings (Visser *et al.,* 2011).

Although the small sample size of these CEEs reported here is too small to make firm conclusions about differential responses of cetaceans to military sonar exposure, none of the results showed that whales responded to sonar signals with panicked flight. Instead, the beaked whales exposed to simulated sonar signals and killer whale sound recording moved in a well oriented direction away from the source towards the deep water exit from the Tongue of the Ocean (Tyack *et al.,* 2011). In addition, different species of cetaceans exhibited different social behavioral responses towards (close) vessel presence and sonar signals, which elicit different, potentially tailored and species-specific responses (Visser *et al.,* 2011).

Much more qualitative information is available on the avoidance responses of free-living cetaceans to other acoustic sources, like seismic airguns and low-frequency active sonar, than mid-frequency active sonar. Richardson *et al.,* (1995) noted that avoidance reactions are the most obvious manifestations of disturbance in marine mammals.

Behavioral Responses

Southall *et al.,* (2007) reports the results of the efforts of a panel of experts in acoustic research from behavioral, physiological, and physical disciplines that convened and reviewed the available literature on marine mammal hearing and physiological and behavioral responses to man-made sound with the goal of proposing exposure criteria for certain effects. This compilation of literature is very valuable, though Southall *et al.* note that not all data is equal, some have poor statistical power, insufficient controls, and/or limited information on received levels, background noise, and other potentially important contextual variables—such data were reviewed and sometimes used for qualitative illustration, but were not included in the quantitative analysis for the criteria recommendations.

In the Southall *et al.,* (2007) report, for the purposes of analyzing responses of marine mammals to anthropogenic sound and developing criteria, the authors differentiate between single pulse sounds, multiple pulse sounds, and non-pulse sounds. HFAS/MFAS sonar is considered a non-pulse sound. Southall *et al.,* (2007) summarize the reports associated with low-, mid-, and high-frequency cetacean responses to non-pulse sounds (there are no pinnipeds in the Gulf of Mexico (GOM)) in Appendix C of their report (incorporated by reference and summarized in the three paragraphs below).

The reports that address responses of low-frequency cetaceans to non-pulse sounds include data gathered in the field and related to several types of sound sources (of varying similarity to HFAS/MFAS) including: Vessel noise, drilling and machinery playback, low frequency M-sequences (sine wave with multiple phase reversals) playback, low frequency active sonar playback, drill vessels, Acoustic Thermometry of Ocean Climate (ATOC) source, and non-pulse playbacks. These reports generally indicate no (or very limited) responses to received levels in the 90 to 120 dB re 1 µPa range and an increasing likelihood of avoidance and other behavioral effects in the 120 to 160 dB range. As mentioned earlier, however, contextual variables play a very important role in the reported responses and the severity of effects are not linear when compared to received level. Also, few of the laboratory or field datasets had common conditions, behavioral contexts or sound sources, so it is not surprising that responses differ.

The reports that address responses of mid-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to HFAS/MFAS) including: Pingers, drilling playbacks, vessel and ice-breaking noise, vessel noise, Acoustic Harassment Devices (AHDs), Acoustic Deterrent Devices (ADDs), HFAS/MFAS, and non-pulse bands and tones. Southall *et al.* were unable to come to a clear conclusion regarding these reports. In some cases, animals in the field showed significant responses to received levels between 90 and 120 dB, while in other cases these responses were not seen in the 120 to 150 dB range. The disparity in results was likely due to contextual variation and the differences between the results in the field and laboratory data (animals responded at lower levels in the field).

The reports that address the responses of high-frequency cetaceans to non-pulse sounds include data gathered both in the field and the laboratory and related to several different sound sources (of varying similarity to HFAS/MFAS) including: Acoustic harassment devices, Acoustical Telemetry of Ocean Climate (ATOC), wind turbine, vessel noise, and construction noise. However, no conclusive results are available from these reports. In some cases, high frequency cetaceans (harbor porpoises) are observed to be quite sensitive to a wide range of human sounds at very low exposure RLs (90 to 120 dB). All recorded exposures exceeding 140 dB produced profound and sustained

avoidance behavior in wild harbor porpoises (Southall *et al.,* 2007).

In addition to summarizing the available data, the authors of Southall *et al.* (2007) developed a severity scaling system with the intent of ultimately being able to assign some level of biological significance to a response. Following is a summary of their scoring system, a comprehensive list of the behaviors associated with each score may be found in the report:

- 0–3 (Minor and/or brief behaviors) includes, but is not limited to: No response; minor changes in speed or locomotion (but with no avoidance); individual alert behavior; minor cessation in vocal behavior; minor changes in response to trained behaviors (in laboratory).
- 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival) includes, but is not limited to: Moderate changes in speed, direction, or dive profile; brief shift in group distribution; prolonged cessation or modification of vocal behavior (duration > duration of sound); minor or moderate individual and/or group avoidance of sound; brief cessation of reproductive behavior; or refusal to initiate trained tasks (in laboratory).
- 7–9 (Behaviors considered likely to affect the aforementioned vital rates) includes, but are not limited to: Extensive of prolonged aggressive behavior; moderate, prolonged or significant separation of females and dependent offspring with disruption of acoustic reunion mechanisms; long-term avoidance of an area; outright panic, stampede, stranding; threatening or attacking sound source (in laboratory).

In Table 2 we have summarized the scores that Southall *et al.* (2007) assigned to the papers that reported behavioral responses of low-frequency cetaceans, mid-frequency cetaceans, and high-frequency cetaceans to non-pulse sounds.

TABLE 4—DATA COMPILED FROM THREE TABLES FROM SOUTHALL ET AL. (2007) INDICATING WHEN MARINE MAMMALS (LOW-FREQUENCY CETACEAN = L, MID-FREQUENCY CETACEAN = M, AND HIGH-FREQUENCY CETACEAN = H) WERE REPORTED AS HAVING A BEHAVIORAL RESPONSE OF THE INDICATED SEVERITY TO A NON-PULSE SOUND OF THE INDICATED RECEIVED LEVEL. AS DISCUSSED IN THE TEXT, RESPONSES ARE HIGHLY VARIABLE AND CONTEXT SPECIFIC

	Received RMS sound pressure level (dB re 1 microPa)											
Response score	80 to <90	90 to <100	100 to <110	110 to <120	120 to <130	130 to <140	140 to <150	150 to <160	160 to <170	170 to <180	180 to <190	190 to <200
9												
8		M	M		M		M				M	M
7						L	L					
6	H	L/H	L/H	L/M/H	L/M/H	L	L/H	H	M/H	M		
5					M							
4			H	L/M/H	L/M		L					
3		M	L/M	L/M	M							
2			L	L/M	L	L	L					
1			M	M	M							
0	L/H	L/H	L/M/H	L/M/H	L/M/H	L	M				M	M

Potential Effects of Behavioral Disturbance

The different ways that marine mammals respond to sound are sometimes indicators of the ultimate effect that exposure to a given stimulus will have on the well-being (survival, reproduction, etc.) of an animal. There is little marine mammal data quantitatively relating the exposure of marine mammals to sound to effects on reproduction or survival, though data exists for terrestrial species to which we can draw comparisons for marine mammals.

Attention is the cognitive process of selectively concentrating on one aspect of an animal's environment while ignoring other things (Posner, 1994). Because animals (including humans) have limited cognitive resources, there is a limit to how much sensory information they can process at any time. The phenomenon called ''attentional capture'' occurs when a stimulus (usually a stimulus that an animal is not concentrating on or attending to) ''captures'' an animal's attention. This shift in attention can occur consciously or unconsciously (for example, when an animal hears sounds that it associates with the approach of a predator) and the shift in attention can be sudden (Dukas, 2002; van Rij, 2007). Once a stimulus has captured an animal's attention, the animal can respond by ignoring the stimulus, assuming a ''watch and wait'' posture, or treat the stimulus as a disturbance and respond accordingly, which includes scanning for the source of the stimulus or ''vigilance'' (Cowlishaw *et al.,* 2004).

Vigilance is normally an adaptive behavior that helps animals determine the presence or absence of predators, assess their distance from conspecifics, or to attend cues from prey (Bednekoff and Lima, 1998; Treves, 2000). Despite those benefits, however, vigilance has a cost of time: when animals focus their attention on specific environmental cues, they are not attending to other activities such as foraging. These costs have been documented best in foraging animals, where vigilance has been shown to substantially reduce feeding rates (Saino, 1994; Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002).

Animals will spend more time being vigilant, which may translate to less time foraging or resting, when disturbance stimuli approach them more directly, remain at closer distances, have a greater group size (for example, multiple surface vessels), or when they co-occur with times that an animal perceives increased risk (for example, when they are giving birth or accompanied by a calf). Most of the published literature, however, suggests that direct approaches will increase the amount of time animals will dedicate to being vigilant. For example, bighorn sheep and Dall's sheep dedicated more time being vigilant, and less time resting or foraging, when aircraft made direct approaches over them (Frid, 2001; Stockwell *et al.,* 1991).

Several authors have established that long-term and intense disturbance stimuli can cause population declines by reducing the body condition of individuals that have been disturbed, followed by reduced reproductive success, reduced survival, or both (Daan *et al.,* 1996; Madsen, 1994; White, 1983). For example, Madsen (1994) reported that pink-footed geese (*Anser*

brachyrhynchus) in undisturbed habitat gained body mass and had about a 46-percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging), which did not gain mass and had a 17 percent reproductive success. Similar reductions in reproductive success have been reported for mule deer (*Odocoileus hemionus*) disturbed by all-terrain vehicles (Yarmoloy *et al.,* 1988), caribou disturbed by seismic exploration blasts (Bradshaw *et al.,* 1998), caribou disturbed by low-elevation military jetfights (Luick *et al.,* 1996), and caribou disturbed by low-elevation jet flights (Harrington and Veitch, 1992). Similarly, a study of elk (*Cervus elaphus*) that were disturbed experimentally by pedestrians concluded that the ratio of young to mothers was inversely related to disturbance rate (Phillips and Alldredge, 2000).

The primary mechanism by which increased vigilance and disturbance appear to affect the fitness of individual animals is by disrupting an animal's time budget and, as a result, reducing the time they might spend foraging and resting (which increases an animal's activity rate and energy demand). For example, a study of grizzly bears (*Ursus horribilis*) reported that bears disturbed by hikers reduced their energy intake by an average of 12 kcal/min (50.2 × 103kJ/min), and spent energy fleeing or acting aggressively toward hikers (White *et al.,* 1999).

On a related note, many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

Stranding and Mortality

When a live or dead marine mammal swims or floats onto shore and becomes ''beached'' or incapable of returning to sea, the event is termed a ''stranding'' (Geraci *et al.,* 1999; Perrin and Geraci, 2002; Geraci and Lounsbury, 2005; NMFS, 2007). Marine mammals are known to strand for a variety of reasons, such as infectious agents, biotoxicosis, starvation, fishery interaction, ship strike, unusual oceanographic or weather events, sound exposure, or combinations of these stressors sustained concurrently or in series. However, the cause or causes of most stranding are unknown (Geraci *et al.,* 1976; Eaton, 1979, Odell *et al.,* 1980; Best, 1982).

Several sources have published lists of mass stranding events of cetaceans during attempts to identify relationships between those stranding events and military sonar (Hildebrand, 2004; IWC, 2005; Taylor *et al.,* 2004). For example, based on a review of stranding records between 1960 and 1995, the International Whaling Commission (IWC, 2005) identified 10 mass stranding events of Cuvier's beaked whales that had been reported and one mass stranding of four Baird's beaked whales (*Berardius bairdii*). The IWC concluded that, out of eight stranding events reported from the mid-1980s to the summer of 2003, seven had been associated with the use of mid-frequency sonar, one of those seven had been associated with the use of low frequency sonar, and the remaining stranding event had been associated with the use of seismic airguns. None of the strandings has been associated with high frequency sonar such as the Q–20 sonar proposed to be tested in this action. Therefore, NMFS does not consider it likely that the proposed Q–20 testing activity would cause marine mammals to strand.

Effects on Marine Mammal Habitat

There are no areas within the NSWC PCD that are specifically considered as important physical habitat for marine mammals.

The prey of marine mammals are considered part of their habitat. The Navy's Final Environmental Impact Statement and Overseas Environmental Impact Statement (FEIS) on the research, development, test and evaluation activities in the NSWC PCD study area contains a detailed discussion of the potential effects to fish from HFAS/MFAS. These effects are the same as expected from the proposed Q–20 sonar testing activities within the same area.

The extent of data, and particularly scientifically peer-reviewed data, on the effects of high intensity sounds on fish is limited. In considering the available literature, the vast majority of fish species studied to date are hearing generalists and cannot hear sounds above 500 to 1,500 Hz (depending upon the species), and, therefore, behavioral effects on these species from higher frequency sounds are not likely. Moreover, even those fish species that may hear above 1.5 kHz, such as a few sciaenids and the clupeids (and relatives), have relatively poor hearing above 1.5 kHz as compared to their hearing sensitivity at lower frequencies. Therefore, even among the species that have hearing ranges that overlap with some mid- and high-frequency sounds, it is likely that the fish will only actually hear the sounds if the fish and source are very close to one another. Finally, since the vast majority of sounds that are of biological relevance to fish are below 1 kHz (e.g., Zelick *et al.,* 1999; Ladich and Popper, 2004), even if a fish detects a mid-or high-frequency sound, these sounds will not mask detection of lower frequency biologically relevant sounds. Based on the above information, there will likely be few, if any, behavioral impacts on fish.

Alternatively, it is possible that very intense mid- and high-frequency signals could have a physical impact on fish, resulting in damage to the swim bladder and other organ systems. However, even these kinds of effects have only been shown in a few cases in response to explosives, and only when the fish has been very close to the source. Such effects have never been indicated in response to any Navy sonar. Moreover, at greater distances (the distance clearly would depend on the intensity of the signal from the source) there appears to be little or no impact on fish, and particularly no impact on fish that do not have a swim bladder or other air bubble that would be affected by rapid pressure changes.

Proposed Mitigation Measures

In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military-readiness activities and the ITA process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity.'' The Q–20 sonar testing activities described in the Navy's IHA application are considered military readiness activities.

For the proposed Q–20 sonar testing activities in the GOM, NMFS worked with the Navy to develop mitigation

measures. The Navy then proposed the following mitigation measures, which include a careful balancing of minimizing impacts to marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''.

Personnel Training

Marine mammal mitigation training for those who participate in the active sonar activities is a key element of the protective measures. The goal of this training is for key personnel onboard Navy platforms in the Q–20 Study Area to understand the protective measures and be competent to carry them out. The Marine Species Awareness Training (MSAT) is provided to all applicable participants, where appropriate. The program addresses environmental protection, laws governing the protection of marine species, Navy stewardship, and general observation information including more detailed information for spotting marine mammals. Marine mammal observer training will be provided before active sonar testing begins.

Marine observers would be aware of the specific actions to be taken based on the RDT&E platform if a marine mammal is observed. Specifically, the following requirements for personnel training would apply:

- All marine observers onboard platforms involved in the Q–20 sonar test activities will review the NMFS-approved MSAT material prior to use of active sonar.
- Marine Observers shall be trained in marine mammal recognition. Marine Observer training shall include completion of the Marine Species Awareness Training, instruction on governing laws and policies, and overview of the specific Gulf of Mexico species present, and observer roles and responsibilities.
- Marine observers will be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

Range Operating Procedures

The following procedures would be implemented to maximize the ability of Navy personnel to recognize instances when marine mammals are in the vicinity.

(1) Observer Responsibilities

- Marine observers will have at least one set of binoculars available for each person to aid in the detection of marine mammals.
- Marine observers will scan the water from the ship to the horizon and be responsible for all observations in their sector. In searching the assigned sector, the lookout will always start at the forward part of the sector and search aft (toward the back). To search and scan, the lookout will hold the binoculars steady so the horizon is in the top third of the field of vision and direct the eyes just below the horizon. The lookout will scan for approximately five seconds in as many small steps as possible across the field seen through the binoculars. They will search the entire sector in approximately five-degree steps, pausing between steps for approximately five seconds to scan the field of view. At the end of the sector search, the glasses will be lowered to allow the eyes to rest for a few seconds, and then the lookout will search back across the sector with the naked eye.
- Observers will be responsible for informing the Test Director of any marine mammal that may need to be avoided, as warranted.
- These procedures would apply as much as possible during RMMV operations. When an RMMV is operating over the horizon, it is impossible to follow and observe it during the entire path. An observer will be located on the support vessel or platform to observe the area when the system is undergoing a small track close to the support platform.

(2) Operating Procedures

- Test Directors will, as appropriate to the event, make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible, consistent with the safety of the ship.
- During Q–20 sonar activities, personnel will utilize all available sensor and optical system (such as Night Vision Goggles) to aid in the detection of marine mammals.
- Navy aircraft participating will conduct and maintain, when operationally feasible, required, and safe, surveillance for marine species of concern as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.
- Marine mammal detections by aircraft will be immediately reported to the Test Director. This action will occur when it is reasonable to conclude that the course of the ship will likely close the distance between the ship and the detected marine mammal.
- Exclusion Zones—The Navy will ensure that sonar transmissions are ceased if any detected marine mammals are within 200 yards (183 m) of the sonar source. Active sonar will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1,828 m) beyond the location of the last detection.
- Special conditions applicable for dolphins only: If, after conducting an initial maneuver to avoid close quarters with dolphins, the Test Director or the Test Director's designee concludes that dolphins are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.
- Sonar levels (generally)—Navy will operate sonar at the lowest practicable level, except as required to meet testing objectives.

Clearance Procedures

When the test platform (surface vessel or aircraft) arrives at the test site, an initial evaluation of environmental suitability will be made. This evaluation will include an assessment of sea state and verification that the area is clear of visually detectable marine mammals and indicators of their presence. For example, large flocks of birds and large schools of fish are considered indicators of potential marine mammal presence.

If the initial evaluation indicates that the area is clear, visual surveying will begin. The area will be visually surveyed for the presence of protected species and protected species indicators. Visual surveys will be conducted from the test platform before test activities begin. When the platform is a surface vessel, no additional aerial surveys will be required. For surveys requiring only surface vessels, aerial surveys may be opportunistically conducted by aircraft participating in the test.

Shipboard monitoring will be staged from the highest point possible on the vessel. The observer(s) will be experienced in shipboard surveys, familiar with the marine life of the area, and equipped with binoculars of sufficient magnification. Each observer will be provided with a two-way radio that will be dedicated to the survey, and will have direct radio contact with the Test Director. Observers will report to the Test Director any sightings of marine mammals or indicators of these species, as described previously. Distance and bearing will be provided when available. Observers may recommend a ''Go''/''No Go'' decision, but the final decision will be the responsibility of the Test Director.

Post-mission surveys will be conducted from the surface vessel(s)

and aircraft used for pre-test surveys. Any affected marine species will be documented and reported to NMFS. The report will include the date, time, location, test activities, species (to the lowest taxonomic level possible), behavior, and number of animals.

NMFS has carefully evaluated the Navy's proposed mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation, including consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Based on our evaluation of the Navy's proposed measures, as well as other measures considered by NMFS, we have preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable adverse impacts on marine mammals species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Proposed Monitoring Measures

In order to issue an ITA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

The RDT&E Monitoring Program, proposed by the Navy as part of its IHA application, is focused on mitigation-based monitoring. Main monitoring techniques include use of civilian personnel as marine mammal observers during pre-, during, and post-, test events.

Systematic monitoring of the affected area for marine mammals will be conducted prior to, during, and after test events using aerial and/or ship-based visual surveys. Observers will record information during the test activity. Data recorded will include exercise information (time, date, and location) and marine mammal and/or indicator presence, species, number of animals, their behavior, and whether there are changes in the behavior. Personnel will immediately report observed stranded or injured marine mammals to NMFS stranding response network and NMFS Regional Office. Reporting requirements will be included in the Naval Surface Warfare Center Panama City Division (NSWC PCD) Mission Activities Final Environmental Impact Statement/ Overseas Environmental Impact Statement Annual Activity report as required by its Final Rule (DON, 2009; NMFS, 2010d).

Ongoing Monitoring

The Navy has an existing Monitoring Plan that provides for site-specific monitoring for MMPA and Endangered Species Act (ESA) listed species, primarily marine mammals within the Gulf of Mexico, including marine water areas of the Q–20 Study Area (DON, 2009; NMFS, 2010d). This monitoring plan was initially developed in support of the NSWC PCD Mission Activities Final Environmental Impact Statement/ Overseas Environmental Impact Statement and subsequent Final Rule by NMFS (DON, 2009; NMFS, 2010d). The primary goals of monitoring are to evaluate trends in marine species distribution and abundance in order to assess potential population effects from Navy training and testing events and determine the effectiveness of the Navy's mitigation measures. The monitoring plan, adjusted annually in consultation with NMFS, includes aerial- and ship-based visual observations, acoustic monitoring, and other efforts such as oceanographic observations.

Estimated Take by Incidental Harassment

Definition of Harassment

As mentioned previously, with respect to military readiness activities, Section 3(18)(B) of the MMPA defines ''harassment'' as: (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Level B Harassment

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammals to Sonar section, the following are the types of effects that fall into the Level B Harassment category:

Behavioral Harassment—Behavioral disturbance that rises to the level described in the definition above, when resulting from exposures to active sonar exposure, is considered Level B Harassment. Some of the lower level physiological stress responses will also likely co-occur with the predicted harassments, although these responses are more difficult to detect and fewer data exist relating these responses to specific received levels of sound. When Level B Harassment is predicted based on estimated behavioral responses, those takes may have a stress-related physiological component as well.

In the effects section above, we described the Southall *et al.,* (2007) severity scaling system and listed some examples of the three broad categories of behaviors: (0–3: Minor and/or brief behaviors); 4–6 (Behaviors with higher potential to affect foraging, reproduction, or survival); 7–9 (Behaviors considered likely to affect the aforementioned vital rates). Generally speaking, MMPA Level B Harassment, as defined in this document, would include the behaviors described in the 7–9 category, and a subset, dependent on context and other considerations, of the behaviors described in the 4–6 categories. Behavioral harassment generally does not include behaviors ranked 0–3 in Southall *et al.,* (2007).

Acoustic Masking and Communication Impairment—Acoustic masking is considered Level B Harassment as it can disrupt natural behavioral patterns by interrupting or limiting the marine mammal's receipt or transmittal of important information or environmental cues.

TTS—As discussed previously, TTS can affect how an animal behaves in response to the environment, including conspecifics, predators, and prey. The following physiological mechanisms are thought to play a role in inducing auditory fatigue: Effects to sensory hair cells in the inner ear that reduce their

sensitivity, modification of the chemical environment within the sensory cells, residual muscular activity in the middle ear, displacement of certain inner ear membranes, increased blood flow, and post-stimulatory reduction in both efferent and sensory neural output. Ward (1997) suggested that when these effects result in TTS rather than PTS, they are within the normal bounds of physiological variability and tolerance and do not represent a physical injury. Additionally, Southall *et al.* (2007) indicate that although PTS is a tissue injury, TTS is not because the reduced hearing sensitivity following exposure to intense sound results primarily from fatigue, not loss, of cochlear hair cells and supporting structures and is reversible. Accordingly, NMFS classifies TTS (when resulting from exposure to Navy sonar) as Level B Harassment, not Level A Harassment (injury).

Level A Harassment

Of the potential effects that were described in the Potential Effects of Exposure of Marine Mammal to Sonar section, following are the types of effects that fall into the Level A Harassment category:

PTS—PTS (resulting from exposure to active sonar) is irreversible and considered an injury. PTS results from exposure to intense sounds that cause a permanent loss of inner or outer cochlear hair cells or exceed the elastic limits of certain tissues and membranes in the middle and inner ears and results in changes in the chemical composition of the inner ear fluids.

Acoustic Take Criteria

For the purposes of an MMPA incidental take authorization, three types of take are identified: Level B harassment; Level A harassment; and mortality (or serious injury leading to mortality). The categories of marine mammal responses (physiological and behavioral) that fall into the two harassment categories were described in the previous section.

Because the physiological and behavioral responses of the majority of the marine mammals exposed to military sonar cannot be detected or measured, a method is needed to estimate the number of individuals that will be taken, pursuant to the MMPA, based on the proposed action. To this end, NMFS uses acoustic criteria that estimate at what received level (when exposed to Navy sonar) Level B Harassment and Level A Harassment of marine mammals would occur. These acoustic criteria are discussed below.

Relatively few applicable data exist to support acoustic criteria specifically for HFAS (such as the Q–20 active sonar). However, because MFAS systems have larger impact ranges, NMFS will apply the criteria developed for the MFAS systems to the HFAS systems.

NMFS utilizes three acoustic criteria for HFAS/MFAS: PTS (injury—Level A Harassment), behavioral harassment from TTS, and sub-TTS (Level B Harassment). Because the TTS and PTS criteria are derived similarly and the PTS criteria was extrapolated from the TTS data, the TTS and PTS acoustic criteria will be presented first, before the behavioral criteria.

For more information regarding these criteria, please see the Navy's FEIS for the NSWC PCD (Navy 2009).

Level B Harassment Threshold (TTS)

As mentioned above, behavioral disturbance, acoustic masking, and TTS are all considered Level B Harassment. Marine mammals would usually be behaviorally disturbed at lower received levels than those at which they would likely sustain TTS, so the levels at which behavioral disturbance is likely to occur are considered the onset of Level B Harassment. The behavioral responses of marine mammals to sound are variable, context specific, and, therefore, difficult to quantify (see Risk Function section, below). TTS is a physiological effect that has been studied and quantified in laboratory conditions. NMFS also uses an acoustic criteria to estimate the number of marine mammals that might sustain TTS incidental to a specific activity (in addition to the behavioral criteria).

A number of investigators have measured TTS in marine mammals. These studies measured hearing thresholds in trained marine mammals before and after exposure to intense sounds. The existing cetacean TTS data are summarized in the following bullets.

- Schlundt *et al.* (2000) reported the results of TTS experiments conducted with 5 bottlenose dolphins and 2 belugas exposed to 1-second tones. This paper also includes a reanalysis of preliminary TTS data released in a technical report by Ridgway *et al.* (1997). At frequencies of 3, 10, and 20 kHz, sound pressure levels (SPLs) necessary to induce measurable amounts (6 dB or more) of TTS were between 192 and 201 dB re 1 μPa (EL = 192 to 201 dB re 1 μPa^2-s). The mean exposure SPL and EL for onset-TTS were 195 dB re 1 μPa and 195 dB re 1 μPa^2-s, respectively.
- Finneran *et al.* (2001, 2003, 2005) described TTS experiments conducted with bottlenose dolphins exposed to 3-kHz tones with durations of 1, 2, 4, and 8 seconds. Small amounts of TTS (3 to 6 dB) were observed in one dolphin after exposure to ELs between 190 and 204 dB re 1 microPa^2-s. These results were consistent with the data of Schlundt *et al.* (2000) and showed that the Schlundt *et al.* (2000) data were not significantly affected by the masking sound used. These results also confirmed that, for tones with different durations, the amount of TTS is best correlated with the exposure EL rather than the exposure SPL.
- Nachtigall *et al.* (2003) measured TTS in a bottlenose dolphin exposed to octave-band sound centered at 7.5 kHz. Nachtigall *et al.* (2003a) reported TTSs of about 11 dB measured 10 to 15 minutes after exposure to 30 to 50 minutes of sound with SPL 179 dB re 1 μPa (EL about 213 dB re μPa^2-s). No TTS was observed after exposure to the same sound at 165 and 171 dB re 1 μPa. Nachtigall *et al.* (2004) reported TTSs of around 4 to 8 dB 5 minutes after exposure to 30 to 50 minutes of sound with SPL 160 dB re 1 μPa (EL about 193 to 195 dB re 1 μPa^2-s). The difference in results was attributed to faster post exposure threshold measurement—TTS may have recovered before being detected by Nachtigall *et al.* (2003). These studies showed that, for long duration exposures, lower sound pressures are required to induce TTS than are required for short-duration tones.
- Finneran *et al.* (2000, 2002) conducted TTS experiments with dolphins and belugas exposed to impulsive sounds similar to those produced by distant underwater explosions and seismic waterguns. These studies showed that, for very short-duration impulsive sounds, higher sound pressures were required to induce TTS than for longer-duration tones.

Some of the more important data obtained from these studies are onset-TTS levels (exposure levels sufficient to cause a just-measurable amount of TTS) often defined as 6 dB of TTS (for example, Schlundt *et al.,* 2000) and the fact that energy metrics (sound exposure levels (SEL), which include a duration component) better predict when an animal will sustain TTS than pressure (SPL) alone. NMFS' TTS criteria (which indicate the received level at which onset TTS (>6dB) is induced) for HFAS/MFAS are as follows:

- Cetaceans—195 dB re 1 μPa^2-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans) (Southall *et al.,* 2007).

A detailed description of how TTS criteria were derived from the results of the above studies may be found in

Chapter 3 of Southall *et al.* (2007), as well as the Navy's Q–20 IHA application.

Level A Harassment Threshold (PTS)

For acoustic effects, because the tissues of the ear appear to be the most susceptible to the physiological effects of sound, and because threshold shifts tend to occur at lower exposures than other more serious auditory effects, NMFS has determined that PTS is the best indicator for the smallest degree of injury that can be measured. Therefore, the acoustic exposure associated with onset-PTS is used to define the lower limit of the Level A harassment.

PTS data do not currently exist for marine mammals and are unlikely to be obtained due to ethical concerns. However, PTS levels for these animals may be estimated using TTS data from marine mammals and relationships between TTS and PTS that have been discovered through study of terrestrial mammals. NMFS uses the following acoustic criteria for injury:

- Cetaceans—215 dB re 1 μPa²-s (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans) (Southall *et al.,* 2007).

These criteria are based on a 20 dB increase in SEL over that required for onset-TTS. Extrapolations from terrestrial mammal data indicate that PTS occurs at 40 dB or more of TS, and that TS growth occurs at a rate of approximately 1.6 dB TS per dB increase in EL. There is a 34-dB TS difference between onset-TTS (6 dB) and onset-PTS (40 dB). Therefore, an animal would require approximately 20-dB of additional exposure (34 dB divided by 1.6 dB) above onset-TTS to reach PTS. A detailed description of how TTS criteria were derived from the results of the above studies may be found in Chapter 3 of Southall *et al.* (2007), as well as the Navy's NSWC PCD LOA application. Southall *et al.* (2007) recommend a precautionary dual criteria for TTS (230 dB re 1 μPa (SPL) in addition to 215 re 1 μPa²-s (SEL)) to account for the potentially damaging transients embedded within non-pulse exposures. However, in the case of HFAS/MFAS, the distance at which an animal would receive 215 (SEL) is farther from the source than the distance at which they would receive 230 (SPL) and therefore, it is not necessary to consider 230 dB.

We note here that behaviorally mediated injuries (such as those that have been hypothesized as the cause of some beaked whale strandings) could potentially occur in response to received levels lower than those believed to directly result in tissue damage. As mentioned previously, data to support a quantitative estimate of these potential effects (for which the exact mechanism is not known and in which factors other than received level may play a significant role) do not exist.

Level B Harassment Risk Function (Behavioral Harassment)

The first MMPA authorization for take of marine mammals incidental to tactical active sonar was issued in 2006 for Navy Rim of the Pacific training exercises in Hawaii. For that authorization, NMFS used 173 dB SEL as the criterion for the onset of behavioral harassment (Level B Harassment). This type of single number criterion is referred to as a step function, in which (in this example) all animals estimated to be exposed to received levels above 173 dB SEL would be predicted to be taken by Level B Harassment and all animals exposed to less than 173 dB SEL would not be taken by Level B Harassment. As mentioned previously, marine mammal behavioral responses to sound are highly variable and context specific (affected by differences in acoustic conditions; differences between species and populations; differences in gender, age, reproductive status, or social behavior; or the prior experience of the individuals), which does not support the use of a step function to estimate behavioral harassment.

Unlike step functions, acoustic risk continuum functions (which are also called ''exposure-response functions,'' ''dose-response functions,'' or ''stress response functions'' in other risk assessment contexts) allow for probability of a response that NMFS would classify as harassment to occur over a range of possible received levels (instead of one number) and assume that the probability of a response depends first on the ''dose'' (in this case, the received level of sound) and that the probability of a response increases as the ''dose'' increases. The Navy and NMFS have previously used acoustic risk functions to estimate the probable responses of marine mammals to acoustic exposures in the Navy FEISs on the SURTASS LFA sonar (DoN, 2001c) and the North Pacific Acoustic Laboratory experiments conducted off the Island of Kauai (ONR, 2001). The specific risk functions used here were also used in the MMPA regulations and FEIS for Hawaii Range Complex (HRC), Southern California Range Complex (SOCAL), and Atlantic Fleet Active Sonar Testing (AFAST). As discussed in the Effects section, factors other than received level (such as distance from or bearing to the sound source) can affect the way that marine mammals respond; however, data to support a quantitative analysis of those (and other factors) do not currently exist. NMFS will continue to modify these criteria as new data becomes available.

To assess the potential effects on marine mammals associated with active sonar used during training activity, the Navy and NMFS applied a risk function that estimates the probability of behavioral responses that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFA sonar. The mathematical function is derived from a solution in Feller (1968) as defined in the SURTASS LFA Sonar Final OEIS/EIS (DoN, 2001), and relied on in the Supplemental SURTASS LFA Sonar EIS (DoN, 2007a) for the probability of MFA sonar risk for MMPA Level B behavioral harassment with input parameters modified by NMFS for MFA sonar for mysticetes and odontocetes (NMFS, 2008). The same risk function and input parameters will be applied to high frequency active (HFA) (≤10 kHz) sources until applicable data becomes available for high frequency sources.

In order to represent a probability of risk, the function should have a value near zero at very low exposures, and a value near one for very high exposures. One class of functions that satisfies this criterion is cumulative probability distributions, a type of cumulative distribution function. In selecting a particular functional expression for risk, several criteria were identified:

- The function must use parameters to focus discussion on areas of uncertainty;
- The function should contain a limited number of parameters;
- The function should be capable of accurately fitting experimental data; and
- The function should be reasonably convenient for algebraic manipulations.

As described in U.S. Department of the Navy (2001), the mathematical function below is adapted from a solution in Feller (1968).

$$R = \frac{1-\left(\frac{L-B}{K}\right)^{-A}}{1-\left(\frac{L-B}{K}\right)^{-2A}}$$

Where:

R = Risk (0 − 1.0)

L = Received level (dB re: 1 μPa)

B = Basement received level = 120 dB re: 1 μPa

K = Received level increment above B where 50 percent risk = 45 dB re: 1 μPa

A = Risk transition sharpness parameter = 10 (odontocetes) or 8 (mysticetes)

In order to use this function to estimate the percentage of an exposed population that would respond in a manner that NMFS classifies as Level B harassment, based on a given received level, the values for B, K and A need to be identified.

B Parameter (Basement)—The B parameter is the estimated received level below which the probability of disruption of natural behavioral patterns, such as migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered approaches zero for the HFAS/MFAS risk assessment. At this received level, the curve would predict that the percentage of the exposed population that would be taken by Level B Harassment approaches zero. For HFAS/MFAS, NMFS has determined that B = 120 dB. This level is based on a broad overview of the levels at which many species have been reported responding to a variety of sound sources.

K Parameter (representing the 50 percent Risk Point)—The K parameter is based on the received level that corresponds to 50 percent risk, or the received level at which we believe 50 percent of the animals exposed to the designated received level will respond in a manner that NMFS classifies as Level B Harassment. The K parameter (K = 45 dB) is based on three datasets in which marine mammals exposed to mid-frequency sound sources were reported to respond in a manner that NMFS would classify as Level B Harassment. There is widespread consensus that marine mammal responses to HFA/MFA sound signals need to be better defined using controlled exposure experiments (Cox *et al.,* 2006; Southall *et al.,* 2007). The Navy is contributing to an ongoing behavioral response study in the Bahamas that is expected to provide some initial information on beaked whales, the species identified as the most sensitive to MFAS. NMFS is leading this international effort with scientists from various academic institutions and research organizations to conduct studies on how marine mammals respond to underwater sound exposures. Until additional data is available, however, NMFS and the Navy have determined that the following three data sets are most applicable for the direct use in establishing the K parameter for the HFAS/MFAS risk function. These data sets, summarized below, represent the only known data that specifically relate altered behavioral responses (that NMFS would consider Level B Harassment) to exposure to HFAS/MFAS sources.

Even though these data are considered the most representative of the proposed specified activities, and therefore the most appropriate on which to base the K parameter (which basically determines the midpoint) of the risk function, these data have limitations, which are discussed in Appendix J of the Navy's EIS for the NSWC PCD (DoN, 2009) and summarized in the Navy's IHA application.

Calculation of K Paramenter—NMFS and the Navy used the mean of the following values to define the midpoint of the function: (1) The mean of the lowest received levels (185.3 dB) at which individuals responded with altered behavior to 3 kHz tones in the SSC data set; (2) the estimated mean received level value of 169.3 dB produced by the reconstruction of the USS SHOUP incident in which killer whales exposed to MFA sonar (range modeled possible received levels: 150 to 180 dB); and (3) the mean of the 5 maximum received levels at which Nowacek *et al.* (2004) observed significantly altered responses of right whales to the alert stimuli than to the control (no input signal) is 139.2 dB SPL. The arithmetic mean of these three mean values is 165 dB SPL. The value of K is the difference between the value of B (120 dB SPL) and the 50 percent value of 165 dB SPL; therefore, K = 45.

A Parameter (Steepness)—NMFS determined that a steepness parameter (A) = 10 is appropriate for odontocetes (except harbor porpoises) and pinnipeds and A = 8 is appropriate for mysticetes.

The use of a steepness parameter of A = 10 for odontocetes (except harbor porpoises) for the HFAS/MFAS risk function was based on the use of the same value for the SURTASS LFA risk continuum, which was supported by a sensitivity analysis of the parameter presented in Appendix D of the SURTASS/LFA FEIS (DoN, 2001c). As concluded in the SURTASS FEIS/EIS, the value of A = 10 produces a curve that has a more gradual transition than the curves developed by the analyses of migratory gray whale studies (Malme *et al.,* 1984; Buck and Tyack, 2000; and SURTASS LFA Sonar EIS, Subchapters 1.43, 4.2.4.3 and Appendix D, and NMFS, 2008).

NMFS determined that a lower steepness parameter (A = 8), resulting in a shallower curve, was appropriate for use with mysticetes and HFAS/MFAS. The Nowacek *et al.* (2004) dataset contains the only data illustrating mysticete behavioral responses to a mid-frequency sound source. A shallower curve (achieved by using A = 8) better reflects the risk of behavioral response at the relatively low received levels at which behavioral responses of right whales were reported in the Nowacek *et al.* (2004) data. Compared to the odontocete curve, this adjustment results in an increase in the proportion of the exposed population of mysticetes being classified as behaviorally harassed at lower RLs, such as those reported in and supported by the only dataset currently available.

Basic Application of the Risk Function—The risk function is used to estimate the percentage of an exposed population that is likely to exhibit behaviors that would qualify as harassment (as that term is defined by the MMPA applicable to military readiness activities, such as the Navy's testing and research activities with HFA/MFA sonar) at a given received level of sound. For example, at 165 dB SPL (dB re: 1 µPa rms), the risk (or probability) of harassment is defined according to this function as 50 percent, and Navy/NMFS applies that by estimating that 50 percent of the individuals exposed at that received level are likely to respond by exhibiting behavior that NMFS would classify as behavioral harassment. The risk function is not applied to individual animals, only to exposed populations.

The data primarily used to produce the risk function (the K parameter) were compiled from four species that had been exposed to sound sources in a variety of different circumstances. As a result, the risk function represents a general relationship between acoustic exposures and behavioral responses that is then applied to specific circumstances. That is, the risk function represents a relationship that is deemed to be generally true, based on the limited, best-available science, but may not be true in specific circumstances. In particular, the risk function, as currently derived, treats the received level as the only variable that is relevant to a marine mammal's behavioral response. However, we know that many other variables—the marine mammal's gender, age, and prior experience; the activity it is engaged in during an exposure event, its distance from a sound source, the number of sound sources, and whether the sound sources are approaching or moving away from the animal—can be critically important in determining whether and how a marine mammal will respond to a sound source (Southall *et al.,* 2007). The data that are currently available do not allow for incorporation of these other variables in the current risk functions; however, the risk function represents

the best use of the data that are available (Figure 1).

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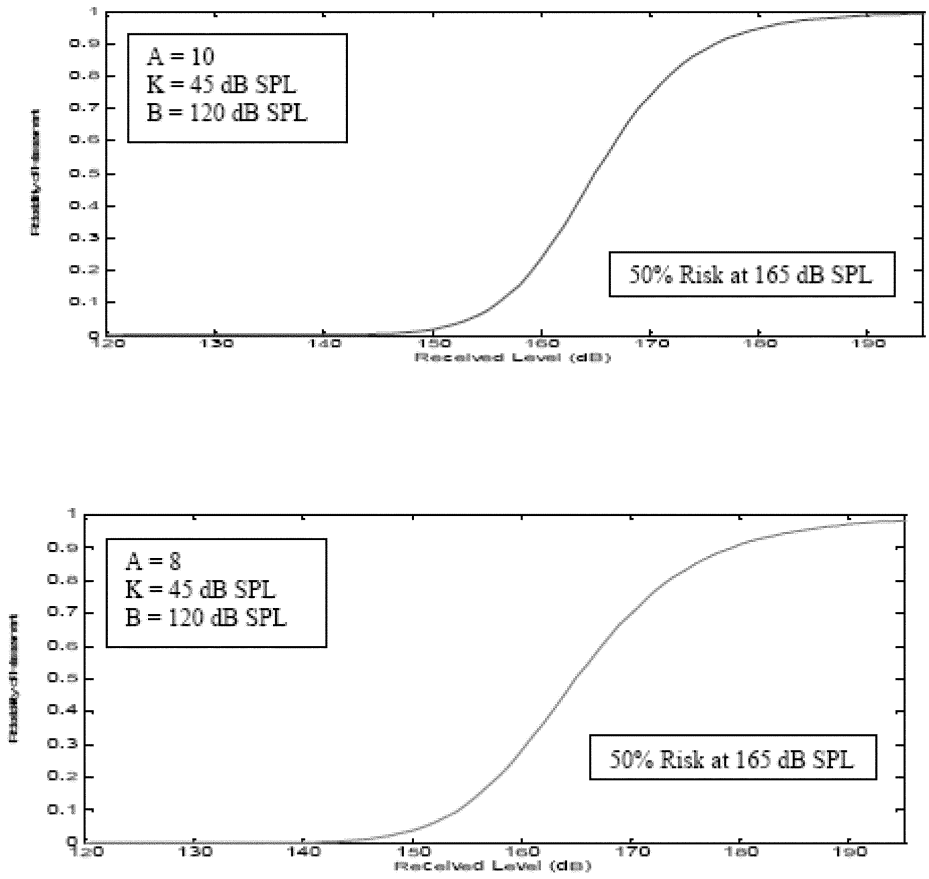


Figure 1. Risk Functions for Odontocetes (above) and Mysticetes (below).

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As more specific and applicable data become available for HFAS/MFAS sources, NMFS can use these data to modify the outputs generated by the risk function to make them more realistic. Ultimately, data may exist to justify the use of additional, alternate, or multivariate functions. For example, as mentioned previously, the distance from the sound source and whether it is perceived as approaching or moving away can affect the way an animal responds to a sound (Wartzok *et al.,* 2003).

Estimated Exposures of Marine Mammals

Acoustical modeling provides an estimate of the actual exposures. Detailed information and formulas to model the effects of sonar from Q–20 sonar testing activities in the Q–20 Study Area are provided in Appendix A, Supplemental Information for Underwater Noise Analysis of the Navy's IHA application.

The quantitative analysis was based on conducting sonar operations in 13 different geographical regions, or provinces. Using combined marine mammal density and depth estimates, which are detailed later in this section, acoustical modeling was conducted to calculate the actual exposures. Refer to Appendix B, Geographic Description of Environmental Provinces of the Navy's IHA application, for additional information on provinces. Refer to Appendix C, Definitions and Metrics for Acoustic Quantities of the Navy's IHA application, for additional information regarding the acoustical analysis.

The approach for estimating potential acoustic effects from Q–20 test activities on cetacean species uses the methodology that the DON developed in cooperation with NMFS for the Navy's HRC Draft EIS (DON, 2007c). The exposure analysis for behavioral response to sound in the water uses energy flux density for Level A harassment and the methods for risk function for Level B harassment (behavioral). The methodology is provided here to determine the number and species of marine mammals for which incidental take authorization is requested.

To estimate acoustic effects from the Q–20 test activities, acoustic sources to be used were examined with regard to their operational characteristics as described in the previous section. Systems with an operating frequency greater than 200 kHz were not analyzed in the detailed modeling as these signals attenuate rapidly resulting in very short propagation distances. Based on the information above, the Navy modeled the Q–20 sonar parameters including source levels, ping length, the interval between pings, output frequencies, directivity (or angle), and other characteristics based on records from previous test scenarios and projected future testing. Additional information on sonar systems and their associated parameters is in Appendix A,

Supplemental Information for Underwater Noise Analysis of the Navy's IHA application.

Every active sonar operation includes the potential to expose marine animals in the neighboring waters. The number of animals exposed to the sonar is dictated by the propagation field and the manner in which the sonar is operated (i.e., source level, depth, frequency, pulse length, directivity, platform speed, repetition rate). The modeling for Q–20 test activities involving sonar occurred in five broad steps listed below, and was conducted based on the typical RDT&E activities planned for the Q–20 Study Area.

1. Environmental Provinces: The Q–20 Study Area is divided into 13 environmental provinces, and each has a unique combination of environmental conditions. These represent various combinations of eight bathymetry provinces, one Sound Velocity Profile (SVP) province, and three Low-Frequency Bottom Loss geo-acoustic provinces and two High-Frequency Bottom Loss classes. These are addressed by defining eight fundamental environments in two seasons that span the variety of depths, bottom types, sound speed profiles, and sediment thicknesses found in the Q–20 Study Area. The two seasons encompass winter and summer, which are the two extremes for the GOM, the acoustic propagation characteristics do not vary significantly between the two. Each marine modeling area can be quantitatively described as a unique combination of these environments.

2. Transmission Loss: Since sound propagates differently in these environments, separate transmission loss calculations must be made for each, in both seasons. The transmission loss is predicted using Comprehensive Acoustic Simulation System/Gaussian Ray Bundle (CASS–GRAB) sound modeling software.

3. Exposure Volumes: The transmission loss, combined with the source characteristics, gives the energy field of a single ping. The energy of more than 10 hours of pinging is summed, carefully accounting for overlap of several pings, so an accurate average exposure of an hour of pinging is calculated for each depth increment. At more than 10 hours, the source is too far away and the energy is negligible. Repeating this calculation for each environment in each season gives the hourly ensonified volume, by depth, for each environment and season. This step begins the method for risk function modeling.

4. Marine Mammal Densities: The marine mammal densities were given in two dimensions, but using reliable peer-reviewed literature sources (published literature and agency reports) described in the following subsection, the depth regimes of these marine mammals are used to project the two dimensional densities (expressed as the number of animals per area where all individuals are assumed to be at the water's surface) into three dimensions (a volumetric approach whereby two-dimensional animal density incorporates depth into the calculation estimates).

5. Exposure Calculations: Each marine mammal's three-dimensional (3–D) density is multiplied by the calculated impact volume to that marine mammal depth regime. This value is the number of exposures per hour for that particular marine mammal. In this way, each marine mammal's exposure count per hour is based on its density, depth habitat, and the ensonified volume by depth.

The planned sonar hours were inserted and a cumulative number of exposures was determined for the proposed action.

Based on the analysis, Q–20 sonar operations in non-territorial waters may expose up to six species to sound likely to result in Level B (behavioral) harassment (Table 2). They include the bottlenose dolphin (*Tursiops truncatus*), Atlantic spotted dolphin (*Stenella frontalis*), pantropical spotted dolphin (*Stenella attenuata*), striped dolphin (*Stenella coeruleoalba*), spinner dolphin (*Stenella longirostris*), and Clymene dolphin (*Stenella clymene*). No marine mammals would be exposed to levels of sound likely to result in TTS. The Navy requests that the take numbers of marine mammals for its IHA reflect the exposure numbers listed in Table 2.

TABLE 2—ESTIMATES OF MARINE MAMMAL EXPOSURES FROM SONAR IN NON-TERRITORIAL WATERS PER YEAR

Marine mammal species	Level A	Level B (TTS)	Level B (behavioral)
Bottlenose dolphin (GOM oceanic)	0	0	399
Pantropical spotted dolphin	0	0	126
Atlantic spotted dolphin	0	0	315
Spinner dolphin	0	0	126
Clymene dolphin	0	0	42
Striped dolphin	0	0	42

Potential for Long-Term Effects

Q–20 test activities will be conducted in the same general areas, so marine mammal populations could be exposed to repeated activities over time. However, as described earlier, this analysis assumes that short-term non-injurious SELs predicted to cause temporary behavioral disruptions qualify as Level B harassment. It is highly unlikely that behavioral disruptions will result in any long-term significant effects.

Potential for Effects on ESA-Listed Species

To further examine the possibility of whale exposures from the proposed testing, CASSGRAB sound modeling software was used to estimate transmission losses and received sound pressure levels (SPLs) from the Q–20 when operating in the test area. Specifically, four radials out towards DeSoto Canyon (which is considered an important habitat for the ESA-listed sperm whales) were calculated. The results indicate the relatively rapid attenuation of sound pressure levels with distance from the source, which is not surprising given the high frequency of the source. Below 120 dB, the risk of significant change in a biologically important behavior approaches zero. This threshold is reached at a distance of only 2.8 km (1.5 nm) from the source. With the density of sperm whales being near zero in this potential zone of influence, this calculation reinforces NMFS' conclusion that the proposed activity is not likely to result in the take of sperm whales. It should also be noted that DeSoto Canyon is well beyond the distance at which sound pressure levels from the Q–20 attenuate to zero.

Negligible Impact and Small Numbers Analysis and Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (i.e., takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects. A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (i.e., population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat.

The Navy's specified activities have been described based on best estimates of the number of Q–20 sonar test hours that the Navy will conduct. Taking the above into account, considering the sections discussed below, and dependent upon the implementation of the proposed mitigation measures, NMFS has preliminarily determined that Navy's Q–20 sonar test activities in the non-territorial waters will have a negligible impact on the marine mammal species and stocks present in the Q–20 Study Area.

Behavioral Harassment

As discussed in the Potential Effects of Exposure of Marine Mammals to Sonar section and illustrated in the conceptual framework, marine mammals can respond to HFAS/MFAS in many different ways, a subset of which qualifies as harassment. One thing that the take estimates do not take into account is the fact that most marine mammals will likely avoid strong sound sources to one extent or another. Although an animal that avoids the sound source will likely still be taken in some instances (such as if the avoidance results in a missed opportunity to feed, interruption of reproductive behaviors, etc.), in other cases avoidance may result in fewer instances of take than were estimated or in the takes resulting from exposure to a lower received level than was estimated, which could result in a less severe response. The Navy proposes only 420 hours of high-frequency sonar operations per year for the Q–20 sonar testing activities, spread among 42 days with an average of 10 hours per day, in the Q–20 Study Area. There will be no powerful tactical mid-frequency sonar involved. Therefore, there will be no disturbance to marine mammals resulting from MFAS systems (such as 53C). The effects that might be expected from the Navy's major training exercises at the Atlantic Fleet Active Sonar Training (AFAST) Range, Hawaii Range Complex (HRC), and Southern California (SOCAL) Range Complex will not occur here. The source level of the Q–20 sonar is much lower than the 53C series MFAS system, and high frequency signals tend to have more attenuation in the water column and are more prone to lose their energy during propagation. Therefore, their zones of influence are much smaller, thereby making it easier to detect marine mammals and prevent adverse effects from occurring.

The Navy has been conducting monitoring activities since 2006 on its sonar operations in a variety of the Naval range complexes (e.g., AFAST, HRC, SOCAL) under the Navy's own protective measures and under the regulations and LOAs. Monitoring reports based on these major training exercises using military sonar have shown that no marine mammal injury or mortality has occurred as a result of the sonar operations (DoN, 2011a; 2011b).

Diel Cycle

As noted previously, many animals perform vital functions, such as feeding, resting, traveling, and socializing on a diel cycle (24-hr cycle). Substantive behavioral reactions to noise exposure (such as disruption of critical life functions, displacement, or avoidance of important habitat) are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007).

In the previous section, we discussed the fact that potential behavioral responses to HFAS/MFAS that fall into the category of harassment could range in severity. By definition, the takes by behavioral harassment involve the disturbance of a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns (such as migration, surfacing, nursing, breeding, feeding, or sheltering) to a point where such behavioral patterns are abandoned or significantly altered. In addition, the amount of time the Q–20 sonar testing will occur is 420 hours per year in non-territorial waters, and is spread among 42 days with an average of 10 hours per day. Thus the exposure is expected to be sporadic throughout the year and is localized within a specific testing site.

TTS

Based on the Navy's model and NMFS analysis, it is unlikely that marine mammals would be exposed to sonar received levels that could cause TTS due to the lower source level (207–212 dB re 1 μPa at 1 m) and high attenuation rate of the HAFS signals (above 35 kHz).

Acoustic Masking or Communication Impairment

As discussed above, it is possible that anthropogenic sound could result in masking of marine mammal communication and navigation signals. However, masking only occurs during the time of the signal (and potential secondary arrivals of indirect rays), versus TTS, which occurs continuously for its duration. The Q–20 ping duration is in milliseconds and the system is relatively low-powered making its range of effect smaller. Therefore, masking effects from the Q–20 sonar signals are expected to be minimal. If masking or communication impairment were to occur briefly, it would be in the frequency range of above 35 kHz (the lower limit of the Q–20 signals), which overlaps with some marine mammal vocalizations; however, it would likely not mask the entirety of any particular vocalization or communication series because the pulse length, frequency, and duty cycle of the Q–20 sonar signal does not perfectly mimic the characteristics of any marine mammal's vocalizations.

PTS, Injury, or Mortality

Based on the Navy's model and NMFS analysis, it is unlikely that PTS, injury, or mortality of marine mammals would occur from the proposed Q–20 sonar testing activities. As discussed earlier, the lower source level (207–212 dB re 1 μPa at 1 m) and high attenuation rate of the HFAS signals (above 35 kHz) make

it highly unlikely that any marine mammals in the vicinity would be injured (including PTS) or killed as a result of sonar exposure.

Based on the aforementioned assessment, NMFS determines that approximately 399 bottlenose dolphins, 126 pantropical spotted dolphins, 315 Atlantic spotted dolphins, 126 spinner dolphins, 42 Clymene dolphins, and 42 striped dolphins would be affected by Level B behavioral harassment as a result of the proposed Q–20 sonar testing activities. These numbers represent approximately 10.76%, 0.37%, 1.26%, 6.33%, and 0.64% of bottlenose dolphins (GOM oceanic stock), pantropical spotted dolphins, striped dolphins, spinner dolphins, and Clymene dolphins, respectively, of these species in the GOM region (calculation based on NMFS 2011 US Atlantic and Gulf of Mexico Marine Mammal Stock Assessment). The percentage of potentially affected Atlantic spotted dolphin is unknown since there is no current population assessment of this species in the Gulf of Mexico region. However, based on the most recent abundance estimate published in NMFS Atlantic and GOM SARs conducted in the northern Gulf of Mexico outer continental shelf during fall 2000–2001 and oceanic waters during spring/summer 2003–2004, the population was estimated at 37,611 (NMFS 2011). Using this number, it is estimated that approximately 0.84% of Atlantic spotted dolphins would be taken by Level B behavioral harassment from the Navy's proposed sonar test activities.

Based on the supporting analyses, which suggest that no marine mammals will be killed, injured, or receive TTS as a result of the Q–20 sonar testing activities, and no more than a small number of any affected species will be taken in the form of short-term Level B behavioral harassment. Coupled with the fact that these impacts will likely not occur in areas and times critical to reproduction, NMFS has preliminarily determined that the taking of these species as a result of the Navy's Q–20 sonar test will have a negligible impact on the marine mammal species and stocks present in the Q–20 Study Area.

Subsistence Harvest of Marine Mammals

NMFS has preliminarily determined that the total taking of marine mammal species or stocks from the Navy's Q–20 sonar testing in the Q–20 Study Area would not have an unmitigable adverse impact on the availability of the affected species or stocks for subsistence uses, since there are no such uses in the specified area.

Endangered Species Act (ESA)

Based on the analysis of the Navy Marine Resources Assessment (MRA) data on marine mammal distributions, there is near zero probability that sperm whale will occur in the vicinity of the proposed Q–20 test area. No other ESA-listed marine mammal is expected to occur in the vicinity of the test area. In addition, acoustic modeling analysis indicates that none of the ESA-listed marine mammal species would be exposed to levels of sound that would constitute a ''take'' under the MMPA, due to the low source level and high attenuation rates of the Q–20 sonar signal. Therefore, the Navy has determined that ESA-listed species are not likely to be adversely affected as the result of the Navy's proposed Q–20 testing activities and has requested concurrence from NMFS.

National Environmental Policy Act (NEPA)

In 2009, the Navy prepared a Final Environmental Impact Statement/Overseas Environmental Impact Statement for the NSWC PCD Mission Activities (FEIS/OEIS), and NMFS subsequently adopted the FEIS/OEIS for its rule governing the Navy's RDT&E activities in the NSWC PCD Study Area. The currently proposed Q–20 sonar testing activities are similar to the sonar testing activities described in the FEIS/OEIS for NSWC PCD mission activities. NMFS will prepare an Environmental Assessment to reflect these additional Q–20 sonar test activities.

Dated: February 23, 2012.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–4695 Filed 2–27–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Sunshine Act Meetings

DATES: *Time and Date:* 10 a.m., Friday, March 30, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

Matters To Be Considered

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–4853 Filed 2–24–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: 10 a.m., Friday, March 2, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–4864 Filed 2–24–12; 4:15 pm]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: 10 a.m., Friday, March 16, 2012.

PLACE: 1155 21st St. NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance and Enforcement Matters. In the event that the times or dates of these or any future meetings change, an announcement of the change, along with the new time and place of the meeting will be posted on the Commission's Web site at *http://www.cftc.gov.*

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2012–4863 Filed 2–24–12; 4:15 pm]

BILLING CODE 6351–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0007]

Impacts of Overdraft Programs on Consumers

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for information.

SUMMARY: Title XIV of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (the Dodd-Frank Act), charges the Bureau of Consumer Financial Protection (the CFPB or the Bureau) with regulating ''the offering and provision of consumer financial products or services under the Federal consumer financial laws.'' [1] Specifically, the Dodd-Frank Act grants regulatory authority to the Bureau for the Electronic Funds Transfer Act,[2] except with respect to section 920 of that Act, and the Truth in Savings Act,[3] which taken together, in part, govern consumer transaction accounts. Accordingly, the Bureau is reviewing existing regulations and supervisory guidance issued by various regulators pertaining to the use of overdraft programs by financial institutions. To support this review, the Bureau seeks information from the public on the impact of overdraft programs on consumers.

The Bureau encourages comments from the public, including consumers, overdraft program processors, and financial institutions.

DATES: Comments must be received on or before April 30, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0007, by any of the following methods:

- *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: cfpb_overdraft_comments@cfpb.gov.*
- *Mail:* Monica Jackson, Office of the Executive Secretary, Bureau of Consumer Financial Protection Bureau, 1500 Pennsylvania Ave. NW., (Attn: 1801 L Street NW.), Washington, DC 20220.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20006.

Instructions: The CFPB encourages the early submission of comments. All submissions must include the document title and docket number. Please note the number of any question to which you are responding at the top of each response (respondents need not answer each question). In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20006, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning 202–435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information such as account numbers or Social Security numbers should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: For general inquiries, submission process questions or any additional information, please contact Monica Jackson, Office of the Executive Secretary, 202–435–7275.

SUPPLEMENTARY INFORMATION:

Background

Technological Advances in Transaction Accounts: With changes in technology, the number of ways in which consumers can access funds in a checking account has expanded over decades from paper checks to include automated teller machine (ATM) withdrawals, point-of-sale (POS) debit card use, preauthorized debit card use, Automated Clearing House (ACH) payments, and online banking transactions. This expanded range of accessing funds also means that the number and types of transactions potentially causing an overdraft has increased as well.

When checking accounts were accessed exclusively or predominantly through paper checks, institutions generally declined to pay an item if there were insufficient funds in the account to cover that item; instead, the item would be returned and the consumer would be charged a returned check or non-sufficient funds (NSF) fee. Before returning an item, some institutions would conduct a manual review and, as a courtesy, pay certain items based on the institution's relationship with the consumer.

Over the past decade or more, many institutions introduced automated overdraft systems under which overdraft items are paid, subject to tolerances or limits that are established at the account level, and an overdraft fee is charged on a per item basis. A study published in 2008 by the Federal Deposit Insurance Corporation (FDIC) of overdraft practices among banks it supervised [4] found that more than two-thirds of surveyed banks with assets of $250 million or more had automated overdraft programs.[5] The FDIC study found that overdraft and NSF fees accounted for 74% of the deposit service income of banks with automated overdraft programs during the 2006 study period.[6]

While not based on a representative sample of banks, the FDIC's analysis of account-level data found that the approximately 9% of accountholders who incurred 10 or more overdrafts annually bore approximately 84% of overdraft-related fees.[7] Those who incurred over 20 overdrafts per year—representing 4.9% of all consumers—incurred fees of over $1,600 per year on average.[8] The FDIC study also concluded that the most frequent overdrafters were disproportionately low and moderate income and more likely to be young adults.

Regulatory Actions Since Completion of the FDIC Study

Amendments to Regulation DD: On January 29, 2009, the Board of Governors of the Federal Reserve System (Board) published final regulations amending Regulation DD, which implements the Truth in Savings Act, effective January 1, 2010.[9] These amendments require all institutions to provide additional periodic statement disclosures of overdraft fees and fees for returning items unpaid. They also restrict institutions' ability to provide ''padded'' balance amounts (i.e., including amounts institutions may make available through their overdraft coverage programs) in response to balance inquiries using automated systems such as ATMs, online banking and voice response units.

It is uncertain what impact these changes to Regulation DD have had on consumer behavior or on the incidence

[1] 12 U.S.C. 5491(a).

[2] 15 U.S.C. 1693 *et seq.*

[3] 12 U.S.C. 4301 *et seq.*

[4] FDIC *Study of Bank Overdraft Programs (''FDIC Study'');* Washington, DC, November, 2008, available at *http://www.fdic.gov/bank/anlytical/overdraft/.*

[5] FDIC Study at Table III–1, page 5.

[6] FDIC Study at page 56. ''NSF-related'' income included fees for items returned due to all fees referred to as ''overdraft fees'' in this document, including fees for items declined due to insufficient funds (''NSF fees''), paid overdraft items (''overdraft coverage fees'') and fees for not repaying paid overdraft items for a certain period of time (''extended overdraft fees'').

[7] FDIC Study at page 76.

[8] FDIC Study at page iv.

[9] 74 FR 5584 (July 29, 2009). The CFPB restated Regulation DD at 12 CFR part 1030. 76 FR 79276 (Dec. 21, 2011).

of overdrafts or related charges to consumers.

Amendments to Regulation E: On November 17, 2009, the Board published final regulations amending Regulation E, which implements the Electronic Fund Transfer Act, effective January 19, 2010.[10] These amendments prohibit financial institutions from charging fees for transactions that overdraw an account by use of a debit card at an ATM and point-of-sale unless the consumer opts in to permitting the institution to authorize and pay overdrafts on these transactions. In so doing the Board noted that ''the cost to consumers of overdraft fees assessed in connection with ATM and debit card overdrafts is significant'' and ''may substantially exceed the amount[s] overdrawn.'' [11] And based upon research that it conducted, the Board found that ''many consumers may not be aware that they are able to overdraft an ATM or POS'' and may therefore ''unintentionally overdraw their account.'' [12] Based on consumer testing, the Board further found that many consumers ''would prefer to have ATM withdrawal and debit card transactions declined if they had insufficient funds, rather than incur an overdraft fee.'' [13]

There is disagreement about the impact that this regulatory change has had. For example, a 2011 industry survey of 18 large banks found that only 16% of consumers had opted in for overdraft coverage on ATM and debit card transactions.[14] In contrast, Moebs Research estimated that, as of March 2011, 75% of consumers had opted in for such overdraft coverage.[15] Further, consumer groups have raised concerns about the manner in which some institutions promoted the opt-in option to their existing checking account customers. For example, one group's survey of consumers found that ''only 33 percent of accountholders opted-in to overdraft coverage, and most who did based their decision on information that was deceptive.'' [16]

Recent FDIC and OCC Supervisory Guidance: Subsequent to the amendments to Regulations DD and E taking effect, the prudential regulators have expressed ongoing concern about overdraft programs.[17] In November 2010, the FDIC issued supervisory guidance to ''assist FDIC-supervised institutions in identifying, managing and mitigating risks associated with overdraft payment programs.'' [18] The FDIC guidance addresses, among other things, the marketing and disclosure practices surrounding automated overdraft and alternatives to overdraft and also the basis on which overdraft charges are assessed, including check-clearing procedures.

In August 2010, the FDIC also issued guidance stating that overdraft payment programs are subject to the requirements of the Equal Credit Opportunity Act (ECOA) as implemented through Regulation B. Specifically, the FDIC adopts the 2005 joint Guidance on Overdraft Protection Programs, stating that ''steering or targeting certain consumers on a prohibited basis for overdraft protection programs while offering other consumers overdraft lines of credit or other more favorable credit products or overdraft services, will raise concerns under the ECOA.'' [19]

In June 2011, the Office of the Comptroller of the Currency (OCC) proposed guidance to ''detail[] the principles that the OCC expects national banks to follow in connection with any deposit-related consumer credit product.'' [20] The OCC's proposed guidance includes an appendix that ''illustrate[s] application of these principles to * * * automated overdraft protection products.'' [21] The proposed guidance states that the ''OCC is concerned with several practices that have developed'' with respect to overdraft programs including ''potentially misleading statements'' in marketing; ''failure to assess a customer's ability to manage and repay overdraft protection before it is made available to the customer''; ''failure to * * * identify excessive usage''; and ''payment processing intended to maximize overdraft and related fees.'' [22]

The FDIC and OCC based their supervisory guidance on safety and soundness concerns, but raised significant consumer protection issues as well.[23] The FDIC Final Guidance expressly noted that overdraft programs ''include[d] risks that could result in serious financial harm to certain consumers.'' Similarly, the OCC predicated its proposed guidance ''on the premise that bankers should provide their customers with products they need, and that bankers should not use their products to take advantage of their customer relationship.'' [24]

While the OCC document has not been finalized, the proposal is materially different from the FDIC guidance. Indeed, after the OCC issued its proposed guidance, the American Bankers Association wrote to the Bureau and to the prudential regulators (including the OCC) urging the development of a ''uniform set of supervisory expectations'' [25] and forwarding comments urging ''consistent regulatory treatment for similar products.'' [26]

Request for Information

The Bureau seeks additional and updated information from the public,

[10] 74 FR 59033 (Nov. 17, 2009). The rule had a delayed mandatory compliance date of July 1, 2010. The CFPB restated Regulation E at 12 CFR part 1005, 76 FR 81020 (Dec. 27, 2011).

[11] *Id.* at p. 59038.

[12] *Id.* at pp. 59038–59039.

[13] *Id.* at p. 59039.

[14] Consumer Bankers Association Press Release, October 27, 2011, which can be viewed at *http://www.cbanet.org/news/PRdetail.cfm?ItemNumber=19595.*

[15] Moebs Services press release, March 8, 2011 which can be viewed at *http://moebs.com/PressReleases/tabid/58/ctl/Details/mid/380/ItemID/199/Default.aspx.*

[16] Center for Responsible Lending: *Banks Collect Overdraft Opt-ins Through Misleading Marketing; April 2011, page 2, available at http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/CRL-OD-Survey-Brief-final-2-4-25-22.pdf.*

[17] The prudential regulators had previously expressed concerns about overdraft programs in 2005. *See* 70 FR 8428 (Feb. 18, 2005) (OTS overdraft guidance) and 70 FR 9127 (Feb. 24, 2005) (OCC, FDIC, Board, and NCUA joint overdraft guidance).

[18] FIL–81–2010: *Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance,* November 24, 2010, available at *http://www.fdic.gov/news/news/financial/2010/fil10081.html* (FDIC Final Guidance).

[19] FDIC, *Financial Institution Letter,* (August 11, 2010) (citing the 2005 *Joint Guidance on Overdraft Protection Programs adopted by the* Office of the Comptroller of the Currency; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; National Credit Union Administration). *http://www.fdic.gov/news/news/financial/2010/fil10047a.html.*

[20] *Guidance on Deposit-Related Consumer Credit Products* 76 FR 33409 (June 8, 2011) (OCC Proposed Guidance).

[21] *Id.* p. 33409.

[22] *Id.* p. 33411.

[23] Separately from the FDIC and OCC, the Office of Thrift Supervision (OTS) specifically addressed consumer financial protection concerns in proposed supplemental guidance it issued in April 2010 to OTS guidance issued in 2005 on overdraft programs. For example, the OTS noted that savings associations should avoid practices it labeled as deceptive, such as marketing an account ''without informing consumers of significant overdraft fees associated with an account'' or failing to disclose certain transaction ordering policies and the effect they may have on the frequency with which overdrafts might occur. The OTS also suggested that failing to ''limit fees for consumers who frequently overdraw their accounts'' could be unfair as ''these consumers may not be able to avoid the harm caused by high overdraft fees;'' for example, ''those who frequently overdraw accounts may simply not have other options in the market, as they may have credit histories and other characteristics that prevent them from obtaining less expensive services.'' 75 FR 22681 (April 29, 2010).

[24] OCC Proposed Guidance, 74 FR at 33410.

[25] American Bankers Association letter to FDIC, OCC, Federal Reserve Board of Governors, and CFPB, August 24, 2011 viewable online at *http://www.aba.com/aba/documents/news/OverdraftLetter82511.pdf.*

[26] American Bankers Association letter in response to OCC proposed guidance August 4, 2011 viewable online at *http://www.aba.com/aba/documents/news/OCCGuidanceLetter8411.pdf.*

including consumers, third party processors, and financial institutions, regarding overdraft programs and their costs, benefits and risks to consumers. This information will enable the Bureau to better understand and evaluate any potential consumer protection issues raised by overdraft programs.

In the questions that follow, we use the terms ''overdraft'' and ''overdraft fee'' broadly to refer to practices followed and fees charged when a consumer initiates a transaction for which there are insufficient funds in the consumer's checking account. Specifically, the term overdraft fee includes fees charged for a returned check (e.g., an NSF fee), fees charged when an overdraft item is paid (i.e., an overdraft coverage fee), and fees charged if an overdraft is not repaid within a specified period of time. The questions are grouped into six broad categories: (a) Lower cost alternatives to overdraft protection programs offered by financial institutions, (b) consumer alerts and information provided regarding balances and overdraft triggers, (c) impact of changes to Regulation DD and Regulation E and overdraft opt-in rates, (d) impact of changes in financial institutions' operating policies, (e) the economics of overdraft programs, and (f) the long-term impact of overdraft programs on consumers. Please feel free to respond to all of the questions or only those that interest you, but please be sure to indicate in your comments which questions you are answering.

Lower Cost Alternatives to Overdraft Protection Programs

1. What alternatives do institutions offer to overdraft protection programs and how much do consumers make use of these alternatives? Among other things, comments could address the availability and utilization of alternatives to traditional overdraft fees—for example, linked savings accounts or overdraft lines of credit—especially among those who incur overdraft charges on their checking accounts.

2. To what extent do consumers avail themselves of alternatives to incurring overdraft fees?

3. How are consumers informed of alternatives to overdraft protection programs and how are such alternatives marketed to new customers, existing customers, and to particular customer segments?

4. What portion of the most frequent overdrafters—those who would benefit the most from alternatives—would qualify for a linked savings account (i.e., have a savings account) or line of credit (i.e., pose acceptable credit risk)?

Consumer Alerts and Information Provided Regarding Balances and Overdraft Triggers

5. What opportunities do financial institutions offer consumers to sign up for alerts via text message and/or email that inform consumers when their balances are low and, thus, when payment transactions might put them at risk of incurring an overdraft? The Bureau is interested in programs and technologies that make consumers aware at the time they engage in a transaction that they may incur an overdraft fee. Among other things, comments could address:

a. The extent, if any, to which consumers are given the opportunity to be alerted to and avoid a transaction that would cause an overdraft fee;

b. The marketing of, participation rates in, and impact on consumers, of such alert programs, particularly among those who are likely to incur overdraft fees;

c. The way account balances are communicated generally in response to routine ATM or telephone inquiries;

d. The extent to which communicated balances differ from available balances and whether these differences affect consumers' ability to avoid incurring overdrafts; and

e. The balance calculations—e.g., available vs. actual balances—used to determine when an overdraft has occurred in end-of-day batch processing.

6. Whether a particular transaction will incur an overdraft fee depends upon the interaction of various terms, rules, and practices, including those governing funds availability, the posting order of debits and credits, the amount by which an account must be overdrawn to trigger an overdraft fee, the number of overdraft fees that can be incurred in a single day, and whether the fee is one-time or for each day the account remains in overdraft status. Comments could include information regarding how these are communicated to consumers and the extent to which consumers understand them. For example:

a. In what ways are consumers informed of the rules and practices that determine which transactions will cause overdraft fees to be incurred? When they enroll in an account? As part of notices that they have incurred an overdraft?

b. Is there any customer research available that documents consumers' perceptions regarding how transactions are processed, when overdrafts are incurred, and when related fees are charged?

c. What changes in consumer behavior or understanding of overdrafts have resulted from the changes that took effect in Regulation DD in 2010?

Impact of Changes to Regulation DD, Regulation E, and Overdraft Opt-In Rates

7. The Bureau is interested in the impact of the changes to Regulation E that took effect in 2010 on consumers. Among other things, comments could address:

a. What were the variations across institutions in opt-in rates among consumers with accounts as of July 1, 2010? What variations in opt-in rates occur now among institutions? What differences in marketing and disclosures practices may be responsible for differences in opt-in rates?

b. How did opt-in rates vary based upon prior usage of overdraft? Were there significant variations between non-overdrafters, occasional overdrafters, and frequent overdrafters (e.g., those who incurred 10 or more overdrafts in a year)?

c. How did the opt-in rates vary based upon average account balance or demographic characteristics, such as income, age, or education level?

d. How do the overdraft frequencies of consumers who opted in differ from those who did not?

8. The Bureau is interested in learning how institutions are conducting outreach to customers who incur overdrafts repeatedly, what policies have been implemented to manage both the risks and needs such customers may present, and which options are given to such customers. The Bureau is aware that some institutions may charge fees based on accounts being overdrawn, notwithstanding the customer's request to close the account, and would like to understand what impact this practice may have. Among other things, the Bureau is particularly interested in hearing more about:

a. The extent to which consumers are permitted to close existing accounts when there are outstanding overdraft fees;

b. The consequences to consumers of keeping accounts open that have outstanding overdraft fees and what additional fees consumers accrue; and

c. The practices that can best serve consumers who have incurred negative balances while protecting institutional safety.

Impact of Changes in Financial Institutions' Operating Policies

9. The Bureau is aware that some institutions have recently changed their order of processing transactions in various ways, including, for example, adoption of a purely chronological

system of posting debit transactions; adoption of a system that separates different types of debit transactions (e.g., ATM and point of sale debit, ACH, check, and various account fees) and applies different rules to order transactions in discrete buckets; and adoption of a system which orders debit transactions from smallest to highest dollar amount. The Bureau is interested in learning how these changes have affected consumers. Comments could include information regarding:

a. The different ways in which institutions currently group and order different types of transactions;

b. How institutions disclose the ways in which they currently group and order transactions;

c. The consequences in practice of different grouping and ordering policies for the frequency with which consumers may incur overdrafts and related fees. Or the consequences for whether certain overdraft items will or will not be paid; or

d. The impact of funds availability policies on when overdrafts are determined to have occurred.

10. In addition to transaction ordering policies, the Bureau is also aware that some institutions have adopted other new policies with respect to overdrafts. For example, some institutions have declined to permit consumers to opt in to overdraft coverage of electronic debits and instead reject those transactions or allow consumers to opt in at the point of the transaction. Other institutions have adopted cushions on the amount by which an account must be overdrawn to incur an overdraft fee; caps on the number of fees that may be incurred in a given day; tiered overdraft fees; a grace period to cover an overdraft item without incurring a fee; or a waiver of fees on a certain number of overdraft items per month. In what way do such changes—or other new policies with respect to overdraft—affect the incidence and/or severity of overdraft charges?

The Economics of Overdraft Programs

11. The Bureau is interested in the economics of overdraft programs, including their contribution to overall costs and revenues associated with checking accounts. There is concern based on the FDIC study's data from 2006 that many institutions are reliant on fees from a small group of frequent overdrafters for a disproportionate share of revenue from checking accounts, while many other accountholders benefit as ''free riders.'' [27] The Bureau is interested to learn the extent to which the FDIC study's findings from 2006 are representative of the market today. At the same time, the Bureau also seeks to learn what costs regulations affecting overdrafts might impose on institutions. Comments may address, among other things:

a. How the distribution of overdraft revenue from consumers may have evolved since the FDIC study and the implementation of changes in Regulations DD and E;

b. The distribution of overdraft fees by type of transaction (check, ACH, debit, ATM, etc.) today relative to what the FDIC found in its study;

c. The extent to which different groups of consumers incur overdrafts and related fees disproportionately (for example, the FDIC study suggested that young adults and consumers with low or moderate incomes might incur overdrafts more frequently than other groups);

d. The share of deposit service fees charged to consumer accounts that are attributable to overdrafts and NSFs today;

e. The costs to institutions of administering overdraft programs; and

f. The losses (e.g., charge-offs) that occur as a result of extending overdraft coverage.

Long-Term Impact on Consumers

12. The long term impact of overdraft programs on consumer behavior and options is of particular interest to the Bureau. Some have argued that overdraft programs allow consumers to meet liquidity challenges while others argue that overdraft eventually adds to liquidity issues because of the high recurring fees that frequent overdrafters must pay. Further, there is concern that heavy use may lead a significant percentage of users to damage their credit records in databases institutions use to qualify consumers for checking accounts and thereby to lose access to the services of competing providers or to the banking system altogether. To what extent are these various perspectives valid?

[27] For example, one consulting firm estimated that the 26 percent of checking accounts in which overdraft fees occur and the 23 percent of accounts with balances over $3000 are responsible for the vast majority of bank revenue (the former based on overdraft fees and the latter based on interest earned on deposits) while the remaining 51 percent of accounts were unprofitable, earning less in fee income and interest than it cost the banks to service them. (Celent blog posted March 10, 2010, viewable at *http://bankingblog.celent.com/?p=1261*).

Dated: February 22, 2012.

Meredith Fuchs,

Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2012–4576 Filed 2–27–12; 8:45 am]

BILLING CODE 4810–AM–P

THE BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2012–0008]

Privacy Act of 1974, as Amended

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of Proposed Privacy Act System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection (''CFPB'' or the ''Bureau'') gives notice of the establishment of a Privacy Act System of Records.

DATES: Comments must be received no later than March 29, 2012. The new system of records will be effective April 9, 2012, unless the comments received result in a contrary determination.

ADDRESSES: You may submit comments, identified by Docket No. CFPB–2012–0008, by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier in Lieu of Mail:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

All submissions must include the agency name and docket number for this notice. In general all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

SUPPLEMENTARY INFORMATION: The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law 111–

203, Title X, established the CFPB to administer and enforce federal consumer financial protection law. Section 1014 of the Act requires the Director of the CBPB to establish a Consumer Advisory Board (CAB) to advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws, and to provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information. The CFPB anticipates that it may establish additional advisory boards, groups, or committees in the future to advise and consult with the Bureau in the exercise of its functions.

The new system of records described in this notice ''CFPB.016–CFPB Advisory Boards and Committees'' will maintain records concerning the activities and operations of the CFPB's Advisory Boards and Committees, including the CAB.

The report of the new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000, and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled ''CFPB.016—CFPB Advisory Boards and Committees'' is published in its entirety below.

Dated: February 23, 2012.

Claire Stapleton,

Chief Privacy Officer.

CFPB.016

SYSTEM NAME:

CFPB Advisory Boards and Committees.

SYSTEM LOCATION:

Consumer Financial Protection Bureau, 1700 G Street NW., Washington DC 20552.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system include any individual who nominated an individual to be on an advisory board or committee to the CFPB (CFPB board or committee), served as a reference for a CFPB board or committee nominee, or was nominated to be on a CFPB board or committee, is currently serving on a CFPB board or committee, and/or has served on a CFPB board or committee and is no longer serving. Board and committee alternatives are also included in this system. Individuals covered by this system also will include any individual, including the public, who, upon invitation from the CFPB board or committee, provided advice or comments on issues or otherwise interacted with the CFPB board or committee.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information maintained on individuals who are past, present or nominated members of CFPB boards or committees will include: (1) Contact information (i.e. name, business phone number, email address); (2) travel records, including dates, locations, travel orders and travel vouchers; (3) information relevant to a determination of suitability for serving on the board or committee, including but not limited to social security number (SSN), place of birth, date of birth, gender, education, registration in professional societies, work experience, record of performance, publications authored, membership on boards and committees, professional awards, declaration of desire and eligibility to serve, lobbyist registration, prior criminal or terrorist activity, and other information that can be used to determine if the individual is fit to serve on the board or committee; (4) financial disclosure information for board or committee members; (5) names of nominee's references and notes and records of conversations with those references; (6) miscellaneous correspondence. Information maintained on experts and consultants invited to provide advice or comments to a CFPB board or committee will include: (1) Contact information (i.e. name, business phone number, email address); and (2) travel records, including dates, locations, travel orders and travel vouchers. Information maintained on members of the public invited to provide advice or comment or otherwise interact with a CFPB board or committee will include contact information (i.e. name, business phone number, email address).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 111–203, Title X, sections 1011, 1012, 1014, codified at 12 U.S.C. 5491, 5492, 5494.

PURPOSE(S):

The purpose of the system is to collect and maintain information on CFPB board or committee nominees and members and those that may interact with CFPB regarding the board or committee. The records are used for administration of the committees or boards, including the preparation of minutes and reports; listings of past, present, and recommended advisory board or committee members; lists of vacancies, acceptances, and separations; and documentation of nominations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records may be disclosed, consistent with the CFPB's rules relating to Disclosure of Records and Information, promulgated at 12 CFR 1070 *et seq.* to the following:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB 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 CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of information submitted by an individual who has requested access to or amendment or correction of records;

(3) To the Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) A court, magistrate, or administrative tribunal in the course of an administrative proceeding or judicial proceeding, including disclosures to opposing counsel or witnesses (including expert witnesses) in the

course of discovery or other pre-hearing exchanges of information, litigation, or settlement negotiations, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings; and

(7) To the public in the form of names, affiliations, and other pertinent biographical information of board or committee members.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPENSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronic records.

RETRIEVABILITY:

Records are retrievable by the name of the individual, SSN, or another personal identifier.

SAFEGUARDS:

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

RETENTION AND DISPOSAL:

The CFPB will maintain electronic and paper records indefinitely until the National Archives and Records Administration (NARA) approves the CFPB's records disposition schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Consumer Financial Protection Bureau, Consumer Advisory Board Manager, 1500 Pennsylvania Ave NW. (Attn: 1801 L Street NW.), Washington, DC 20220.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is obtained directly from the individual who is the subject of these records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–4697 Filed 2–27–12; 8:45 am]

BILLING CODE 4810–AM–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), 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. Sec. 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 requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its Segal AmeriCorps Education Award Matching Program Commitment Form. This form is submitted by colleges and universities that provide incentives for AmeriCorps alumni such as matching or partially matching the AmeriCorps Education Award that members receive after successful completion of the AmeriCorps program. Completion of this information collection is required for colleges and universities to obtain approval for information on them to appear on the Segal AmeriCorps Education Awards section of the Corporation for National and Community Service Web site.

Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by April 30, 2012.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Calvin Dawson, Room 9106C, 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3475 Calvin Dawson, Program Specialist.

(4) Electronically through *cdawson@cns.gov* or *www.regulations.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Calvin Dawson, 202–606–6897 or by email at *cdawson@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected 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 submissions of responses).

Background

The information is provided by colleges and universities who are requesting to be listed on the Segal AmeriCorps Education Award Matching Program section of the Corporation for National and Community Service Web site. The information will be collected electronically by the Corporation for National and Community Service.

Current Action

This is a new information request. The information collected will be used to determine if colleges and universities are eligible to be listed on the Segal AmeriCorps Education Award Matching Program section of the Corporation for National and Community Service Web site.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Segal AmeriCorps Education Award Matching Program Commitment Form.

OMB Number: None.

Agency Number: None.

Affected Public: Colleges and Universities that provide incentives for AmeriCorps alumni such as matching or partially matching the AmeriCorps Education Award that members receive after successful completion of the AmeriCorps Program and that request to be listed on the Segal AmeriCorps Education Award Matching Program section of the Corporation for National and Community Service Web site.

Total Respondents: Estimated 200 Colleges and Universities.

Frequency: Once every five years.

Average Time per Response: Average 30 minutes.

Estimated Total Burden Hours: 100 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

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: February 22, 2012.

Idara Nickelson,

Chief of Program Operations.

[FR Doc. 2012–4665 Filed 2–27–12; 8:45 am]

BILLING CODE: P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (the Corporation), has submitted a public information collection request (ICR) entitled AmeriCorps Application Instructions for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Amy Borgstrom at (202) 606–6930 or email to *aborgstrom@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose 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, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on Thursday, September 15, 2011. This comment period ended November 15, 2011. No public comments were received from this Notice.

Description: The Corporation is seeking approval of AmeriCorps Applications Instructions which are used by applicants for AmeriCorps funding to apply for AmeriCorps State and National funding.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Application Instructions.

OMB Number: 3045–0047.

Agency Number: None.

Affected Public: Nonprofit organizations, State, Local, and Tribal governments.

Total Respondents: 654.

Frequency: Annually.

Average Time per Response: 24 hours.

Estimated Total Burden Hours: 15,696 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated February 23, 2012.

Jennifer Bastress-Tahmsebi,

Deputy Director, AmeriCorps State and National.

[FR Doc. 2012–4704 Filed 2–27–12; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–11]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 12–11 with attached transmittal and policy justification.

Dated: February 23, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–P

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

FEB 16 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-11, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services estimated to cost $170 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 12–11

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Japan.

(ii) *Total Estimated Value:*

Major Defense Equipment *	$24 million
Other	$146 million
Total	$170 million

* As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* provides for 6 KC–130R and 30 T–56–A–16 engines being provided as Excess Defense Articles (EDA), along with the regeneration, overhaul, modifications, and logistics support for those engines. Also included are 6 non-EDA spare T–56–A–16 engines, 6 AN/APS–133 Radars, 9 AN/APX–119 Transponder Systems (6 installed and 3 spares), transportation, aircraft ferry support, repair and return, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support.

(iv) *Military Department:* Navy (SAF).

(v) *Prior Related Cases, if any:* None.

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vii) *Sensitivity of Technology Contained in the Defense Article or*

Defense Services Proposed to be Sold: None.

(viii) *Date Report Delivered to Congress:* February 16, 2012.

Policy Justification

Japan—KC–130R Aircraft

The Government of Japan has requested a possible sale to provide 6 KC–130R and 30 T–56–A–16 engines being provided as Excess Defense Articles (EDA), along with the regeneration, overhaul, modifications, and logistics support for those engines. Also included are 6 non-EDA spare T–56–A–16 engines, 6 AN/APS–133 Radars, 9 AN/APX–119 Transponder Systems (6 installed and 3 spares), transportation, aircraft ferry support, repair and return, spare and repair parts, support equipment, tools and test equipment, technical data and publications, personnel training and training equipment, U.S. Government and contractor engineering, technical, and logistics support services, and other related elements of logistics support. The estimated cost is $170 million. The EDA portion of this sale is also being notified separately as required by statute.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of this region. The U.S. Government shares bases and facilities in Japan. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

The proposed sale of aircraft and support will help to modernize the Japanese Defense Force's aging cargo aircraft fleet. The KC–130 will provide Japan with an improved capability for the movement of cargo and personnel in humanitarian missions.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor for training will be CAE, Inc in Tampa, Florida. The regeneration, overhaul, and modifications will be accomplished by U.S. Government personnel. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require U.S. Government personnel to Japan on a temporary basis to support aircraft deliveries, technical assistance, technical and program reviews, and training.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2012–4694 Filed 2–27–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisory Council on Dependents' Education; Open Meeting Notice

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Open meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Advisory Council on Dependents' Education will take place.

DATES: Friday, April 20, 2012, Vicenza, Italy, from 12 p.m. to 4 p.m., Central European Summer Time (CEST); Arlington, Virginia (via Video Teleconference), from 6 a.m. to 10 a.m., Eastern Daylight Time (EDT).

ADDRESSES: Caserma Ederle, Vicenza, Italy 36100; 4040 North Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Joel K. Hansen at (703) 588–3166 or *Joel.Hansen@hq.dodea.edu.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: Recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense.

Agenda: The meeting agenda will reflect current DoDDS schools operational status, educational practices, and other educational matters that come before the Council. Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Point of Contact: Mr. Joel K. Hansen at (703) 588–3166, 4040 North Fairfax Drive, Arlington, VA 22203 or *Joel.Hansen@hq.dodea.edu.*

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Mr. Hansen at least five (5) business days prior to the meeting so that appropriate arrangements can be made.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140 and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements to the Advisory Council on Dependents' Education about its mission and functions. Written statements may be submitted at any time or in response to the stated agendas of the planned meeting of the Advisory Council on Dependents' Education.

All written statements shall be submitted to the Acting Designated Federal Officer (DFO) for the Advisory Council on Dependents' Education, Mr. Joel K. Hansen, 4040 North Fairfax Drive, Arlington, VA 22203; *Joel.Hansen@hq.dodea.edu.*

Statements being submitted in response to the agendas mentioned in this notice must be received by the Acting DFO at the address listed in **FOR FURTHER INFORMATION CONTACT** at least fourteen calendar days prior to the meeting, which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Advisory Council on Dependents' Education until its next meeting.

The Acting DFO will review all timely submissions with the Advisory Council on Dependents' Education Chairpersons and ensure they are provided to all members of the Advisory Council on Dependents' Education before the meeting that is the subject of this notice.

Oral Statements by the Public to the Membership: Pursuant to 41 CFR § 102–3.140(d), time will be allotted for public comments to the Advisory Council on Dependents' Education. Individual comments will be limited to a maximum of five minutes duration. The total time allotted for public comments will not exceed thirty minutes.

Dated: February 23, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–4612 Filed 2–27–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and

Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 29, 2012.

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 emailed 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: February 23, 2012.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title of Collection: Application for Grants Under Ronald E. McNair Postbaccalaureate Achievement Program.

OMB Control Number: 1840–0619.

Total Estimated Number of Annual Responses: 330.

Total Estimated Annual Burden Hours: 10,260.

Abstract: The U.S. Department of Education is requesting a reinstatement with change of a previously approved collection of information entitled ''Application for New Awards under the Ronald E. McNair Postbaccalaureate Achievement (McNair) Program.'' The Department is requesting the reinstatement with change because of the implementation of the Higher Education Opportunity Act of 2008 revisions to the Higher Education Act of 1965, as amended, the authorizing statute for the program. This application will be used to award new grants and collect data under the McNair program. The McNair program provides grants to institutions of higher education and combinations of such institutions to prepare low-income, first-generation college students, and students from groups underrepresented in graduate education, for doctoral study.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1894–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 04815. 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. 2012–4721 Filed 2–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before March 29, 2012.

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 emailed 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: February 23, 2012.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title of Collection: Fiscal Operations Report for 2011–2012 and Application to Participate for 2013–2014 Fiscal Operations Report and Application to Participate (FISAP) and Reallocation Form E40–4P.

OMB Control Number: 1845–0030.

Agency Form Number(s): E40–4P.

Total Estimated Number of Annual Responses: 4,258.

Total Estimated Annual Burden Hours: 32,961.

Abstract: The data submitted electronically in the Fiscal Operations Report and Application to Participate through FISAP on the Web is used by the Department of Education to determine the institution's funding need for the award year and monitor program effectiveness and accountability of fund expenditures. The Reallocation form is part of FISAP on the Web. The Higher Education Act of 1965, as amended requires that if an institution anticipates not using all of its allocated funds for the Perkins, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant programs by the end of an award year, it must specify the anticipated remaining unused amount to the Secretary. This data collection is due to expire June 30, 2012. In addition to renewing the expiration date, references to dates and award years dates have been updated on the forms and in the instructions for both documents. Two fields were removed from the FISAP form due to the termination of the Academic Competitiveness Grant and National Science and Mathematics Access to Retain Talent Grant programs. Additional clarifications were made to the FISAP instructions.

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 04767. 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. 2012–4724 Filed 2–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Migrant Education Program (MEP) Consortium Incentive Grants Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

Overview Information:

Migrant Education Program (MEP) Consortium Incentive Grants Program;

Notice inviting applications for new awards for fiscal year (FY) 2012.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.144F.

Dates:

Applications Available: February 28, 2012.

Deadline for Transmittal of Applications: May 4, 2012.

Deadline for Intergovernmental Review: July 6, 2012.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the MEP Consortium Incentive Grants program is to provide incentive grants to State educational agencies (SEAs) that participate in consortia with one or more other SEAs or other appropriate entities to improve the delivery of services to migrant children whose education is interrupted. Through this program, the Department provides financial incentives to SEAs to participate in consortia to improve the intrastate and interstate coordination of migrant education programs by addressing key needs of migratory children who have their education interrupted.

Priorities: These priorities are from the notice of final requirements for this program, published in the **Federal Register** on March 3, 2004 (69 FR 10110), and from the notice of final priority, published in the **Federal Register** on March 12, 2008 (73 FR 13217).

Absolute Priorities: For FY 2012, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or more of these absolute priorities. In order for an SEA to be considered for an incentive grant, an application from a proposed consortium in which the SEA would participate must address one or more of the following absolute priorities:

Priority 1: Services designed to improve the proper and timely identification and recruitment of eligible migratory children whose education is interrupted.

Priority 2: Services designed (based on a review of scientifically based research) to improve the school readiness of preschool-aged migratory children whose education is interrupted.

Priority 3: Services designed (based on a review of scientifically based research) to improve the reading proficiency of migratory children whose education is interrupted.

Priority 4: Services designed (based on a review of scientifically based research) to improve the mathematics proficiency of migratory children whose education is interrupted.

Priority 5: Services designed (based on a review of scientifically based research) to decrease the dropout rate of migratory students whose education is interrupted and improve their high school completion rate.

Priority 6: Services designed (based on a review of scientifically based research) to strengthen the involvement of migratory parents in the education of migratory students whose education is interrupted.

Priority 7: Services designed (based on a review of scientifically based research) to expand access to innovative educational technologies intended to increase the academic achievement of migratory students whose education is interrupted.

Priority 8: Services designed (based on review of scientifically based research) to improve the educational attainment of out-of-school migratory youth whose education is interrupted.

Program Authority: 20 U.S.C. 6398(d).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75 (except 75.232), 76, 77, 79, 80 (except 80.40(b)), 82, 84, 85, and 99; (b) the notice of final requirements published in the **Federal Register** on March 3, 2004 (69 FR 10110); and (c) the notice of final priority published in the **Federal Register** on March 12, 2008 (73 FR 13217).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Formula grants.

Estimated Available Funds: $3,000,000.

Estimated Range of Awards: $50,000–$150,000.

Estimated Average Size of Awards: $64,000.

Maximum Award: By statute, the maximum amount that we may award under this program is $250,000.

Estimated Number of Awards: 47.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs) receiving MEP Basic State Formula grants, in consortium with one or more other SEAs or appropriate entities.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Pursuant to the notice of final requirements published in the **Federal Register** on March 3, 2004 (69 FR 10110), the supplement-not-supplant provisions in sections 1120A(b) and 1304(c)(2) of the Elementary and Secondary Education Act of 1965, as amended, are applicable to this program.

IV. Application and Submission Information

1. *Address to Request Application Package:* Michelle Moreno, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E325, LBJ, Washington, DC 20202–6135. Telephone: (202) 401–2928, or by email: *michelle.moreno@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339. Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., Braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms an applicant must submit, are in the application package for this program.

Page Limit: Part IV of the application is where you, the applicant, describe the proposed consortium and include the Part IV Summary Chart (this chart is explained in the application package). Your description of the proposed consortium must include how the consortium's proposed project meets (1) the *Application Requirements* listed in the notice of final requirements published in the **Federal Register** on March 3, 2004 (69 FR 10110) and in the notice of final priority published in the **Federal Register** on March 12, 2008 (73 FR 13217), (2) one or more of the absolute priorities, and (3) the selection criteria that reviewers use to evaluate your application. You must limit Part IV to no more than 30 double-spaced pages, using the standards in the following paragraphs. Please note that the Summary Chart does not count as part of Part IV for purposes of the page limit.

- A ''page'' is 8.5″ x 11″ , on one side only, with 1'' margins at the top, bottom and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.
- For charts, tables, and graphs, use a font that is either 12-point or larger or no smaller than 10 pitch.

The page limit does not apply to the Part IV Summary Chart, Parts I through III, or Parts V through VII, or to any appendices, resumes, bibliography, or letters of support. However, the page limit does apply to the description of the proposed consortium in Part IV of the application.

Department reviewers will not read any pages of the Part IV narrative that exceed the page limit.

3. *Submission Date and Times:*

Applications Available: February 28, 2012.

Deadline for Transmittal of Applications: May 4, 2012.

Applications for grants under this program must be submitted in paper format by mail or by hand delivery. For information (including dates and times) about how to submit your application by mail or by hand delivery, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: July 6, 2012.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section in this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted in paper format by mail or hand delivery.

a. *Submission of Paper Applications by Mail.*

If you submit your application by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of

Education, Application Control Center, Attention (CFDA Number 84.144F) LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

b. *Submission of Paper Applications by Hand Delivery.*

If you submit your application by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.144F) 550 12st Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

Note: A person delivering an application must show identification to enter the U.S. Department of Education building.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your consortium application is successful, the Department will notify your U.S. Representative and U.S. Senators and send you a Grant Award Notice (GAN). The Department will also notify Congress regarding grant awards. We may notify you informally, also.

If an application is not evaluated or not selected for funding, the Department will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* Grant recipients under this program must submit the annual and final performance and financial reports specified in the notice of final requirements for this grant program published in the **Federal Register** on March 3, 2004 (69 FR 10110).

4. *Performance Measures:* Consortium grantees are required to report on their project's effectiveness based on the project objectives, performance measures and scheduled activities outlined in the consortium's application.

In addition, all grantees are required, under 34 CFR 80.40(b), to report on the Government Performance and Results Act (GPRA) indicators as part of their Consolidated State Performance Report. The GPRA indicators established by the Department for the Migrant Education Program, of which the Consortium Incentive Grants are a component, are:

a. The percentage of migrant students at the elementary school level who meet or exceed the proficient level on State assessments in reading.

b. The percentage of migrant students at the middle school level who meet or exceed the proficient level on State assessments in reading.

c. The percentage of migrant students at the elementary school level who meet or exceed the proficient level on State assessments in mathematics.

d. The percentage of migrant students at the middle school level who meet or exceed the proficient level on State assessments in mathematics.

e. The percentage of migrant students who drop out from secondary school (grades 7–12).

f. The percentage of migrant students who graduate from high school.

VII. Agency Contact

For Further Information Contact: Michelle Moreno, U.S. Department of Education, 400 Maryland Avenue SW., Room 3E325, LBJ, Washington, DC 20202–6135. Telephone: (202) 401–2928, or by email: *michelle.moreno@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities may obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register.** Free Internet access to the

official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: February 23, 2012.

Michael Yudin,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2012–4707 Filed 2–27–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 21, 2012, 5 p.m.

ADDRESSES: West Career and Technical Academy, 11945 West Charleston Boulevard, Las Vegas, Nevada 89135.

FOR FURTHER INFORMATION CONTACT: Denise Rupp, Board Administrator, 232 Energy Way, M/S 505, North Las Vegas, Nevada 89030. Phone: (702) 630–0522; Fax (702) 295–5300 or Email: *nssab@nv.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. U–233 Disposition Update.

2. Soils Committee Update—Risk-Based Corrective Action Evaluation Process.

Public Participation: The EM SSAB, Nevada, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Denise Rupp at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Denise Rupp at the telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing to Denise Rupp at the address listed above or at the following Web site: *http://nv.energy.gov/nssab/MeetingMinutes.aspx.*

Issued at Washington, DC, on February 23, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–4629 Filed 2–27–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, March 28, 2012, 1 p.m.–7 p.m.

ADDRESSES: Marriott Albuquerque Pyramid North, 5151 San Francisco Road NE., Albuquerque, New Mexico 87109.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m.—Call To Order by Deputy Designated Federal Officer (DDFO), Ed Worth
Establishment of a Quorum: Roll Call and Excused Absences, Karen Erickson
Welcome and Introductions, Ralph Phelps, Chair
Welcome to Albuquerque, Mayor R.J. Berry (invited)
Approval of Agenda and January 25, 2012, Meeting Minutes
1:30 p.m.—Public Comment Period
1:45 p.m.—Old Business
- Written Reports
- Report on Waste Management Symposia, Manuel Pacheco and Joe Tiano
- Other Items

2 p.m.—New Business
- Approval of NNMCAB Top Three Issues for Spring Chairs' Meeting, Ralph Phelps
- Other Items

2:15 p.m.—Update From Los Alamos Site Manager, Kevin Smith
2:45 p.m.—Items From the DDFO
- Update From DOE
- Definition of One Contaminant
- Other Items

3 p.m.—Break
3:15 p.m.—Status of Sandia Laboratory Environmental Restoration Program, Joe Estrada/J. Cochran
3:45 p.m.—Items From Liaison Members
- DOE, Los Alamos Site Office, George Rael
- Los Alamos National Laboratory (LANL), Michael Graham
- New Mexico Environment Department, John Kieling
- Environmental Protection Agency (Region 6), Rich Mayer

4:15 p.m.—Presentation on Effects of the Las Conchas Fire and LANL, Jane De Rosa-Bamman; Operations on Cochiti Lake and the Rio Grande, Albuquerque/Bernalillo County Water Authority
5 p.m.—Dinner Break
6 p.m.—Public Comment Period
6:15 p.m.—Consideration and Action on Draft Recommendation(s) to the DOE, Ralph Phelps
- Draft Recommendation 2012–01, ''Fiscal Year 2013 Budget Request for Los Alamos National Laboratory

Environmental Management Work'' 6:45 p.m.—Wrap up and Comments

From Board Members, Ralph Phelps 7 p.m.—Adjourn, Ed Worth

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC on February 23, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–4641 Filed 2–27–12; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–68–000]

Texas Eastern Transmission, LP; Notice of Application

Take notice that on February 16, 2012, Texas Eastern Transmission, LP (Texas Eastern), PO Box 1642, Houston, Texas 77056 filed an application in the above referenced docket pursuant to section 7(b) of the Natural Gas Act (NGA) for approval to abandon its obligation to provide service on a certain natural gas supply lateral and appurtenances located in federal waters offshore in the Gulf of Mexico near Louisiana. Specifically, Texas Eastern proposes to abandon its obligation to provide service on its undivided interests in a 20-inch diameter supply lateral extending northwesterly approximately 10.7 miles from a production platform located in High Island Block A–568 to a subsea tie-in with the 30-inch diameter High Island Offshore System pipeline in High Island Block A–539, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Berk Donaldson, Director, Rates & Certificates, Texas Eastern Transmission, LP, PO Box 1642, Houston, Texas 77251–1642, by telephone at (713) 627–4488 or by email at *bdonaldson@spectraenergy.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: March 13, 2012

Dated: February 21, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–4594 Filed 2–27–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0236; FRL–9512–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Ferroalloys Production Area Sources (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 29, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0236, to (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0236, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Ferroalloys Production Area Sources (Renewal).

ICR Numbers: EPA ICR Number 2303.03, OMB Control Number 2060–0625.

ICR Status: This ICR is scheduled to expire on March 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart YYYYYY.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart YYYYYY, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

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 Number for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11 hours per response. 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 which have subsequently changed; 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.

Respondents/Affected Entities: Ferroalloys production area sources facilities.

Estimated Number of Respondents: 10.

Frequency of Response: Initially, and annually.

Estimated Total Annual Hour Burden: 345.

Estimated Total Annual Cost: $33,035, which includes $33,035 in labor costs, no capital/startup costs, and no operation and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease in Respondent labor burden and cost from the most recently approved ICR. The decrease is due to a reduction in initial compliance costs as existing respondents are already expected to be in compliance with the regulations. Also, there is an increase in Agency costs due to an adjustment in labor rates, which have increased over the past three years and the cost calculations in this ICR have been updated to reflect the most recent labor rates.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–4602 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2012–0114, FRL–9640–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Hazardous Remediation Waste Management Requirements (HWIR Contaminated Media)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to the Office of

Management and Budget (OMB) to renew an existing approved Information Collection Request (ICR) concerning the hazardous remediation waste management requirements. This ICR is scheduled to expire on July 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2012–0114, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave. NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2012–0114. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *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 email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Mike Fitzpatrick, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–8411; fax number 703–308–8617; email address: *fitzpatrick.mike@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2012–0114, which is available for online viewing at *www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES.**
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are business or other for-profit.

Title: Hazardous Remediation Waste Management Requirements (HWIR Contaminated Media).

ICR numbers: EPA ICR No. 1775.06, OMB Control No. 2050–0161.

ICR status: This ICR is currently scheduled to expire on July 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Resource Conservation and Recovery Act of 1976 (RCRA), as amended, requires EPA to establish a national regulatory program to ensure that hazardous wastes are managed in a manner protective of human health and the environment. Under this program (known as the RCRA Subtitle C program), EPA regulates newly generated hazardous wastes, as well as hazardous remediation wastes (i.e., hazardous wastes managed during cleanup). To facilitate prompt and protective treatment, storage, and disposal of hazardous remediation wastes, EPA established three requirements for remediation waste management sites that are different from those for facilities managing newly generated hazardous waste: (1) Performance standards for remediation waste management sites (40 CFR 264.1(j)); (2) a provision excluding remediation waste management sites from requirements for facility-wide corrective action; and (3) a new form of RCRA permit for treating, storing, and disposing of hazardous remediation wastes (40 CFR part 270, subpart H). The new permit, a Remedial Action Plan (RAP), streamlines the permitting process for remediation waste management sites to allow cleanups to take place more quickly.

In addition, EPA created a new kind of unit called a ''staging pile'' (40 CFR 264.554) that allows more flexibility in storing remediation waste during cleanup. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: For owners/operators of hazardous remediation waste management sites subject to the 40 CFR 264.1(j) and part 270, subpart H requirements, the reporting burden is estimated to be 27.33 hours per respondent per year. This hourly burden includes time for preparing and submitting a RAP application, information to modify a RAP, and information to transfer a RAP. The recordkeeping burden is estimated to be 42.13 hours per respondent per year. This hourly burden includes time for reading the regulations and maintaining documentation (e.g., waste analyses results, contingency and emergency plan, file of RAP documents) on site.

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 which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 215.

Frequency of response: One-time.

Estimated total average number of responses for each respondent: One.

Estimated total annual burden hours: 6,953 hours.

Estimated total annual costs: $483,576, which includes $459,103 annualized labor and $24,473 annualized capital or O&M costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 15, 2012.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2012–4666 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2011–0983; FRL–9640–5]

Agency Information Collection Activities; Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to the Office of Management and Budget (OMB) to renew an existing approved Information Collection Request (ICR) concerning the criteria for classification of solid waste disposal facilities and practices. This ICR is scheduled to expire on July 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before April 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2011–0983, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rcra-docket@epa.gov*.
- *Fax:* 202–566–0272.
- *Mail:* Office of Solid Waste and Emergency Response (OSWER); Resource Conservation and Recovery Act (RCRA) Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* RCRA Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2011–0983. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *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 email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, mailcode 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number 703–308–9037; fax 703–308–8686; email address: *Dufficy.craig@epa.gov*.

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2011–0983, which is available for online viewing at *www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the RCRA Docket is 202–566–0270.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Docket ID No. EPA–HQ–RCRA–2011–0983.

Affected entities: Entities potentially affected by this action are both the generators of Conditionally Exempt Small Quantity Generator (CESQG) wastes and owners or operators of new, existing, or lateral expansions of existing non-municipal non-hazardous waste disposal units that receive CESQG wastes.

Title: Agency Information Collection Activities; Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements—40 CFR part 257.

ICR numbers: EPA ICR No. 1745.07, OMB Control No. 2050–0154.

ICR status: This ICR is currently scheduled to expire on July 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 257—subpart B on a State level, owners/operators of construction and demolition waste landfills that receive CESQG hazardous wastes will have to comply with the final reporting and recordkeeping requirements. 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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. This continuing ICR documents the recordkeeping and reporting burdens associated with the location and ground-water monitoring provisions contained in 40 CFR part 257—subpart B.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 74 hours per response. 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; 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 which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 152.

Frequency of response: On occasion.

Estimated total annual burden hours: 11,215 hours.

Estimated total annual costs: $ (in thousands of dollars): $1,577,659, which includes $936,491 annualized capital or O&M costs.

Are there changes in the estimates from the last approval?

There is no change of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This reflects EPA's estimate that the recent trend of the number of C&D landfills has stabilized at the current level.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 15, 2012.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2012–4672 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0235; FRL–9512–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards for Carbon Black, Ethylene, Cyanide and Spandex (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 29, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2011–0235, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 9, 2011 (76 *FR* 26900), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2011–0235, which is available for public viewing online at *http://www.regulations.gov,* or in person, at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system, at *http://www.regulations.gov,* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NESHAP for Source Categories: Generic Maximum Achievable Control Technology Standards for Carbon Black, Ethylene, Cyanide and Spandex (Renewal).

ICR Numbers: EPA ICR Number 1983.06, OMB Control Number 2060–0489.

ICR Status: This ICR is scheduled to expire on March 31, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for the EPA regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the General Provisions specified at 40 CFR part 63, subpart YY.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart YY, as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined to be private.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 90 hours per response. ''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 which have subsequently changed; 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.

Respondents/Affected Entities: Source categories: generic maximum achievable control technology standards for carbon black, ethylene, cyanide and spandex facilities.

Estimated Number of Respondents: 72.

Frequency of Response: Annually, semiannually, and occasionally.

Estimated Total Annual Hour Burden: 13,524.

Estimated Total Annual Cost: $1,654,836, which includes $1,295,805 in labor costs, no capital/startup costs, and $359,031 in operation and maintenance (O&M) costs.

Changes in the Estimates: The increase in burden from the most recently approved ICR is due to adjustments. The adjustment increase in burden costs for both the respondents and the Agency is due to an update in labor rates. Despite the increase in burden costs, there is a decrease in the respondent labor hours (9 hours) in this ICR compared to the previous ICR due to a mathematical error in determining the person-hours per respondent.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–4603 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OARM–2011–0748, FRL–9512–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Monthly Project Reports (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments must be submitted on or before March 29, 2012.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OARM–2011–0748, to (1) EPA online using *www.regulations.gov* (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tom Valentino, Environmental Protection Agency, Office of Acquisition Management, Mail Code 3802R, 1200 Pennsylvania Ave. NW., Washington, DC 20460; email address: *valentino.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to procedures prescribed in 5 CFR 1320.12. On 27 October 2011 (76 *FR* 66715), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID number EPA–HQ–OARM–2011–0748, which is available for public viewing at *www.regulations.gov,* or in person viewing at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Titles: Monthly Progress Reports (Renewal).

ICR numbers: EPA ICR No. 1039.13, OMB Control No. 2030–0005.

ICR Status: This ICR is scheduled to expire on April 30, 2012. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9,

are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Agency contractors who have cost reimbursable, time and material, labor hour, or indefinite delivery/indefinite quantity fixed rate contracts will report the technical and financial progress of the contract on a monthly basis. EPA will use this information to monitor the contractors' progress under the contract. Responses to the information collection are mandatory for contractors, and are required for the contractors to receive monthly payments. Information submitted is protected from public release in accordance with the Agency's confidentiality regulations, 40 CFR 2.201 et seq.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 25 hours per response. 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.

Respondents/Affected Entities: The majority of respondents fall into one of the following NAICS codes: 511210 for prepackaged computer software, 541511 for computer processing services, 54170 for computer-related services, and 541620 for environmental consulting services.

Estimated Number of Respondents: 203.

Frequency of Response: Monthly.

Estimated Total Annual Hour Burden: 60,900.

Estimated Total Annual Cost: $5,391,258.

Changes in the Estimates: There is a decrease of 4,872 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. Collection activity hours have decreased since the last clearance due mainly to improved tracking software and increasing familiarity with EPA reporting requirements.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2012–4601 Filed 2–27–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

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. 3502–3520), 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 estimates; (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 on 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 March 29, 2012. 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 (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Application for Mobility Fund Phase I Support.

Form No.: FCC Form 180.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 250 respondents; 250 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154, 254 and 303(r).

Total Annual Burden: 375 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 information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for a new information collection.

On November 18, 2011, the Commission released the *Connect America Fund & Intercarrier Compensation Reform Order,* FCC 11–161, which adopted rules to govern the Connect America Fund Mobility Fund (Mobility Fund). In adopting the rules, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to ensure that all Americans have access to robust, affordable broadband and advanced mobile services. Concluding that mobile voice and broadband services provide unique consumer benefits; and that promoting the universal availability of such services is a vital component of the Commission's universal service mission, the Commission created the Mobility Fund. Mobility Fund Phase I support will be awarded through a nationwide

reverse auction. For Phase I of the Mobility Fund, the Commission provided up to $300 million in one-time support to immediately accelerate deployment of networks for mobile broadband services in unserved areas. The Commission also established a separate and complementary one-time Tribal Mobility Fund Phase I to award up to $50 million in additional universal service funding to Tribal Areas, including Alaska, to accelerate mobile broadband availability in these remote and underserved areas. The Commission will use a two-stage application process similar to the one used in spectrum license auctions. Based on the Commission's experience with auctions and consistent with the record, this two-stage collection of information balances the need to collect information essential to conduct a successful auction with administrative efficiency.

Under section 1.21001(c) of the Commission's rules, an applicant may be required, as a prerequisite to participating in competitive bidding, to post a bond or place funds on deposit with the Commission. If a deposit is required, applicants may be required to submit FCC Form 159 and/or an attachment to its newly created FCC Form 180. FCC Form 159 is a remittance advice form that applicants/licensees file when making payment(s) to the Commission, including auction payments. The OMB Control number for the FCC Form 159 is 3060–0589.

OMB Control Number: 3060–XXXX.

Title: Application to Participate in an Auction for Mobility Fund Phase I Support.

Form No.: FCC Form 680.

Type of Review: New collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 250 respondents; 250 responses.

Estimated Time per Response: 1.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154, 254 and 303(r).

Total Annual Burden: 375 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 information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for a new information collection.

On November 18, 2011, the Commission released the *Connect America Fund & Intercarrier Compensation Reform Order,* FCC 11–161, which adopted rules to govern the Connect America Fund Mobility Fund (Mobility Fund). In adopting the rules, the Commission comprehensively reformed and modernized the universal service and intercarrier compensation systems to ensure that all Americans have access to robust, affordable broadband and advanced mobile services. Concluding that mobile voice and broadband services provide unique consumer benefits; and that promoting the universal availability of such services is a vital component of the Commission's universal service mission, the Commission created the Mobility Fund. Mobility Fund Phase I support will be awarded through a nationwide reverse auction. For Phase I of the Mobility Fund, the Commission provided up to $300 million in one-time support to immediately accelerate deployment of networks for mobile broadband services in unserved areas. The Commission also established a separate and complementary one-time Tribal Mobility Fund Phase I to award up to $50 million in additional universal service funding to Tribal Areas, including Alaska, to accelerate mobile broadband availability in these remote and underserved areas. The Commission will use a two-stage application process similar to the one used in spectrum license auctions. Based on the Commission's experience with auctions and consistent with the record, this two-stage collection of information balances the need to collect information essential to conduct a successful auction with administrative efficiency.

The Commission needs to use the information collected in determining whether the winning bidders are qualified to receive Mobility Fund support. After the auction has concluded, a winning bidder will be required to file the newly created FCC Form 680 to qualify for and receive support. Those applications will be subject to a review of the applicants' eligibility and qualifications to receive support. Commission staff will review the information collected and will determine whether applicants claiming status to receive support are eligible for the status claimed. Without such information, the Commission could not determine whether to provide the support to the winning bidder.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–4574 Filed 2–27–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

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 April 30, 2012. 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 Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov.* To submit your PRA comments by email send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0132.

Title: Supplemental Information—72–76 MHz Operational Fixed Stations.

Form Number: FCC Form 1068A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or Households; Business or other for-profit entities; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 300 respondents; 300 responses.

Estimated Time per Response: .50 hours.

Frequency of Response: On occasion reporting requirement.

Obligation To Respond: Required to obtain or retain benefits. There is no statutory authority cited for this information collection.

Total Annual Burden: 150 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: Yes. Records may include information about individuals or households, e.g., personally identifiable information or PII, and the uses and disclosure of this information are governed by the requirements of a System of Records Notice (''SORN'', FCC/WTB–1, ''Wireless Services Licensing Records.'' There are no additional impacts under the Privacy Act.

Nature and Extent of Confidentiality: The Commission has in place the following policy and procedures for records retention and disposal: Records will be actively maintained as long as the license is valid; paper records will be archived after being keyed or scanned into the ULS database and destroyed when 12 years old; electronic records will be backed up and deleted 12 years after the license is no longer valid.

Needs and Uses: The Commission is seeking OMB approval for an extension of this expiring information collection in order to obtain the full three year approval from them. There are no changes in the reporting requirements. There are no changes to the Commission's previous burden estimates.

Section 90.527 of the Commission's rules requires that an applicant agrees to eliminate any harmful interference caused by the operation to TV reception on either channel 4 or 5 that might develop. The FCC Form 1068A is filed along with FCC Form 601 when applying for the assignment of frequencies in the 72–76 MHz band. The FCC Form 1068A is required by the Communications Act of 1934, as amended and 47 CFR 90.527.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–4573 Filed 2–27–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Safety and Homeland Security Bureau; Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (FCC) Communications Security, Reliability, and Interoperability Council (CSRIC III) will hold a meeting on March 22, 2012, from 9 a.m. to 1 p.m. in the Commission Meeting Room of the Federal Communications Commission, Room TW–C305, 445 12th Street SW., Washington, DC 20554.

DATES: March 22, 2012.

ADDRESSES: Federal Communications Commission, Room TW–C305 (Commission Meeting Room), 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, Designated Federal Officer, (202) 418–1096 (voice) or *jeffery.goldthorp@fcc.gov* (email); or Lauren Kravetz, Deputy Designated Federal Officer, (202) 418–7944 (voice) or *lauren.kravetz@fcc.gov* (email).

SUPPLEMENTARY INFORMATION: The CSRIC is a federal Advisory Committee that will provide recommendations to the FCC regarding best practices and actions the FCC can take to ensure the security, reliability, and interoperability of communications systems. On March 19, 2011, the FCC, pursuant to the Federal Advisory Committee Act, renewed the charter for the CSRIC for a period of two years through March 18, 2013.

Each CSRIC III working group will present an update on topics that will range from emergency warning systems to 9–1–1 location accuracy to cybersecurity best practices. Several Working Groups will present recommendations on which the CSRIC will vote. The CSRIC Working Groups are described in more detail at *http://www.fcc.gov/encyclopedia/communications-security-reliability-and-interoperability-council-iii.*

The FCC will attempt to accommodate as many attendees as possible; however, admittance will be limited to seating availability. The Commission will provide audio and/or video coverage of the meeting over the Internet from the FCC's Web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Jeffery Goldthorp, CSRIC Designated Federal Officer, by email to *jeffery.goldthorp@fcc.gov* or U.S. Postal Service Mail to Jeffery Goldthorp, Associate Bureau Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Room 7–A325, Washington, DC 20554.

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the FCC can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted, but may be impossible to fill.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2012–4662 Filed 2–27–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 12–37; DA 12–202]

Comment Sought on Petition for Declaratory Ruling Interpreting the Definition of ''Commercial Mobile Radio Services'' as Applied to NEXTG Networks of California, Inc.'s Distributed Antenna Systems and Other ''Small-Cell'' Solutions

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Wireless Telecommunications Bureau seeks comment on NextG Networks of California, Inc.'s Petition for Declaratory Ruling, which asks the Commission to interpret § 20.3 of the Commission's rules and to find that it is not a provider of ''commercial mobile radio service'' (CMRS).

DATES: Interested parties may file comments on or before April 2, 2012, and reply comments on or before May 2, 2012.

ADDRESSES: You may submit comments, identified by WT Docket No. 12–37, by any of the following methods:

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

Federal Communications Commission's Electronic Comment Filing System (ECFS) Web site: http://www.fcc.gov/cgb/ecfs/. Follow the instructions for submitting comments.

Mail: Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

People With Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions on submitting comments and additional information, see the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Amy Brett, Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, *Amy.Brett@fcc.gov,* (202) 418–2703.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, DA 12–202, released on February 16, 2012, which seeks comment on a Petition for Declaratory (Petition) filed December 21, 2011, by NextG Networks of California, Inc. (Petitioner), a subsidiary of NextG Networks, Inc. The full text of this document is available for public inspection and copying during normal business hours in the FCC Reference Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by sending an email to *FCC504@fcc.gov* or by calling the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Summary of Public Notice

1. The Petitioner asks the Commission to interpret § 20.3 of the Commission's rules, 47 CFR 20.3, in response to a referral from the Superior Court of Arizona, County of Maricopa. In the state court litigation, Petitioner is challenging the City of Scottsdale, Arizona's authority to impose fees on Petitioner for use of public rights-of-way. Petitioner asks the Commission to find that it is not a provider of ''commercial mobile radio service'' (CMRS) as defined in § 20.3 of the Commission's rules. Such a finding could potentially exempt Petitioner from local fees under Arizona law.

2. The Commission has defined CMRS in § 20.3 of the rules as: ''A mobile service that is: (a)(1) Provided for profit, i.e., with the intent of receiving compensation or monetary gain; (2) An interconnected service; and (3) Available to the public, or to such classes of eligible users as to be effectively available to a substantial portion of the public; or (b) The functional equivalent of such a mobile service described in paragraph (a) of this § .'' § 322(d)(1) of the Communications Act of 1934, as amended, similarly defines a ''commercial mobile service'' as ''any mobile service (as defined in § 153 of this title) that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public, as specified by regulation by the Commission.'' 47 U.S.C. 332(d)(1).

3. Petitioner states that it provides telecommunications service via Distributed Antenna Systems (DAS) and other ''small-cell solutions.'' Petitioner states that in operating these systems, it transmits signals for its wireless carrier customers along fiber optic networks between equipment used by the carriers to receive and transmit radio signals and the carriers' networks. Petitioner argues that, because it only transports received wireless signals over its own wired network, it does not provide ''commercial mobile radio service'' as defined under the Commission's rules. Petitioner also states that it has received a certificate of convenience and necessity from the Arizona Public

Utilities Commission to provide its services in the State of Arizona.

Federal Communications Commission.

Jane Jackson, Associate Chief,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 2012–4659 Filed 2–27–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve 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.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829) Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final Approval under OMB Delegated Authority of the Extension for Three Years, without Revision, of the Following Reports

1. *Report title:* Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks.

Agency form number: FR 2644.

OMB control number: 7100–0075.

Frequency: Weekly.

Reporters: Domestically chartered commercial banks and U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 120,575 hours.

Estimated average hours per response: 2.65 hours.

Number of respondents: 875.

General description of report: The FR 2644 is authorized by section 2A and 11(a)(2) of the Federal Reserve Act (12 U.S.C. 225(a) and 248(a)(2)) and by section 7(c)(2) of the International Banking Act (12 U.S.C. 3105(c)(2)) and is voluntary. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2644 is the primary source of high-frequency data used in the analysis of current banking developments. The FR 2644 collects sample data that are used to estimate universe levels using data from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031 and 041; OMB No. 7100–0036) and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100–0032) (Call Reports). Data from the FR 2644, together with data from other sources, are used to construct weekly estimates of bank credit, balance sheet data for the U.S. banking industry, sources and uses of banks' funds, and to analyze banking developments.

Current Actions: On December 8, 2011 the Federal Reserve published a notice in the **Federal Register** (76 FR 76730) requesting public comment for 60 days on the extension, without revision, of the Weekly Report of Selected Assets and Liabilities of Domestically Chartered Commercial Banks and U.S. Branches and Agencies of Foreign Banks. The comment period for this notice expired on February 6, 2012. The Federal Reserve did not receive any comments. No changes are proposed to the FR 2644; however, going forward, the Federal Reserve will modify the FR 2644 instructions as needed to maintain consistency with any instructional revisions to the Call Reports that might occur during the three year extension period.

2. *Report title:* Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans; Quarterly Report of Credit Card Plans [1]

Agency form number: FR 2835; FR 2835a.

OMB control number: 7100–0085.

Frequency: Quarterly.

Reporters: Commercial banks.

Estimated annual reporting hours: FR 2835, 132 hours; FR 2835a: 100 hours.

Estimated average hours per response: FR 2835, .22 hours; FR 2835a: .50 hours.

Number of respondents: FR 2835, 150; FR 2835a, 50.

General description of report: These information collections are voluntary (12 U.S.C. 248(a)(2)). The FR 2835a individual respondent data are given confidential treatment (5 U.S.C. 552 (b)(4)). The FR 2835 data, however, are not given confidential treatment.

Abstract: The FR 2835 collects information from a sample of commercial banks on interest rates charged on loans for new vehicles and loans for other consumer goods and personal expenses. The data are used for the analysis of household financial conditions.

The FR 2835a collects information on two measures of credit card interest rates from a sample of commercial banks with $1 billion or more in credit card receivables and a representative group of smaller issuers. The data are used to analyze the credit card market and draw implications for the household sector.

Current Actions: On December 8, 2011 the Federal Reserve published a notice in the **Federal Register** (76 FR 76730) requesting public comment for 60 days on the extension, without revision, of the Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans (FR 2835) and the Quarterly Report of Credit Card Plans (FR 2835a). The comment period for this notice expired on February 6, 2012. The Federal Reserve did not receive any comments. No changes are proposed to the FR 2835 or FR 2835a.

Proposal To Approve under OMB Delegated Authority the Extension for Three Years, with Revision, of the Following Report

1. *Report title:* Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks.

Agency form number: FR 2502q.

OMB control number: 7100–0079.

Frequency: Quarterly.

Reporters: Major foreign branches and banking subsidiaries of U.S. depository

[1] This family of reports also contains the following voluntary reports, which have fewer than 10 respondents and do not require an OMB control number: Automobile Finance Terms (FR 2005) and the Passenger Auto Contract Collection Trends (FR 2012). The Federal Reserve will combine FR 2005 and the FR 2012 into one reporting form, the Automobile Finance Company Report (FR 2512) with no changes to the data items reported.

institutions that are located in the Caribbean or the United Kingdom.

Estimated annual reporting hours: 574 hours.

Estimated average hours per response: 3.5 hours.

Number of respondents: 41.

General description of report: This information collection is required (12 U.S.C. 248(a)(2), 461, 602, and 625) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2502q collects data quarterly on the geographic distribution of the assets and liabilities of major U.K. or Caribbean branches and subsidiaries of U.S. commercial banks, bank holding companies, including financial holding companies, and of banking Edge and agreement corporations. Data from this reporting form comprise a piece of the flow of funds data that are compiled by the Federal Reserve. FR 2502q data also helps the Federal Reserve understand the nature of activities of foreign offices of U.S. banks, particularly the scope of cross-border activity that is conducted by different foreign offices in the United Kingdom and the Caribbean.

Current Actions: On December 8, 2011 the Federal Reserve published a notice in the **Federal Register** (76 FR 76730) requesting public comment for 60 days on the extension, with revision, of the Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks. The comment period for this notice expired on February 6, 2012. The Federal Reserve did not receive any comments. The revisions will be implemented as proposed.

Board of Governors of the Federal Reserve System, February 22, 2012.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2012–4527 Filed 2–27–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 14, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Perry Hodgson, Alexander Hodgson, and Raymond Hodgson,* all of Charlevoix, Michigan; to join the existing Hodgson control group and to retain and acquire voting shares of Charlevoix First Corporation, and indirectly retain and acquire voting shares of Charlevoix State Bank, Charlevoix, Michigan.

Board of Governors of the Federal Reserve System, February 23, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–4616 Filed 2–27–12; 8:45 am]

BILLING CODE 6210–01–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 applications will also 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 March 23, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *SCBT Financial Corporation,* Columbia, South Carolina; to acquire 100 percent of the voting shares of Peoples Bancorporation, Inc., and thereby indirectly acquire voting shares of The Peoples National Bank, both in Easley, South Carolina, Bank of Anderson, NA, Anderson, South Carolina, and Seneca National Bank, Seneca, South Carolina.

B. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *United Group of Central Florida II, LLC,* Longwood, Florida, to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bancorp of Oviedo, Inc., and thereby indirectly acquire voting shares of Citizens Bank of Florida, both in Oviedo, Florida.

Board of Governors of the Federal Reserve System, February 23, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–4617 Filed 2–27–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12EL]

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 404–639–7570 and send comments to Kimberly S. Lane, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email 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

Critical Thinking and Cultural Affirmation (CTCA): Evaluation of a Locally Developed HIV Prevention Intervention—New—National Center for HIV/AIDS, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In 2005, the Centers for Disease Control and Prevention (CDC) reported that 80,187 African Americans were diagnosed with HIV/AIDS, which represents 51% of persons diagnosed. African-American men with HIV/AIDS represented 44% of all cases among males (Centers for Disease Control and Prevention [CDC], 2005). These statistics have been consistently disproportional since the late 1990s, with African Americans bearing the greatest burden of new HIV cases in most regions of the United States. The Centers for Disease Control and Prevention estimates that at the end of 2006, Blacks were disproportionately affected by HIV. The 2006 HIV infection rate in Blacks was nearly twice the rate of Whites (92 out of every 100,000 Blacks compared to 48 per 100,000 Whites and 31 per 100,000 Hispanics). Among males, Black males accounted for the largest number of diagnosed HIV infections and have the highest HIV infection rate of any race/ethnicity group (144 per 100,000, compared to 94 per 100,000 for White males and 50 per 100,000 for Hispanic males.

While many HIV prevention and intervention studies include samples of African-American men and African-American Men who have Sex with Men (AAMSM), beyond demonstrating disparities in seroprevalence between and among racial groups, few have been specifically designed and evaluated for efficacy among African-American men. Because few HIV prevention interventions targeting AAMSM have been developed and rigorously evaluated, while their HIV infection rates remain disproportionately high and continue to rise, identifying effective interventions for AAMSM is a public health imperative.

The purpose of this project is to test the efficacy of an HIV transmission prevention intervention for reducing sexual risk among African American men who have sex with men in Chicago, Illinois. The intervention is a 3-day weekend retreat, group-level CTCA intervention that combines cultural affirmation with critical thinking and empowerment, to increase reasoning skill, problem solving capacity, self-protective behavior change, and well-being which facilitates the reduction of risky sexual behaviors. A convenience sample of 438 AAMSM will be recruited to participate in the study. We anticipate recruiting potential participants for the CTCA RCT through a variety of community venues, using both active (i.e., venue outreach) and passive (i.e., referral, flyers/handcards, Internet) recruitment techniques. The intervention will be evaluated using baseline, 3-month and 6-month follow up assessments. This project will also conduct exit surveys to identify men who were more favorable—men who agreed with positive comments about the intervention and those who were less favorable—men who disagreed with positive comments about the intervention. Exit interviews will be conducted with 15 favorable and 15 less favorable men identified by the Exit Survey to help understand participants' experiences with the CTCA intervention and their thoughts about the content of the intervention and ways in which it could be improved. Using the participant responses to the exit survey, we will categorize participants into two categories: favorable (those men reporting a favorable reaction to the intervention) and unfavorable (those men reporting an unfavorable reaction to the intervention). Once we have 50 participants in each category, we will randomly select 15 participants from each group and invite them to participate in the exit interview. We anticipate that we will need to repeat these procedures and extend an invitation to at least 65 participants in order to reach and successfully interview 15 participants in each group.

CDC is requesting approval for a 3-year clearance for data collection. Data collection will begin November 2012 and end January 2015. The data collection system involves a pre and full screening, brief locator information, record locator information, baseline assessment, 3-month follow-up assessment, 6-month follow-up assessment, participant evaluation forms, exit survey, and exit interviews. An estimated 700 men will be pre-screened and 500 will be full-screened for eligibility in order to enroll 438 men. The baseline and follow-up questionnaires will be administered electronically using audio computer assisted self-interview (ACASI). The ACASI interview includes questions about participants' socio-demographic information, health and healthcare, sexual activity, substance use, and other psychosocial issues. The duration of each baseline, 3-month, and 6-month assessment is estimated to be 60 minutes; the exit survey 10 minutes; the exit interview 30 minutes; pre-screening form 5 minutes; full-screening form 10 minutes; brief locator information form 5 minutes; record locator information form 10 minutes; each participant evaluation survey 5 minutes.

There is no cost to participants other than their time.

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per respondent (in hours)	Total annual burden in hours
Prospective Study Participant	Pre-Screening Form	700	1	5/60	58
Prospective Study Participant	Full-Screening Form	515	1	10/60	86
Prospective Study Participant	Brief Locator Form	515	1	5/60	43
Enrolled Study Participant	Record Locator Form	438	1	10/60	73
Enrolled Study Participant	Baseline Assessment	438	1	1	438
Enrolled Study Participant	3-month Follow-up Assessment	395	1	1	395
Enrolled Study Participant	6-month Follow-up Assessment	350	1	1	350
Enrolled Study Participant	Participant Evaluation Forms	438	6	5/60	219
Enrolled Study Participant	Exit Survey	350	1	10/60	58
Enrolled Study Participant	Exit Interview	30	1	30/60	15

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per respondent (in hours)	Total annual burden in hours
Total					1735

Kimberly S. Lane,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2012–4566 Filed 2–27–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0171]

Using Innovative Technologies and Other Conditions of Safe Use To Expand Which Drug Products Can Be Considered Nonprescription; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The U.S. Food and Drug Administration (FDA or the Agency) is announcing a public hearing to obtain input on a new paradigm we are considering. Under this paradigm, the Agency would approve certain drugs that would otherwise require a prescription for nonprescription use (also known as over-the-counter or OTC) under conditions of safe use. These conditions of safe use would be specific to the drug product and might require sale in certain pre-defined health care settings, such as a pharmacy. This public hearing is being held to obtain information and comments from the public on the feasibility of this paradigm and its potential benefits and costs.

DATES: *Public Hearing:* The public hearing will be held on March 22 and 23, 2012, from 9 a.m. to 4 p.m. The meeting may be extended or may end early depending on the level of public participation.

Presentations and Comments: Submit either electronic or written requests for oral presentations and comments by March 9, 2012. (See section IV of this document for details.) Either electronic or written comments will be accepted after the hearing until May 7, 2012 (See section VI of this document for details.)

ADDRESSES: The public hearing will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Rm. 1503, Silver Spring, MD, 20993–0002.

Comments and Transcripts: Submit either electronic or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* All comments should be identified with the docket number found in brackets in the heading of this document. Transcripts of the hearing will be available for review at the Division of Dockets Management and on the Internet at *http://www.regulations.gov* approximately 45 days after the hearing.

FOR FURTHER INFORMATION CONTACT: Lee Lemley, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20903–0002, 301–796–3441, Fax: 301–847–8753, email: *OTCTechnologiesPublicMeeting@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing a public hearing to obtain input on a potential new paradigm under which the Agency would approve certain drugs that would otherwise require a prescription for nonprescription use under conditions of safe use specific to the drug product. Some drugs approved in this manner might require sale in certain pre-defined health care settings, such as a pharmacy.

I. Background

A. Prescription and Nonprescription Drugs

Under the Federal Food, Drug, and Cosmetic Act (FD&C Act), FDA approves new drugs under section 505 (21 U.S.C. 355) either as prescription or nonprescription. Under section 503(b)(1)(A) of the FD&C Act (21 U.S.C. 353(b)(1)(A)), a drug must be dispensed by prescription if, ''because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, [it] is not safe for use except under the supervision of a practitioner licensed by law to administer such drug.'' Under sections 505(d)(1) and (d)(4), FDA has considerable latitude in determining whether the information submitted as part of a new drug application (NDA) is sufficient to ensure that a drug is safe for use under its proposed labeling. FDA also makes a determination under 503(b) as to whether the product meets the criteria for prescription-only dispensing.

Prescription drugs are dispensed upon receipt of a prescription from a practitioner licensed by law to administer the drug (which may include health care professionals such as physicians, nurse practitioners, physician's assistants, and others whom we will refer to here as practitioners or prescribers). (See 21 U.S.C. 353(b).) In many instances, under the current regulatory system, a patient has to obtain at least the initial prescription, and in some cases, prescription refills, from a practitioner through an in person interaction. Obtaining a refill for other prescription drugs involves at least a telephone call or other communication with the practitioner. In contrast, nonprescription drugs (sometimes referred to as over-the-counter or OTC products) can be purchased by consumers in pharmacies, supermarkets, and other retail establishments without the need for a prescription. Currently, consumers can purchase nonprescription drugs from a retailer for diseases or conditions that do not meet the statutory criteria for prescription products and that are safe and effective for use in self-medication as directed in the labeling. (See 21 U.S.C. 353(b).) Generally, OTC products: (1) Are available to treat diseases or conditions that can be self-diagnosed without a prior interaction with a practitioner, (2) are not associated with toxicities that require an evaluation of the benefits and risks by a practitioner; and (3) do not require a practitioner's input for use.

B. Undertreatment of Diseases and Other Effects on the Health Care System

Undertreatment of many common diseases or conditions in the United States is a well recognized public health problem. Increasing the number of people who are able to obtain for the first time and those who continue on necessary drug therapy could provide improved health outcomes. The requirement to obtain a prescription for appropriate medication (and to make one or more visits to a practitioner) may contribute to undertreatment of certain common medical conditions including

hyperlipidemia (high cholesterol), hypertension (high blood pressure), migraine headaches, and asthma. For instance, some consumers do not seek necessary medical care, which may include prescription drug therapy, because of the cost and time required to visit a health care practitioner for an initial diagnosis and an initial prescription. Some patients who obtain an initial prescription do not continue on necessary medication because they would need to make additional visits to a health care practitioner for a prescription refill after any refills authorized by the initial prescription have been used or the time during which they can be filled has expired. Some prescription medications require routine monitoring through the prescribing practitioner such as blood tests to assist in the diagnosis of a condition, or to determine whether or how well the medication is working, or to adjust the dose. FDA believes that some of these visits could be eliminated by making certain prescription medications available without a prescription but with certain other conditions of safe use that would ensure they could be used safely and effectively without the initial involvement of a health care practitioner. In some cases, a visit to a practitioner would be required for the initial prescription, but a certain number of refills could be authorized beyond those that would normally be authorized without a return visit under specialized conditions of safe use. This paradigm might be useful for certain rescue medicines, such as inhalers used to treat asthma or epinephrine for allergic reactions, that patients need to keep on hand for use in emergencies. In addition to improved health outcomes for consumers staying on their medications, the time and attention that physicians and other health care providers expend on routine tasks related to prescription refills reduces the time that they are available to attend to more seriously ill patients. Eliminating or reducing the number of routine visits could free up prescribers to spend time with more seriously ill patients, reduce the burdens on the already overburdened health care system, and reduce health care costs.

II. New Paradigm

FDA is considering whether medications for certain diseases or conditions that would otherwise be available only by prescription could be made available without a prescription with certain conditions of safe use. For example, some conditions of safe use could be designed to assist patients in self-selection of an appropriate medication or provide for followup monitoring during continued use. The conditions of use could include requiring pharmacist intervention to ensure appropriate nonprescription use. Additionally, conditions of safe use could involve the use of innovative technologies, such as diagnostics approved or cleared by FDA for use in the pharmacy or other setting.

FDA is aware that industry is developing new technologies that consumers could use to self-screen for a particular disease or condition and determine whether a particular medication is appropriate for them. For example, kiosks or other technological aids in pharmacies or on the Internet could lead consumers through an algorithm for a particular drug product. Such an algorithm could consist of a series of questions that help consumers properly self-diagnose certain medical conditions, or determine whether specific medication warnings contraindicate their use of a drug product. In addition, for some drug products that require an initial prescription, the product could be made available as a nonprescription product with a condition of safe use for the purpose of product refills.

In addition, some drug products that would otherwise require a prescription could be approved as nonprescription drug products with some type of pharmacist intervention as their condition of safe use. For example, some diseases or conditions might require confirmation of a diagnosis or routine monitoring using a diagnostic test (e.g., a blood test for cholesterol levels or liver function) that could be available in a pharmacy. A pharmacist, or consumer, could then use the results to determine whether use of a certain drug product is appropriate. Other potential roles for the pharmacist include assessing whether the consumer has any conditions or other risk factors that would indicate that the drug should not be used, or assisting the consumer in choosing between various drug products. For drugs that require use of a diagnostic test, creating a pathway for nonprescription use may result in the development by industry of diagnostics suitable for use by the patient or a pharmacy professional.

FDA is also considering whether the same drug product could be simultaneously available as both a prescription and nonprescription product with conditions of safe use. Dual availability could help ensure greater access to needed medications by making obtaining them more flexible. Consumers could choose to continue seeing their health care practitioner to diagnose diseases or conditions and obtain prescriptions, and when their local retail establishment is not equipped to offer the nonprescription product with conditions of safe use. Other consumers could take advantage of the ability to obtain nonprescription products with conditions of safe use where they are available.

FDA is seeking input on what types of evidence would be needed to demonstrate that certain drugs could be used safely and effectively in the nonprescription setting with conditions of safe use. We anticipate that, depending upon the situation, applications for approval of nonprescription products with conditions of safe use may need to include patient studies (e.g., self-selection studies, label comprehension studies, and actual use studies) to demonstrate that the drug would be safe and effective under the specified conditions. When a device, e.g., diagnostic test or computer algorithm, is necessary as a condition of safe use, evidence may need to be submitted demonstrating that it will perform its intended function and can be appropriately administered in the particular setting in which it will be used. We expect that certain classes of drugs may be appropriate candidates for nonprescription use under this new paradigm, but FDA would need to evaluate each NDA, and when applicable, each device, on a case-by-case basis.

III. Scope of the Public Hearing

FDA is holding this public hearing to seek input from interested members of the public including consumers, pharmacists, physicians and other members of the medical community, regulated industry, insurers, and managed care organizations on a potential new paradigm to allow certain drugs that would otherwise require a prescription to be approved as nonprescription drugs with conditions of safe use. FDA is interested in obtaining information and public comment on the following issues:

A. Types of Technology and Conditions of Safe Use

1. Can you suggest specific medical conditions or diseases for which consumers may benefit if the treatment drug were available as a nonprescription product with conditions of safe use?

2. What types of technologies (e.g., kiosks, computer algorithms) are currently in development that could assist in allowing drugs to be used safely and effectively in the nonprescription setting?

3. What other types of conditions of safe use (e.g., pharmacy monitoring or counseling) could be used to help ensure the safe and effective use of certain drug products as nonprescription products?

4. Are there types of diagnostic aids, such as noninvasive blood pressure monitors and urinalysis reagent strips, that could be used in the nonprescription setting after appropriate FDA review, either with or without the aid of a pharmacist to diagnose or monitor a disease or condition?

5. What data or other information exist on the use of conditions of safe use, including novel technologies, and on their effects on health care, access to medication, and/or disease and treatment education or awareness?

6. Are there data on how expanded access to medication or increased consumer education or awareness could affect patient or consumer behavior (e.g., by promoting patient compliance with a medication dosage regimen) or on health outcomes generally that would be relevant to the discussion of expanding the availability of nonprescription medications with conditions of safe use?

7. What types of studies could be conducted to evaluate the effects of conditions of safe use on the safety and efficacy of particular drugs and on behavior and health outcomes?

8. What types of studies could be conducted to evaluate the safety and efficacy of any technologies that might be relied upon as conditions of safe use?

B. Pharmacy, Consumer, and Health Care Provider Issues

1. Would this new paradigm increase consumer access to necessary medical care?

2. Are data available about the number of consumers who require drug therapy for conditions or diseases but who currently do not take such medication because of the burdens associated with obtaining a prescription?

3. Would a lack of oversight from a practitioner, including involvement in diagnosing the condition or monitoring for drug interactions or other drug effects, be a concern? If so, how could these concerns be addressed?

4. How might the new paradigm be expected to affect consumers financially or otherwise affect access to and delivery of health care generally?

5. Would expanding what could be considered nonprescription drugs under the new paradigm, and thus creating greater consumer access to needed drug products, reduce burden on emergency rooms and on individual health care providers, or otherwise increase the availability of these resources for other consumers? Are there other ways in which the new paradigm might reduce the burden on the health care system?

6. How might various types of conditions of safe use on nonprescription drug products affect pharmacy business operations? What differences might there be in the operational issues experienced by pharmacies operated by chains and independently operated retail outlets?

7. Would additional specialized training be needed for pharmacists if this paradigm were adopted?

8. If availability of a nonprescription product with conditions of safe use were limited to certain outlets (e.g., a chain pharmacy that chooses to offer a particular technology or service), would the situation create confusion or difficulties for consumers seeking to obtain the drug product? Could such a situation create difficulties for practitioners in knowing whether a particular consumer could access the drug with a prescription or would be able to obtain the same product as a nonprescription drug product at a retail outlet? If so, how could these issues be overcome?

9. What experiences have practitioners, pharmacists, and insurers had with state-authorized arrangements under which access to prescription drugs has been expanded that might be relevant to and inform our consideration of this paradigm (e.g., a collaborative practice agreement between a pharmacist and a practitioner that allows the pharmacist to dispense a prescription drug to a consumer who meets certain criteria under a standing or open prescription, when that consumer did not obtain a prescription directly from a practitioner, or that allows a pharmacist to refill a prescription after an initial prescription from a practitioner pursuant to a similar agreement)?

10. What are the public health and regulatory implications of the use of in vitro diagnostic tests as conditions of safe use for nonprescription drug products in a pharmacy setting (e.g., as a laboratory under the Clinical Laboratory Improvement Act of 1988 (CLIA) (Public Law 100–578))?

C. Other Related Issues

1. How would insurance coverage of pharmaceuticals be affected by approving nonprescription products with conditions of safe use for widely prescribed prescription drugs under this paradigm?

2. How would out-of-pocket costs for the insured be affected by making prescription drugs available as nonprescription products with conditions of safe use?

3. Would the new paradigm increase liability concerns for pharmacists and pharmacies? To what extent would these concerns raise the cost of the services provided?

4. What proprietary, technological, economic, or competitive barriers might impede widespread implementation of this paradigm? To the extent such impediments exist, are there suggestions for mitigating or avoiding the impediments specific to this paradigm?

5. Would overall health care costs decrease if this paradigm were instituted?

IV. Attendance and/or Participation in the Public Hearing

The public hearing is free and seating will be on a first-come, first-served basis. Attendees who do not wish to make an oral presentation do not need to register.

If you wish to make an oral presentation during the hearing, you must register by submitting either an electronic or a written request by 5 p.m. on March 9, 2012, to Lee Lemley (see **FOR FURTHER INFORMATION CONTACT**). You must provide your name, title, business affiliation (if applicable), address, telephone and fax numbers, email address, and type of organization you represent (e.g., industry, consumer organization). You also should submit a brief summary of the presentation, including the discussion topic(s) that will be addressed and the approximate time requested for your presentation. We encourage individuals and organizations with common interests to consolidate or coordinate their presentations to allow adequate time for each request for presentation. Persons registered to make an oral presentation should check in before the hearing.

Participants should submit a copy of each presentation to Lee Lemley (see **FOR FURTHER INFORMATION CONTACT**) no later than March 19, 2012. We will file the hearing schedule, indicating the order of presentation and the time allotted to each person, with the Division of Dockets Management (see **ADDRESSES**). Additional information will also be available on the Internet at *http://www.fda.gov/Drugs/NewsEvents/ucm289290.htm.*

We will mail, email, or telephone the schedule to each participant before the hearing. In anticipation of the hearing presentations moving ahead of schedule, participants are encouraged to arrive early to ensure their designated order of presentation. Participants who

are not present when called risk forfeiting their scheduled time.

If you need special accommodations due to a disability, contact Lee Lemley (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance.

V. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The hearing will be conducted by a presiding officer, who will be accompanied by FDA senior management from the Office of the Commissioner and the relevant centers.

Under § 15.30(f), the hearing is informal and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation (21 CFR 15.30(e)). Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10 (21 CFR part 10), subpart C) (§ 10.203(a)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). (See section VII of this document for more details.) To the extent that the conditions for the hearing as described in this document conflict with any provisions set out in part 15, this document acts as a waiver of those provisions as specified in § 15.30(h)).

VI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments for consideration. Persons who wish to provide additional materials for consideration should file these materials with the Division of Dockets Management. You should annotate and organize your comments to identify the specific questions identified by the topic to which they refer. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

VII. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript also will be available in either hard copy or on CD–ROM after submission of a Freedom of Information request. Written requests are to be sent to the Division of Freedom of Information (ELEM–1029), Office of Management Programs, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: February 23, 2012.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2012–4597 Filed 2–27–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 27, 2012, from 8 a.m. to 5 p.m.

Location: FDA White Oak Campus, Building 31 Conference Center, the Great Room (rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *CRDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 27, 2012, the committee will begin with a closed session from 8 a.m. to 10:45 a.m. Following the closed session, from 11 a.m. to 5 p.m., the meeting will be open to the public. The committee will discuss biologics license application 125410, proposed tradename REPLAGAL (agalsidase alfa), submitted by Shire Human Genetics Therapies, for an enzyme replacement therapy for patients with Fabry disease.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: On March 27, 2012, from 11 a.m. to 5 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 13, 2012. Oral presentations from the public will be scheduled between approximately 2:10 p.m. and 3:10 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 5, 2012. Time allotted

for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 6, 2012.

Closed Presentation of Data: On March 27, 2012, from 8 a.m. to 10:45 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c) (4)). During this session, the committee will discuss confidential manufacturing information.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 23, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–4669 Filed 2–27–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Joint Meeting of the Anti-Infective Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Anti-Infective Drugs Advisory Committee and the Nonprescription Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 2, 2012, from 8 a.m. to 5 p.m.

Location: DoubleTree by Hilton Hotel Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD 20910. The hotel's telephone number is 301–589–5200.

Contact Person: Minh Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave. Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *AIDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: The committees will provide advice on types of consumer studies needed to assess proper use of a MedKit containing doxycycline to be taken in the event of anthrax exposure. Issues such as the feasibility of an FDA-approved MedKit as a public health strategy, the role of personal MedKits, home stockpiling, and interfaces of home readiness with public health systems, will be raised in the course of the discussions. The Biomedical Advanced Research and Development Authority will propose a possible plan for a step-wise development program for MedKits containing oral doxycycline hyclate.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 19, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 9, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 12, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Minh Doan at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 22, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–4528 Filed 2–27–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Radiological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Radiological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 11 and 12, 2012, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel's telephone number is 301–977–8900.

Contact Person: Shanika Craig, *Shanika.Craig@fda.hhs.gov,* Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1613, Silver Spring, MD 20993, 301–796–6639, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On April 11, 2012, the committee will discuss, make recommendations, and vote on information related to a premarket approval application for the Automated Breast Ultrasound (ABUS) scanning device, sponsored by U–Systems, Inc. The ABUS scanning device is intended to increase breast cancer detection in asymptomatic dense-breasted women following a negative screening mammogram.

On April 12, 2012, during session I, the committee will discuss and make recommendations regarding the 515(i) order issued by FDA on April 9, 2009 (74 FR 16214), for breast transilluminators, one of the remaining preamendments class III devices. On July 18, 1995 (60 FR 36639), FDA published a Final Rule that misbranded breast transilluminators and effectively placed them in class III based on the recommendation of the Obstetrics and Gynecology Devices Panel, which concluded there were no published studies or clinical data demonstrating the safety and effectiveness of this device. The committee discussion will include a review of the present literature to assess the current knowledge of breast transilluminators and determine if sufficient safety and effectiveness data are available to support reclassification of breast transilluminators.

During session II on April 12, 2012, the committee will discuss and make recommendations regarding the classification of blood irradiators. Blood irradiators have been found to be substantially equivalent to predicate devices marketed in interstate commerce prior to May 28, 1976, and are subject to the general controls provisions of the Federal Food, Drug and Cosmetic Act. These devices have never been formally classified. There is an agreement between the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER) that outlines which FDA center will regulate these devices. CDRH regulates irradiators intended for use in the immunologically active cells in blood and other tissues and CBER regulates irradiators intended for use in the in-process inactivation of HIV viruses or other pathogens. The committee discussion will focus on whether these devices should be classified in class I, II, or III.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 3, 2012. On April 11, 2012, oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m.; on April 12, 2012, oral presentations will be scheduled between approximately 9 a.m. and 10 a.m. for session I and between 1:30 p.m. and 2:30 p.m. for session II. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the appropriate meeting topic, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 26, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 27, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact James Clark, Committee Management Staff, 301–796–5293, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 23, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–4670 Filed 2–27–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the combined meeting on March 27, 2012, of the Substance Abuse and Mental Health Services Administration's (SAMHSA) four National Advisory Councils (the SAMHSA National Advisory Council (NAC), the Center for Mental Health Services NAC, the Center for Substance Abuse Prevention NAC, the Center for Substance Abuse Treatment NAC), and the two SAMHSA Advisory Committees (Advisory Committee for Women's Services, and the Tribal Technical Advisory Committee).

The Councils were established to advise the Secretary, Department of Health and Human Services (HHS), the Administrator, SAMHSA, and Center Directors, concerning matters relating to the activities carried out by and through the Centers and the policies respecting such activities.

Under Section 501 of the Public Health Service Act, the Advisory Committee for Women's Services (ACWS) is statutorily mandated to advise the SAMHSA Administrator and the Associate Administrator for Women's Services on appropriate activities to be undertaken by SAMHSA and its Centers with respect to women's substance abuse and mental health services.

Pursuant to Presidential Executive Order No. 13175, November 6, 2000, and the Presidential Memorandum of September 23, 2004, SAMHSA established the Tribal Technical Advisory Committee (TTAC) for working with Federally-recognized Tribes to enhance the government-to-government relationship, honor Federal trust responsibilities and obligations to Tribes and American Indian and Alaska Natives. The SAMHSA TTAC serves as an advisory body to SAMHSA.

The March 27 combined meeting will include a report from the SAMHSA Administrator, an update on SAMHSA's Budget, and discussions related to SAMHSA strategic initiatives and critical issues, health reform, and the use of public health frameworks to promote behavioral health in school.

The meeting is open to the public. However, attendance is limited to space availability. Public comments are welcome. The meeting may be accessed via Webcast. To attend on site, obtain the call-in number and access code, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register on-line at *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx*, or communicate with SAMHSA's Committee Management Officer, Ms. Geretta Wood (see contact information below).

Substantive program information may be obtained after the meeting by accessing the SAMHSA Committee Web site, *http://nac.samhsa.gov/,* or by contacting Ms. Wood.

Committee Names: Substance Abuse and Mental Health Services Administration National Advisory Council.

Center for Mental Health Services National Advisory Council.

Center for Substance Abuse Prevention National Advisory Council.

Center for Substance Abuse Treatment National Advisory Council.

SAMHSA's Advisory Committee for Women's Services.

SAMHSA Tribal Technical Advisory Committee.

Date/Time/Type: Tuesday, March 27, 2012, 8:30 a.m.–5 p.m. (OPEN).

Place: SAMHSA, 1 Choke Cherry Road, SAMHSA 1st Floor Conference Rooms, Rockville, Maryland 20857.

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, SAMHSA's Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–1260 and Email: *geretta.wood@samhsa.hhs.gov.*

The Substance Abuse and Mental Health Services Administration National Advisory Council will meet on March 28, 2012. The meeting will include a recap of the March 27, 2012 Joint Council meeting; and discussions on the use of performance measures for recovery, LGBT behavioral health disparities, and crisis and disaster response.

The meeting is open to the public. However, attendance is limited to space availability. Public comments are welcome. To attend on-site, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx*, or communicate with the SAMHSA Council's Designated Federal Official, Ms. Geretta Wood (see contact information below).

Committee Name: Substance Abuse and Mental Health Services Administration National Advisory Council.

Date/Time/Type: Wednesday, March 28, 2012, 8:30 a.m.–1:45 p.m. (OPEN).

Place: SAMHSA, 1 Choke Cherry Road, Sugarloaf Conference Room, Rockville, Maryland 20857.

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official, SAMHSA National Advisory Council, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, Fax: (240) 276–1260, Email: *geretta.wood@samhsa.hhs.gov.*

The Substance Abuse and Mental Health Services Administration's Advisory Committee for Women's Services Committee (ACWS) will meet on March 26, 2012. The meeting will include remarks from the Associate Administrator for Women's Services; updates from SAMHSA Women's Coordinating Committee regarding the SAMHSA Women's Conference; a discussion of risk factors and potential interventions for adolescent girls; and a presentation on barriers to treatment for young women.

Public attendance is limited to space availability. Public comments are welcome. To attend on site, submit written or brief oral comments, or to request special accommodations for persons with disabilities, please register at the SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the ACWS Designated Federal Officer, Ms. Geretta Wood (see contact information below).

Committee Name: SAMHSA's Advisory Committee for Women's Services.

Date/Time/Type: Monday, March 26, 2012, 9 a.m.–5 p.m. (OPEN).

Place: SAMHSA, 1 Choke Cherry Road, Sugarloaf Conference Room, Rockville, Maryland 20857.

Contact: Geretta Wood, Committee Management Officer and Designated Federal Official, SAMHSA Advisory Committee for Women's Services, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2326, FAX: (240) 276–1260, Email: *geretta.wood@samhsa.hhs.gov.*

The SAMHSA Tribal Technical Advisory Committee (STTAC) will meet on March 28, 2012. The meeting agenda will include Administrator's remarks, discussions on health reform and effective outreach to Tribes. The meeting is open to the public. However, attendance is limited to space availability. To attend on-site or request special accommodations for persons with disabilities, please register at the SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/*

meetingsRegistration.aspx, or communicate with the SAMHSA Senior Advisor for Tribal Affairs, Ms. Sheila Cooper (see contact information below).

Committee Name: SAMHSA Tribal Technical Advisory Committee.

Date/Time/Type: Wednesday, March 28, 2012, 9 a.m.–4:30 p.m. (OPEN).

Place: SAMHSA, 1 Choke Cherry Road, Seneca Conference Room, Rockville, Maryland 20857.

Contact: Sheila Cooper, Senior Advisor for Tribal Affairs, SAMHSA Tribal Technical Advisory Committee, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2005, Fax: (240) 276–2010 and Email: *sheila.cooper@samhsa.hhs.gov.*

The Center for Mental Health Services National Advisory Council will meet on March 28, 2012. The meeting will include the Director's report; an update on the FY2012 budget; discussion of SAMHSA's Strategic Initiatives, including the Recovery Support, and Military Families Strategic Initiatives; presentations on the Trauma and Justice Initiatve and Prevention Initiative (suicide), and the Primary and Behavioral Health Care Integration Project.

The meeting is open to the public. However, attendance is limited to space availability. Public comments are welcome. To attend on-site, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx* or communicate with the CMHS Council's Designated Federal Official, Ms. Crystal Saunders (see contact information below).

Committee Name: Center for Mental Health Services National Advisory Council.

Date/Time/Type: Wednesday, March 28, 2012, 8:30 a.m.–4:30 p.m. (OPEN).

Place: SAMHSA, 1 Choke Cherry Road, Great Falls Conference Room, Rockville, Maryland 20857.

Contact: Crystal Saunders, Designated Federal Official, CMHS National Advisory Council, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–1117, Fax: (240) 276–1930 and Email: *crystal.saunders@samhsa.hhs.gov.*

The Center for Substance Abuse Prevention National Advisory Council will meet on March 26, 2012. The meeting is open and will include discussion of the Center's policy and program issues, FY2012 budget, and current and emerging issues in prevention. Attendance is limited to space availability. Public comments are welcome. To attend on-site, submit written or brief oral comments, or request special accommodations for persons with disabilities, please register at the SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx*, or communicate with the CSAP Council's Designated Federal Official, Ms. Tia Haynes (see contact information below).

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Date/Time/Type: Monday, March 26, 2012, 10 a.m.–4 p.m. (OPEN).

Place: SAMHSA, 1 Choke Cherry Road, Rock Creek Conference Room, Rockville, Maryland 20857.

Contact: Tia Haynes, Designated Federal Official, CSAP National Advisory Council, 1 Choke Cherry Road, Rockville, Maryland 20857, Telephone: (240) 276–2436, Fax: (240) 276–2430, Email: *tia.haynes@samhsa.hhs.gov.*

The Center for Substance Abuse Treatment National Advisory Council will meet on March 26, 2012. The meeting is open to the public and will include a discussion of the Center's current budget, administrative, legislative, and program developments. However, attendance is limited to space availability. Public comments are welcome. To attend on-site, or request special accommodations for persons with disabilities, please register at SAMHSA Committees' Web site, *http://nac.samhsa.gov/Registration/meetingsRegistration.aspx,* or communicate with the Council's Designated Federal Officer, Ms. Cynthia Graham (see contact information below).

Committee Name: Center for Substance Abuse Treatment National Advisory Council.

Date/Time/Type: Monday, March 26, 2012, 9 a.m.–4:30 p.m. (OPEN).

Place: SAMHSA, 1 Choke Cherry Road, Seneca Conference Room, Rockville, Maryland 20857.

Contact: Cynthia Graham, M.S., Designated Federal Official, SAMHSA/CSAT National Advisory Council, 1 Choke Cherry Road, Room 5–1036, Rockville, MD 20857, Telephone: (240) 276–1692, FAX: (240) 276–1690, Email: *cynthia.graham@samhsa.hhs.gov.*

Summer King,

Statistician, Substance Abuse and Mental Health Services Administration.

[FR Doc. 2012–4564 Filed 2–27–12; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–1061]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding an Information Collection Requests (ICR), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collection of information: 1625–0011, Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures. Due to a change to forms CG–2554 ''Privacy Aids to Navigation Application'' and CG–4143 ''Application for Class I Privacy Aids to Navigation on Artificial Islands and Fixed Structures'', this Notice is being submitted as a revision.

Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before March 29, 2012.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–1061 to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) Online: (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by email via: *OIRA-submission@omb.eop.gov*.

(2) Mail: (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) Hand Delivery: To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) Fax: (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To

ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: COMMANDANT (CG–611), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2100 2ND ST SW., STOP 7101, WASHINGTON, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the Collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICR referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2011–1061], and must be received by March 29, 2012. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–1061], indicate the specific section of the document to which each comment applies, providing a reason for each comment. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an email address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–1061'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to *http://www.regulations.gov,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–1061'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: 1625–0011.

Privacy Act

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

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (76 FR 80956, December 27, 2012) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: Applications for Private Aids to Navigation and for Class I Private Aids to Navigation on Artificial Islands and Fixed Structures.

OMB Control Number: 1625–0011.

Type of Request: Extension of a currently approved collection.

Respondents: Owners of private aids to navigation.

Abstract: Under 14 U.S.C. 81, the Coast Guard is authorized to establish aids to navigation. Title 14 U.S.C. section 83 prohibits establishment of aids to navigation without permission of the Coast Guard. Title 33 CFR section 66.01–5 provides a means for private individuals to establish privately maintained aids to navigation. Under 43 U.S.C. 1333, the Coast Guard has the authority to promulgate and enforce regulations concerning lights and other warning devices relating to the promotion of safety of life and property on the artificial islands, installations, and other devices on the outer continental shelf involved in the exploration, development, removal, or transportation of resources therefrom. Title 33 CFR section 67.35–1 prescribes the type of aids to navigation that must

be installed on artificial islands and fixed structures.

To obtain approval to establish a private aid to navigation, applicants must submit either CG Form 2554 (Private Aids to Navigation Application) or CG Form 4143 (Application for Class 1 Private Aids to Navigation on Artificial Islands and Fixed Structures). The forms collect information about the private aid to navigation (type, color, geographic position), as well as the applicant's contact information. The information is stored in the Coast Guard's Integrated Aids to Navigation System (I–ATONIS). I–ATONIS is the Coast Guard's comprehensive database for managing information about aids to navigation.

Collecting the applicant's contact information is important because it allows the Coast Guard to contact the applicant should there be a discrepancy or mishap involving the permitted private aid to navigation. Certain discrepancies create hazards to navigation and must be immediately corrected or repaired. I–ATONIS has user access controls in place to govern who may view or access the information. The contact information is only available to Coast Guard aids to navigation personnel and contact is only initiated if the private aid to navigation becomes discrepant or in need of repair.

Forms: CG–2554 and CG–4143.

Burden Estimate: The estimated burden remains 3,000 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: February 20, 2012.

R.E. Day,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2012–4607 Filed 2–27–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0133]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) will meet on March 13, 2012, and March 14, 2012, in Burlingame, CA, to discuss various issues related to the training and fitness of merchant marine personnel. This meeting will be open to the public.

DATES: MERPAC working groups will meet on March 13, 2012, from 8 a.m. until 4 p.m., and the full committee will meet on March 14, 2012, from 8 a.m. until 4 p.m. This meeting may adjourn early if all business is finished. Written comments to be distributed to committee members and placed on MERPAC's Web site are due March 3, 2012.

ADDRESSES: The Committee will meet at the Hilton San Francisco Airport Bayfront, 600 Airport Blvd., Burlingame, CA 94010. To facilitate public participation, we are inviting public comment on the issues to be considered by the committee and working groups. Written comments must be identified by Docket No. USCG–2012–0133 and submitted by one of the following methods no later than March 3, 2012:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–372–1918.
- *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.
- *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.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

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

Any requests to make oral presentations should be made no later than March 3, 2012, using one of the methods highlighted above. This notice may be viewed in our online docket, USCG–2012–0133, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Rogers Henderson, U. S. Coast Guard, telephone 202–372–1408, or by email at *rogers.w.henderson@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

MERPAC is an advisory committee authorized under section 871 of the Homeland Security Act of 2002, Title 6, United States Code, section 451, and chartered under the provisions of the FACA. The Committee will act solely in an advisory capacity to the Secretary of the Department of Homeland Security (DHS) through the Commandant of the Coast Guard and the Director of Commercial Regulations and Standards on matters relating to personnel in the U.S. merchant marine, including but not limited to training, qualifications, certification, documentation, and fitness standards. The Committee will advise, consult with, and make recommendations reflecting its independent judgment to the Secretary.

Agenda of Meeting

Day 1

The agenda for the March 13, 2012, meeting is as follows:

(1) The full committee will meet briefly to discuss the working groups' business/task statements, which are listed under paragraph 2 below.

(2) Working groups addressing the following task statements, available for viewing at *http://homeport.uscg.mil/merpac* will meet to deliberate:

(a) Task Statement 58, concerning Stakeholder Communications during Merchant Mariner Licensing and Documentation Program (MLD) Restructuring and Centralization;

(b) Task Statement 71, concerning Review of USCG/International Maritime Organization (IMO) Operational Level Examination (3rd/2nd Mate and 3rd/2nd Assistant Engineer) Topics and Questions and Alignment with the International Convention on Standards of Training, Certification & Watchkeeping for seafarers (1978), as amended, (STCW Code);

(c) Task Statement 76, concerning Review of Performance Measures (Assessment Criteria); and

(d) Task Statement 77, concerning Development of Performance Measures (Assessment Criteria).

(3) The Coast Guard may form new working groups to address any additional issues emanating from the existing task statements.

(4) Public comment period.

(5) Reports of working groups. At the end of the day, the working groups will make a report to the full committee on what was accomplished in their meetings. The full committee will not take action on these reports on this date.

Any official action taken as a result of this working group meeting will be taken on day 2 of the meeting.

(6) Adjournment of meeting.

Day 2

The agenda for the March 14, 2012, Committee meeting is as follows:

(1) Introduction/Chairman Remarks.

(2) Remarks from Coast Guard Leadership, Mr. Jeff Lantz.

(3) Introduction and swearing in of the new member.

(4) Rollcall of committee members and determination of a quorum.

(5) DFO announcements.

(6) Reports from the following working groups:

(a) Task Statement 30, concerning Utilizing Military Education, Training and Assessment for STCW and U.S. Coast Guard Certifications;

(b) Task Statement 58, concerning Stakeholder Communications during MLD Program Restructuring and Centralization;

(c) Task Statement 71, concerning Review of USCG/IMO Operational Level Examination (3rd/2nd Mate and 3rd/2nd Assistant Engineer) Topics and Questions and Alignment with the STCW Code;

(d) Task Statement 73, concerning Development of Training Guidance for Engineers Serving on Near-Coastal Vessels;

(e) Task Statement 76, concerning Review of Existing Performance Measures (Assessment Criteria which can be used to assess mariner competencies listed in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978 as amended; and

(f) Task Statement 77, concerning Development of Performance Measures (Assessment Criteria) which can be used to assess mariner competencies listed in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), 1978, as amended.

(7) Other items which will be discussed:

(a) Report on National Maritime Center (NMC) activities from NMC Commanding Officer;

(b) Report on IMO/International Labor Organization (ILO) related activities; and

(c) Report from the Mariner Credentialing Program Policy Division.

(8) Period for public comments/presentations.

(9) Discussion of working group recommendations. The committee will review the information presented on each issue, deliberate on any recommendations presented by the working groups and approve/formulate recommendations for the Department's consideration. Official action on these recommendations may be taken on this date.

(10) Closing remarks/plans for next meeting.

(11) Adjournment of meeting.

Procedural

This meeting will be open to the public. Please note that the meeting may adjourn early if all business is finished.

A copy of all meeting documentation is available at the *https://www.fido.gov* Web site or by contacting Rogers Henderson. Once you have accessed the MERPAC Committee page, click on the meetings tab and then the ''View'' button for the meeting dated 3/14/12 to access the information for this meeting. Minutes will be available 90 days after this meeting. Both minutes and documents applicable for this meeting can also be found at an alternative site using the following web address: *https://homeport.uscg.mil* and use these key strokes: Missions; Port and Waterways Safety; Advisory Committees; MERPAC; and then use the event key.

Public Participation

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee and working groups. Written comments must be identified by Docket No. USCG–2012–0133 and submitted by one of the methods specified in **ADDRESSES**. Written comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. Anyone can search the electronic form of comments received into the docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). For access to the docket to read background documents or comments received in response to this notice, go to *http://www.regulations.gov.* An opportunity for public oral comment will be held during both meetings. Speakers are requested to limit their comments to 3 minutes. Please note that the public oral comment periods may end before the prescribed ending time indicated following the last call for comments. Contact Rogers Henderson at *rogers.w.henderson@uscg.mil* to register as a speaker.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Ms. Theresa Alas at telephone 650–373–4004 as soon as possible.

Dated: February 22, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2012–4450 Filed 2–27–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Federal Flight Deck Officer Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0011, abstracted below that we will submit to OMB for renewal in compliance with the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection requires interested volunteers to fill out an application to determine their suitability for participating in the Federal Flight Deck Officer (FFDO) Program, and deputized FFDOs to submit written reports of certain prescribed incidents.

DATES: Send your comments by April 30, 2012.

ADDRESSES: Comments may be emailed to *TSAPRA@dhs.gov* or delivered to the TSA PRA Officer, Office of Information Technology (OIT), TSA–11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6011.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227–3651.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0011; Federal Flight Deck Officer Program. The Transportation Security Administration (TSA) initially required this information collection under Public Law 107–296 and Public Law 108–176. *See* Arming Pilots Against Terrorism Act (APATA), Title XIV of the Homeland Security Act (Pub. L. 107–296, Nov. 25, 2202), codified at 49 U.S.C. 44921; Vision 100—Century of Aviation Reauthorization Act (Vision 100) (Pub. L. 108–176, 117 Stat. 2490, Dec. 12, 2003), codified at 49 U.S.C. 44918. TSA is seeking to renew this information collection in order to continue collecting the information described in this notice to comply with its statutory mission. The Arming Pilots Against Terrorism Act required TSA to establish a program to deputize volunteer pilots of passenger air carriers as Federal law enforcement officers to defend the flight deck of their aircraft against acts of criminal violence or air piracy. With the enactment of Vision 100, eligibility to participate in the FFDO program expanded to include pilots of all-cargo aircraft, as well as flight engineers and navigators on both passenger and cargo aircraft.

In order to screen volunteers for entry into the FFDO program, TSA collects information, including name, address, prior address information, personal references, criminal history, limited medical information, financial information, and employment information, from applicants through comprehensive applications they submit to TSA. In addition, standard operating procedures require deputized FFDOs to report certain prescribed incidents to TSA so that appropriate records are created for evidentiary, safety, and security purposes. TSA uses the information collected to assess the qualifications and suitability of prospective and current FFDOs through an online application, to ensure the readiness of every FFDO, to administer the program, and for other transportation security purposes. Based on the average number of new applicants to the FFDO program, TSA estimates a total of 5,000 respondents annually. TSA estimates that the online application will take one hour for each applicant to complete, for a total burden of 5,000 hours.

Issued in Arlington, Virginia, on February 21, 2012.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2012–4570 Filed 2–27–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–102; Revision of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

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 notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 30, 2012.

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), U.S. Citizenship and Immigration Services (USCIS), Sunday Aigbe, Chief, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via email at *uscisfrcomment@dhs.gov*. When submitting comments by email, please make sure to add OMB Control No. 1615–0079 in the subject box.

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 agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Application for Replacement/Initial Nonimmigrant Arrival-Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–102; 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. Nonimmigrants temporarily residing in the United States use this form to request a replacement of their arrival evidence document.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 17,700 responses at .416 (25 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 7,363.2 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: February 22, 2012.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–4589 Filed 2–27–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–28, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review: Form G–28, Notice of Entry of Appearance as Attorney or Accredited Representative.

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. An information collection notice was previously published in the **Federal Register** on October 12, 2011, at 76 FR 63322, allowing for a 60-day public comment period. USCIS received comments one comment in connection with the 60-day notice. A discussion of the comment and USCIS' response is addressed in item 8 of the supporting statement that can be viewed at: *http://www.regulations.gov.*

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until March 29, 2012. 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, 20 Massachusetts Avenue, Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via email at *uscisfrcomment@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via email at *oira_submission@omb.eop.gov.*

When submitting comments by email please make sure to add OMB Control Number 1615–0105 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:* Revision of an existing information collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Accredited Representative.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–28. 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.* The data collected on Form G–28 is used by DHS to determine eligibility of the individual to appear as a representative.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,479,000 responses at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 825,507 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, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, telephone number 202–272–8377.

Dated: February 22, 2012.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–4592 Filed 2–27–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–601, Revision of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I–601, Application for Waiver of Grounds of Inadmissibility.

The Department of Homeland Security, U.S. Citizenship and Immigration Services 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 April 30, 2012.

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, Clearance Office, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997, or via email at *uscisfrcomment@dhs.gov.* When submitting comments by email, please add the OMB Control Number 1615–0029 in the subject box.

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 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

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:* Application for Waiver of Grounds of Inadmissibility.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–601. 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. The information collected on this form is used by U.S. Citizenship and Immigration Services (USCIS) to determine whether the applicant is eligible for a waiver of excludability under section 212 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 30,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2020, telephone number 202–272–8377.

Dated: February 22, 2012.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–4591 Filed 2–27–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I–824; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form I–824; Application for Action on an Approved Application.

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice is published in the **Federal Register** to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 30, 2012.

During this 60 day period, USCIS will be evaluating whether to revise the Form I–824. Should USCIS decide to revise Form I–824 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 I–824.

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, 20 Massachusetts Avenue NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via email at *uscisfrcomment@dhs.gov.* When submitting comments by email, please make sure to add OMB Control No. 1615–0044 in the subject box. 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:* Application for Action on an approved Application or Petition.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–824; 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 I–824 is used to request a duplicate approval notice, or to notify the U.S. Consulate that a petition has been approved or that a person has been adjusted to permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,961 responses at .416 hours (25 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8,607 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: February 22, 2012.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–4590 Filed 2–27–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Renewal of Information Collection: American Customer Satisfaction Index (ACSI) Government Customer Satisfaction Survey

AGENCY: National Business Center, Federal Consulting Group, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Interior, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Federal Consulting Group within the Department of the Interior is soliciting comments concerning the American Customer Satisfaction Index (ACSI) Government Customer Satisfaction Survey.

DATES: Consideration will be given to all comments received by April 30, 2012.

ADDRESSES: Written comments may be submitted to the Federal Consulting Group, Attention: Rick Tate, 1849 C St. NW., MS 314, Washington, DC 20240–0001. Comments may also be sent by facsimile to (202) 513–7686, or via email to *Richard_Tate@nbc.gov.* Individuals providing comments should reference Customer Satisfaction Surveys.

FOR FURTHER INFORMATION CONTACT: To request additional information or copies of the form(s) and instructions, please write to the Federal Consulting Group, Attention: Rick Tate, 1849 C St. NW., MS 314, Washington, DC 20240–0001, or call him on (202) 513–7655, or send an email to *Richard_Tate@nbc.gov.*

SUPPLEMENTARY INFORMATION:

Title: American Customer Satisfaction Index (ACSI) Government Customer Satisfaction Survey.

OMB Control Number: 1090–0007.

Abstract

The proposed renewal of this information collection activity provides a means to consistently assess, benchmark and improve customer satisfaction with Federal government agency programs and/or services within the Executive Branch. The Federal Consulting Group of the Department of the Interior serves as the executive agent for this methodology and has partnered with the CFI Group and the ACSI organization to offer the methodology to Federal government agencies.

The CFI Group, a leader in customer satisfaction and customer experience management, offers a comprehensive model that quantifies the effects of quality improvements on citizen satisfaction. The CFI Group has developed the methodology and licenses it to the ACSI organization which produces the American Customer Satisfaction Index (ACSI) for different economic sectors and as an annual benchmark for customer service in the U.S. Government. The ACSI was introduced in 1994 by Professor Claes Fornell under the auspices of the University of Michigan, the American Society for Quality (ASQ), and the CFI Group. In 2008, the ACSI became an independent organization that continues to monitor and benchmark customer satisfaction across more than 200 companies and many U.S. Federal agencies.

The ACSI is the only cross-agency methodology for obtaining comparable measures of customer satisfaction with Federal government programs and/or services. Along with other economic objectives—such as employment and growth—the quality of output (goods and services) is a part of measuring living standards. The ACSI's ultimate purpose is to help improve the quality of goods and services available to American citizens.

ACSI surveys conducted by the Federal Consulting Group are completely subject to the Privacy Act 1074, Public Law 93–579, December 31, 1974 (5 U.S.C. 522a). The agency information collection is an integral part of conducting an ACSI survey. The contractor will not be authorized to release any agency information upon completion of the survey without first obtaining permission from the Federal Consulting Group and the participating agency. In no case shall any new system of records containing privacy information be developed by the Federal Consulting Group, participating agencies, or the contractor collecting the data. In addition, participating Federal agencies may only provide information used to randomly select respondents from among established systems of records provided for such routine uses.

There is no other agency or organization which is able to provide the information that is accessible through the surveying approach used in this information collection. Further, the information will enable Federal agencies to determine customer satisfaction metrics with discrimination capability across variables. Thus, this information collection will assist Federal agencies in improving their customer service in a targeted manner which will make best use of resources to improve service to the public.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Proposed renewal of collection of information.

Type of Review: Renewal.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: Participation by Federal agencies in the ACSI is expected to vary as new customer segment measures are added or deleted. However, based on historical records, projected average estimates for the next three years are as follows:

Average Expected Annual Number of Customer Satisfaction Surveys: 125.

Respondents: 43,750.

Annual responses: 43,750.

Frequency of Response: Once per survey.

Average minutes per response: 12.0.

Burden hours: 8,750 hours.

Note: It is expected that the first year there will be approximately 100 surveys submitted, the second year 125 surveys submitted, and the third year 150 surveys submitted due to expected growth in the program. The figures above represent an expected average per year over the three-year period.

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 utilize 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 by appointment with the Federal Consulting Group at the contact information given in the Addresses section. The comments, with names and addresses, will be available for public view during regular business hours. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to extent allowable by law.

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.

Ron Oberbillig,

Chief Operating Officer, Federal Consulting Group.

[FR Doc. 2012–4631 Filed 2–27–12; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2012–N013; FXES11130400000EA–123–FF04EF1000]

Endangered and Threatened Wildlife and Plants; Receipt of Application for Modification of Incidental Take Permit; Availability of Proposed Low-Effect Habitat Conservation Plan; Mosaic Fertilizer, LLC, Manatee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from Mosaic Fertilizer, LLC (applicant), for modification to Incidental Take Permit #TE236128–0. Mosaic Fertilizer, LLC (applicant), requests a 41-year ITP under the Endangered Species Act of 1973, as amended (Act) (ITP; # TE236128–1). We request public comment on the permit application and accompanying proposed habitat conservation plan (HCP), as well as on our preliminary determination that the plan qualifies as low-effect under the National Environmental Policy Act (NEPA). To make this determination, we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: To ensure consideration, please send your written comments by March 29, 2012.

ADDRESSES: If you wish to review the application and HCP, you may request documents by email, U.S. mail, or phone (see below). These documents are also available for public inspection by appointment during normal business hours at the office below. Send your comments or requests by any one of the following methods.

Email: northflorida@fws.gov. Use ''Attn: Permit number TE236128–1'' as your message subject line.

Fax: David L. Hankla, Field Supervisor, (904) 731–3045, Attn.: Permit number TE236128–1.

U.S. mail: David L. Hankla, Field Supervisor, Jacksonville Ecological Services Field Office, Attn: Permit number TE236128–1, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Erin M. Gawera, telephone: (904) 731–3121; email: *erin_gawera@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—*i.e.,* take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

Applicant's Proposal

The applicant is requesting modification of the existing incidental take permit #TE236128–0 issued September 28, 2010, and made available via the **Federal Register** on January 28, 2010 (75 FR 4581). The original permit is for the take of approximately 75 acres (ac) of Florida scrub-jay (*Aphelocoma coerulescens*)—occupied habitat incidental to land clearing and phosphate mining. The requested modifications to this permit are increasing the duration of the permit from 24 years to 41 years, changing the boundary of the conservation easement placed on the property used for mitigation, and including take of one additional species, the threatened eastern indigo snake (*Drymarchon couperi*). The applicant requests take of no more than 3 threatened eastern indigo snakes within each 5-year period throughout the 41-year-long duration of the permit. The 4,345-ac project is located on parcel #45400059, within Sections 13, 22–27, and 34, Township 34 South, Range 22 East, Manatee County, Florida. The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the Florida scrub-jay and Eastern indigo snake.

Our Preliminary Determination

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we determined that the ITP is a low-effect project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

Next Steps

We will evaluate the HCP and comments we receive to determine whether the ITP application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 et seq.). If we determine that the application meets these requirements, we will issue ITP # TE236128–1. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will

use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP. If the requirements are met, we will issue the permit to the applicant.

Public Comments

If you wish to comment on the permit application, HCP, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: February 22, 2012.

David L. Hankla,

Field Supervisor, Jacksonville Field Office, Southeast Region.

[FR Doc. 2012–4624 Filed 2–27–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCS42800800]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on March 29, 2012.

DATES: Protests of the survey must be filed before March 29, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Blaise Lodermeier, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5128 or (406) 896–5009, *bloderme@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the U.S. Army Corps of Engineers, Omaha District, and was necessary to determine federal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 23 N., R. 43 E.

The plat, in five sheets, representing the supplemental plat of sections 18, 19, and 30, showing the amended lottings created by the segregation of various parcels, Township 23 North, Range 43 East, Principal Meridian, Montana, was accepted February 17, 2012.

We will place a copy of the plat, in five sheets, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in five sheets, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in five sheets, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–4609 Filed 2–27–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLMT926000–L19100000–BJ0000–LRCME1R02060]

Notice of Filing of Plats of Survey; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Montana State Office, Billings, Montana, on March 29, 2012.

DATES: Protests of the survey must be filed before March 29, 2012 to be considered.

ADDRESSES: Protests of the survey should be sent to the Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669.

FOR FURTHER INFORMATION CONTACT: Marvin Montoya, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, Billings, Montana 59101–4669, telephone (406) 896–5124 or (406) 896–5009, *Marvin_Montoya@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Regional Director, Bureau of Indian Affairs, Rocky Mountain Region, Billings, Montana, and was necessary to determine boundaries of trust or tribal interest lands.

The lands we surveyed are:

Principal Meridian, Montana

T. 4 S., R. 36 E.

The plat, in one sheet, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 27 and 28, Township 4 South, Range 36 East, Principal Meridian, Montana, was accepted February 16, 2012.

We will place a copy of the plat, in one sheet, and related field notes we described in the open files. They will be available to the public as a matter of information. If the BLM receives a protest against this survey, as shown on this plat, in one sheet, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file this plat, in one sheet, until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Authority: 43 U.S.C. Chap. 3.

Steve L. Toth,

Acting Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 2012–4611 Filed 2–27–12; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[FES–12–4]

Final Programmatic Environmental Impact Statement and Integrated Water Resource Management Plan, Yakima River Basin, Water Enhancement Project, Benton, Kittitas, Klickitat, and Yakima Counties, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Reclamation (Reclamation), in cooperation with the Washington State Department of Ecology (Ecology), the joint lead agency, is notifying the public that they have prepared a final programmatic environmental impact statement pursuant to the National Environmental Policy Act and have made it available to the public for review.

DATES: The Bureau of Reclamation will not make a decision on the proposed action until at least 30 days after filing of the Final Programmatic Environment Impact Statement (FPEIS) with the Environmental Protection Agency. After the 30-day waiting period, Reclamation may complete a Record of Decision. The Record of Decision will discuss factors and rationale used in making the decision.

ADDRESSES: Requests for copies of the FPEIS should be addressed to Candace McKinley, Environmental Program Manager, Bureau of Reclamation, Columbia-Cascades Area Office, 1917 Marsh Road, Yakima, WA 98901; or by email: *yrbwep@usbr.gov.* This document is also available on the Bureau of Reclamation's web site at: *http://www.usbr.gov/pn/programs/yrbwep/2011integratedplan/index.html.*

FOR FURTHER INFORMATION CONTACT: Candace McKinley at (509) 575–5848, ext. 232, or at the above address.

SUPPLEMENTARY INFORMATION: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 United States Code (U.S.C.) § 4332, the FPEIS will comply with requirements of the Washington State Environmental Policy Act (SEPA), Chapter 43.21C, Revised Code of Washington (RCW). Reclamation published a Draft PEIS in the **Federal Register** on November 16, 2011 (76 FR 71070) with a public comment period ending on January 3, 2012. The FPEIS includes written responses to all public comments on the Draft PEIS.

Background

In response to long-standing water resource problems in the basin, Reclamation and Ecology have analyzed the elements of the Integrated Water Resource Management Plan in the FPEIS. The FPEIS addresses impacts that could occur if Reclamation and Ecology implement the comprehensive program of water resource and habitat improvements and management initiatives intended to restore ecological functions in the Yakima River system and to provide more reliable and sustainable water resources for the health of the riverine environment, and for agriculture and municipal and domestic needs.

The proposed water resource management plan includes three major components (Habitat, Systems Modification, and Water Supply) which are comprised of seven elements (listed below). The Habitat Component includes a package of projects and actions intended to improve conditions for fish and the health of the riverine environment. The Habitat Component includes the reservoir fish passage and habitat/watershed protection and enhancement elements. The Systems Modification Component is intended to modify existing facilities and operations in order to improve conditions for fish and to improve water supply. The Systems Modification Component includes the structural and operational changes at existing facilities elements. The third component, Water Supply, is intended to improve water supply for agricultural and municipal needs as well as for fish. It includes the surface water storage, groundwater storage, enhanced water conservation and market reallocation elements.

The plan elements include projects and actions including, but not limited to:

1. Fish Passage (fish passage improvements at Cle Elum, Bumping, Clear Lake, Keechelus, Kachess, and Tieton Dams);
2. Structural/Operational Changes (subordination of power generation at Roza and Chandler Power Plants);
3. Surface Storage (new Wymer Dam and Reservoir, Bumping Reservoir enlargement, Kachess inactive storage);
4. Groundwater Storage (groundwater infiltration prior to storage control);
5. Fish Habitat (mainstem floodplain restoration program);
6. Enhanced Water Conservation (agricultural water and municipal/domestic conservation); and
7. Market-Based Reallocation of Water Resources (institutional improvements to facilitate market-based water transfers).

Public Disclosure

Before including your name, address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Review Locations

The FPEIS is available for public inspection at the following locations:

- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 N Curtis Road, Boise, ID.
- Bureau of Reclamation, Columbia Cascades Area Office, 1917 Marsh Road, Yakima, WA.
- Washington State Department of Ecology, 15 W. Yakima Avenue, Suite 200, Yakima, WA.

Libraries

- Carpenter Memorial Library, 302 N Pennsylvania Ave, Cle Elum, Washington 98922.
- Ellensburg Public Library, 209 N Ruby St, Ellensburg, Washington 98926.
- Roslyn Public Library, 201 S. First St, Roslyn, Washington 98941.
- Benton City Library, 810 Horne Dr, Benton City, Washington 99320.
- Kennewick Library, 1620 S Union St, Kennewick, Washington 99338.
- Kittitas Public Library, 200 N Pierce St, Kittitas, Washington 98934.
- Mid-Columbia Library, 405 S Dayton St, Kennewick, Washington 99336.
- Pasco Library, 1320 W Hopkins St, Pasco, Washington 99301.
- Prosser Library, 902 7th St, Prosser, Washington 99350.
- Richland Public Library, 955 Northgate Dr, Richland, Washington 99352.
- Sunnyside Public Library, 621 Grant Ave, Sunnyside, Washington 98944.
- Toppenish Library, 1 S Elm St, Toppenish, Washington 98948.
- Wapato Library, 119 E 3rd St, Wapato, Washington 98951.
- Washington State Library, Point Plaza East, 6880 Capitol Blvd. SE., Tumwater, Washington 98504.
- West Richland Library, 3803 W Van Giesen St, Richland, Washington 99353.
- Yakama Nation Library, 100 Spiel-Yi Loop, Toppenish, Washington 98948.
- Yakima Valley Regional Library, 102 N 3rd St, Yakima, Washington 98901.

Dated: February 22, 2012.

Timothy L. Personius,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 2012–4506 Filed 2–27–12; 8:45 am]

BILLING CODE 4310–MN–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of The Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: November 1–2, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle, NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Deputy Rules Officer and Counsel.

[FR Doc. 2012–4630 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a one-day meeting. The meeting will be open to public observation but not participation.

DATES: October 5, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Charleston School of Law, 81 Mary Street, Charleston, SC 29403.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Deputy Rules Officer and Counsel.

[FR Doc. 2012–4635 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States, Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: September 27–28, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: University of Pennsylvania Law School, 3400 Chestnut Street, Philadelphia, PA 19104.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Deputy Rules Officer and Counsel.

[FR Doc. 2012–4636 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATE: September 11–12, 2012.

TIME: 8:30 a.m. to 5 p.m.

ADDRESSES: Hotel Monaco Portland, 506 SW Washington Street, Portland, OR 97204.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Deputy Rules Officer and Counsel.

[FR Doc. 2012–4637 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Civil Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Civil Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Civil Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: March 22–23, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: University of Michigan Law School, 312 Hutchins Hall—Room 138, Ann Arbor, MI 48109.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2012–4671 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Bankruptcy Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: March 29–30, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Arizona Biltmore, 2400 East Missouri Avenue, Phoenix, AZ 85016.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2012–4668 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Evidence

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Evidence.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Evidence will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 3, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Southern Methodist University, Dedman School of Law, Storey Hall Karcher Auditorium, 3315 Daniel Avenue, Dallas, TX 75205.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2012–4664 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Appellate Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Appellate Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Appellate Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 12–13, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2012–4660 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: April 23–24, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: James R. Browning Courthouse, 95 7th Street Courtroom Five, San Francisco, CA 94103.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Rules Committee Deputy and Counsel.

[FR Doc. 2012–4654 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Practice and Procedure

AGENCY: Judicial Conference of the United States Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Committee on Rules of Practice and Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: June 11–12, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Deputy Rules Officer and Counsel.

[FR Doc. 2012–4650 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Meeting of the Judicial Conference Advisory Committee on Rules of Criminal Procedure

AGENCY: Judicial Conference of the United States Advisory Committee on Rules of Criminal Procedure.

ACTION: Notice of open meeting.

SUMMARY: The Advisory Committee on Rules of Criminal Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

DATES: October 18–19, 2012.

Time: 8:30 a.m. to 5 p.m.

ADDRESSES: Thurgood Marshall Federal Judiciary Building, Mecham Conference Center, One Columbus Circle NE., Washington, DC 20544.

FOR FURTHER INFORMATION CONTACT: Benjamin J. Robinson, Deputy Rules Officer and Counsel, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: February 21, 2012.

Benjamin J. Robinson,

Deputy Rules Officer and Counsel.

[FR Doc. 2012–4632 Filed 2–27–12; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

[OMB Number 1121–0170]

Agency Information Collection Activities; Proposed Collection; Comments Requested: Crime Victim Compensation State Certification Form Request

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Office of Justice Programs (OJP), Office for Victims of Crime (OVC) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 76, Number 345, page 79219, on December 21, 2011, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 29, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection of which approval has expired.

(2) *Title of the form/collection:* Crime Victim Compensation State Certification Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* The agency form number is 7390/5 and U.S. Department of Justice, Office of Justice Programs, Office for Victims of Crime.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State government VOCA administrators.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 53 respondents will complete the form within approximately 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 53 total hour burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–4622 Filed 2–27–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on February 16, 2012, a proposed Settlement Agreement in *In re Canal Corp., et al.,* Case No. 08–36642–DOT, was lodged with the United States Bankruptcy Court for the Eastern District of Virginia. The Settlement Agreement resolves a proof of claim filed by the United States, on behalf of the Environmental Protection Agency (''EPA'') and Department of the Interior (''DOI''), against Canal Corporation for response costs and natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675, with respect to the Peck Iron and Metal Site in Portsmouth, Virginia. Under the Settlement Agreement, EPA will receive an allowed general unsecured claim in the amount of $4,466,402, and DOI will receive an allowed general unsecured claim in the amount of $3,889.

The Department of Justice will receive, for a period of thirty days from the date of this publication, comments relating to the Settlement Agreement. To be considered, comments must be received by the Department of Justice by the date that is thirty days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Canal Corp., et al.,* D.J. Ref. 90–11–2–1045/8. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of the Resource Conservation and Recovery Act, 42 U.S.C. 6973(d).

During the public comment period, the Settlement Agreement may be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, please forward a check in that amount to the Consent Decree Library at the address given above.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–4593 Filed 2–27–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Cotton Dust Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration sponsored information collection request (ICR) titled, ''Cotton Dust Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before March 29, 2012.

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 email 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, Occupational Safety and Health Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), email: *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 email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the cotton dust standard and its information collection requirements is to provide protection for employees from the adverse health effects associated with occupational exposure to cotton dust. Employers must monitor employee exposure, reduce employee exposure to within permissible exposure limits, provide employees with medical examinations and training, and establish and maintain employee exposure monitoring and medical records.

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 1218–0061. The current OMB approval is scheduled to expire on February 29, 2012; however, it should be noted that existing information collection requirements 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 October 5, 2011 (76 FR 61752).

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 1218–0061. 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: Occupational Safety and Health Administration.

Title of Collection: Cotton Dust Standard.

OMB Control Number: 1218–0061.

Affected Public: Private Sector—Businesses or Other For-Profits.

Total Estimated Number of Respondents: 281.

Total Estimated Number of Responses: 53,622.

Total Estimated Annual Burden Hours: 20,558.

Total Estimated Annual Other Costs Burden: $2,449,194.

Dated: February 22, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–4585 Filed 2–27–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,047]

Era Systems, LLC, Formerly Era Systems Corporation, a Subsidiary of Systems Research and Applications Corporation, Syracuse, NY; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated February 2, 2012, a worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of Era Systems, LLC, formerly Era Systems Corporation, a subsidiary of Systems Research and Applications Corporation, Syracuse, New York (hereafter referred to as ''Era Systems, LLC'' or ''the subject firm''). The determination was issued on January 13, 2012 and the Department's Notice of determination will soon be published in the **Federal Register.**

The initial investigation resulted in a negative determination based on the findings that imports of services like or directly competitive with the services supplied by the firm have not increased; there has not been a shift to a foreign country of services like or directly competitive with the research and development services supplied by the firm; and there has not been an acquisition from a foreign country of services like or directly competitive with the research and development services supplied by the firm. The investigation also revealed that Era Systems, LLC is not 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, 19 U.S.C. 2272(a).

In the request for reconsideration, the petitioner supplied new information regarding a possible shift to/acquisition

from a foreign country by the subject firm in the supply of services.

The Department of Labor has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements to apply for TAA.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 16th day of February, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–4581 Filed 2–27–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,892]

Stanley Black and Decker, CDIY Division, Warranty Evaluation Center (WEC), Including On-Site Leased Workers From Manpower, McAllen, 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 18, 2011, applicable to workers of Stanley Black and Decker, CDIY Division, including on-site leased workers from Manpower, McAllen, Texas. The notice was published in the **Federal Register** on February 2, 2011 (76 FR 5836).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers in the CDIY Division are engaged in activities related to the receiving and inspecting reconditioning products sent from customers to the Warranty Evaluation Center.

New findings show that the correct name of the subject firm in its entirety should read Stanley Black and Decker, CDIY Division, Warranty Evaluation Center.

Accordingly, the Department is amending this certification to include the Warranty Evaluation Center (WEC), CDIY Division of Stanley Black and Decker, McAllen, Texas.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in services to China, Taiwan and Poland.

The amended notice applicable to TA–W–74,892 is hereby issued as follows:

All workers of Stanley Black and Decker, CDIT Division, Warranty Evaluation Center (WEC), including on-site leased workers from Manpower, McAllen, Texas, who became totally or partially separated from employment on or after November 8, 2009, through January 18, 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 in Washington, DC, this 13th day of February, 2012.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 2012–4580 Filed 2–27–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,264]

Keithley Instruments Including On-Site Leased Workers from StaffMatrix and ADECCO, Solon, OH; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 8, 2011, applicable to workers of Keithley Instruments, Solon, Ohio. The workers are engaged in activities related to the production of electronic test and measurement equipment. The notice was published in the **Federal Register** on July 29, 2011 (76 FR 45623).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that workers leased from Adecco were employed on-site at the Solon, Ohio location of Keithley Instruments. The Department has determined that these workers were sufficiently under the control of Keithley Instruments to be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by an actual/likely increase in imports of electronic test and measurement equipment following a shift to another country.

Based on these findings, the Department is amending this certification to include workers leased from Adecco working on-site at the Solon, Ohio location of the subject firm.

The amended notice applicable to TA–W–80,264 is hereby issued as follows:

All workers of Keithley Instruments, including on-site leased workers from StaffMatrix and Adecco, Solon, Ohio, who became totally or partially separated from employment on or after June 30, 2010, through July 8, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 14th day of February 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–4579 Filed 2–27–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,307]

Comscope, Inc., Catawba Facility, A Subsidiary of the Carlyle Group Including On-Site Leased Workers From Staffmasters, Including On-Site Workers from Cable Transport, Inc. Catawba, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 13, 2011, applicable to workers of CommScope, Inc., Catawba Facility, a subsidiary of the Carlyle Group, including on-site leased workers from Staffmasters,

Catawba, North Carolina. The workers are engaged in activities related to the production of coaxial cable and coax products for the cable television industry. The notice was published in the **Federal Register** on October 26, 2011 (76 FR 66329).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that workers from Cable Transport, Inc. were employed on-site at the Catawba, North Carolina location of CommScope, Inc., Catawba Facility, a subsidiary of the Carlyle Group. The Department has determined that these workers were sufficiently under the control of CommScope, Inc., Catawba Facility, a subsidiary of the Carlyle Group to be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by increased company imports of coaxial cable and coax products for the cable television industry.

Based on these findings, the Department is amending this certification to include workers from Cable Transport, Inc. working on-site at the Catawba, North Carolina location of the subject firm.

The amended notice applicable to TA–W–80,307 is hereby issued as follows:

All workers of CommScope, Inc., Catawba Facility, a subsidiary of the Carlyle Group, including on-site leased workers from Staffmasters, including on-site workers from Cable Transport, Inc., Catawba, North Carolina (TA–W–80,307) and CommScope., Conover Facility, a subsidiary of the Carlyle Group, including remote workers reporting to Conover, North Carolina, including on-site leased workers from Staffmasters, Conover, North Carolina (TA–W–80,307A), who became totally or partially separated from employment on or after July 20, 2010, through October 13, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of February 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–4582 Filed 2–27–12; 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 *February 6, 2012 through February 10, 2012.*

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
80,522	L.A. Darling Company LLC, Major Metals Division	Paragould, AR	October 14, 2010.
81,062	Thomasville Furniture Industries, Inc., Furniture Brands Intl, Corporate Office, Manpower, Ajilon Staffing, etc.	Thomasville, NC	February 13, 2010.
81,182	GFF Holding Company	Soperton, GA	February 13, 2010.
81,182A	GFF Holding Company	LaGrange, GA	February 13, 2010.
81,201	EuroLeather, Inc	Newton, NC	February 13, 2010.
81,218	Ballantyne Strong, Inc., Corporate Division, Aerotek, Remedy Staffing and TMI Managemet.	Omaha, NE	February 13, 2010.
81,225	Adecco Engineering and Technical, Idaho Technical Center, Hewlett-Packard Company.	Boise, ID	February 13, 2010.
81,251	Isaacson Structural Steel, Inc	Berlin, NH	February 13, 2010.
81,251A	Isaacson Structural Steel, Inc	Berlin, NH	February 13, 2010.
81,304	Bristol Compressors International, Inc., Bright Services	Bristol, VA	February 7, 2011.

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
81,023	Hanet Plastics USA, Inc., Butternut Placement	Plattsburgh, NY	February 13, 2010.
81,038	Ford Motor Company, Twin Cities Assembly Plant, Vehicle Operations Division.	St. Paul, MN	February 13, 2010.
81,083	John Crane, Inc., Business Information Services Division, Smiths Group PLC	Morton Grove, IL	February 13, 2010.
81,223	Genband US, LLC, Genband Holdings, A2 Research & Development Division, Including All Remote.	Plano, TX	February 13, 2010.
81,243	Goodrich Lighting Systems, Inc., Goodrick Corporation, Apex, Adecco, Alliance Workforce, etc.	Oldsmar, FL	February 13, 2010.
81,250	Schneider Electric, U.S.A., Power Business Unit, Power Solutions, Volt Workforces Solutions.	LaVergne, TN	February 13, 2010.
81,263	Chartis Global Services, Inc., Regional Service Center, Chartis, Inc	Houston, TX	January 18, 2011.
81,265	Seagate US LLC, Shrewsbury Division	Shrewsbury, MA	March 6, 2011.
81,279	Springs Window Fashions, LLC, Including Leased Workers: Keystone Staffing, Aerotek Staffing.	Montgomery, PA	February 27, 2012.
81,296	Pentair Water Filtration Indiana, LLC, Water Purification Division, Manpower	Monticello, IN	February 3, 2011.

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
80,508	LD Commodities Services LLC, Stateline Warehouse	Ridgeway, VA	October 7, 2010.

TA–W No.	Subject firm	Location	Impact date
81,033	Tower Automotive, L.L.C., Weststaff	Bellevue, OH	February 13, 2010.
81,035	Dell USA LP, Global Platform Services Group	Round Rock, TX	February 13, 2010.
81,156	Schott Gemtron, Hometech and Flat Glass Divisions	Vincennes, IN	February 6, 2011.
81,156A	Leased Workers from Select Remedy, Working On-Site at Schott Gemtron	Vincennes, IN	February 13, 2010.
81,255	Oakley Sub Assembly, Inc., Oakley Industries Sub Assembly, Jean Simpson Personnel Services.	Shreveport, LA	January 13, 2011.

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 criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) 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
81,071	II–VI Incorporated, Infrared Optics-Saxonburg Division	Saxonburg, PA.	
81,086	The Flexaust Co., Inc., Encore Staffing and Instaff	El Paso, TX.	

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
80,438	LabWest, Inc., Laboratory Corporation of America Holding	Santa Ana, CA.	
80,449	Marfred Industries	Hayward, CA.	
81,066	ConocoPhillips Company, Trainer Refinery	Trainer, PA.	
81,098	Universal Handling Equipment Company, Inc., Davrond Corporation	Owosso, MI.	
81,145	Sunoco, Inc. R & M, Refining Division	Marcus Hook, PA.	
81,145A	Sunoco, Inc., 10 Industrial Highway, MS4 Building G	Lester, PA.	
81,245	Interlake Mecalux, Inc	Sumter, SC.	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioner has requested that the petition be withdrawn.

TA–W No.	Subject firm	Location	Impact date
81,227	Dell Financial Services (DFS)	Austin, TX.	
81,257	World of Flowers, Inc	Oxford, AL.	

The following determinations terminating investigations were issued because the Department issued a negative determination on petitions related to the relevant investigation period applicable to the same worker group. The duplicative petitions did not present new information or a change in circumstances that would result in a reversal of the Department's previous negative determination, and therefore, further investigation would duplicate efforts and serve no purpose.

TA–W No.	Subject firm	Location	Impact date
81,273	Sunoco, Inc., 10 Industrial Highway, MS4, Building G	Lester, PA.	

I hereby certify that the aforementioned determinations were issued during the period of *February 6, 2012 through February 10, 2012*. These determinations are available on the Department's Web site *tradeact/taa/taa search form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at 888–365–6822.

Dated: February 14, 2012.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–4577 Filed 2–27–12; 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 Division 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 March 9, 2012.

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 March 9, 2012.

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 17th day of February 2012.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[29 TAA petitions instituted between 2/6/12 and 2/10/12]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81294	Olean Advanced Products (Company)	Olean, NY	02/06/12	02/03/12
81295	Classic Industries, Inc. (State/One-Stop)	El Paso, TX	02/06/12	02/01/12
81296	Pentair Water Filtration Indiana, LLC (Company)	Monticello, IN	02/06/12	02/03/12
81297	Samsung Information Systems America, Inc. (SISA) (Workers)	San Jose, CA	02/06/12	02/03/12
81298	Syniverse Technologies, Inc. (State/One-Stop)	Watertown, MA	02/07/12	02/06/12
81299	Kohler Co. (State/One-Stop)	Malvern, AR	02/07/12	02/06/12
81300	Daxin Pacific, Inc. (State/One-Stop)	Seattle, WA	02/07/12	02/06/12
81301	MassMutual Financial Group (Workers)	Springfield, MA	02/07/12	01/24/12
81302	American Technical Ceramics Corp. (Company)	Huntington Station, NY	02/07/12	02/06/12
81303	K & T Switching Services (Workers)	Dearborn, MI	02/07/12	02/06/12
81304	Bristol Compressors International, Inc. (Company)	Bristol, VA	02/07/12	12/08/11
81305	Zurn Industries (Workers)	Falconer, NY	02/08/12	01/30/12
81306	Allstate Insurance Company (Workers)	Irving, TX	02/08/12	02/06/12
81307	Avon Products, Inc. (Company)	Springdale, OH	02/08/12	02/07/12
81308	Maxim Integrated Products (Workers)	Hillsboro, OR	02/08/12	02/06/12
81309	Hartford Financial Services Group, Inc. (Company)	Simsbury, CT	02/08/12	02/07/12
81310	Sanmina—Sci (Workers)	Owego, NY	02/08/12	02/06/12
81311	Teachscape (State/One-Stop)	San Francisco, CA	02/08/12	02/06/12
81312	Seattle-Snohomish Mill Company Inc. (Union)	Snohomish, WA	02/08/12	02/03/12
81313	Hovensa Oil Refinery (Workers)	St. Croix, VI	02/08/12	02/06/12
81314	NW Hardwoods (State/One-Stop)	Arlington, WA	02/08/12	02/07/12
81315	Tandy Brands Accessories, Inc. (Company)	Los Angeles, CA	02/08/12	02/07/12
81316	Finisar Corporation (State/One-Stop)	Wilmington, MA	02/09/12	01/30/12
81317	Dana Sealing Products Group, (Union)	Milwaukee, WI	02/09/12	02/08/12
81318	Cooper Standard Automotive, Inc. (Union)	Bowling Green, OH	02/10/12	02/06/12
81319	TE Connectivity (Company)	Middletown, PA	02/10/12	02/09/12
81320	Bose Corporation (Company)	Blythewood, SC	02/10/12	02/01/12
81321	PlumChoice (State/One-Stop)	Billerica, MA	02/10/12	02/09/12
81322	Steiff North America, Inc. (State/One-Stop)	Raynham, MA	02/10/12	02/09/12

[FR Doc. 2012–4578 Filed 2–27–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

2002 Reopened—Previously Denied Determinations; Notice of Revised Denied Determinations On Reconsideration Under the Trade Adjustment Assistance Extension Act of 2011 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) (Act) the Department of Labor (Department) herein presents summaries of revised determinations on reconsideration regarding eligibility to apply for Trade Adjustment Assistance for workers by case (TA–W-) number regarding negative determinations issued during the period of *February 13, 2011 through October 21, 2011.* Notices of negative determinations were published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271). As required by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), all petitions that were denied during this time period were automatically reconsidered. The reconsideration investigation revealed that the following workers groups have met the certification criteria under the provisions of TAAEA.

After careful review of the additional facts obtained, the following revised determinations on reconsideration have been issued.

TA–W–80,125; Shine Electronics Co., Inc., Long Island City, NY: February 7, 2010.

I hereby certify that the aforementioned revised determinations on reconsideration were issued on *February 8, 2012.* These determinations are available on the Department's Web site at *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll-free at 888–365–6822.

Dated February 13, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–4583 Filed 2–27–12; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–018]

NASA Advisory Council; Science Committee; Earth Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Earth Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Wednesday, March 21, 2012, 8:30 a.m. to 5 p.m. and Thursday, March 22, 2012, 8:30 a.m. to 2 p.m., Local Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Rooms 8R40 and 7H45 respectively, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–1377, or *mnorris@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Earth Science Division Update
—Committee on Earth Observations Satellites and Other International Coordination Efforts
—Ground Networks and Their Evolution
—Earth Science Division Communication Strategy

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Marian Norris via email at *mnorris@nasa.gov* or by fax at (202) 358–1377. U.S. citizens and green card holders are requested to submit their name and affiliation 3 working days prior to the meeting to Marian Norris.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–4529 Filed 2–27–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Committee Management Renewals

The NSF management officials having responsibility for three advisory committees listed below have determined that renewing these groups for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 et seq. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Committees:

Advisory Committee for Environmental Research and Education, #9487

Proposal Review Panel for Industrial Innovations and Partnerships, #28164

Proposal Review Panel for Emerging Frontiers in Research and Innovation, #34558

Effective date for renewal is March 1, 2012. For more information, please contact Susanne Bolton, NSF, at (703) 292–7488.

Dated: February 22, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–4512 Filed 2–27–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0119]

Final Staff Guidance, Revision 4 to Standard Review Plan; Section 8.1 on Electric Power—Introduction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing its final Revision 4 to NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' Standard Review Plan (SRP) Section 8.1 on ''Electric Power—Introduction,'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML113640121), and the Branch Technical Position (BTP) 8–8 (ADAMS Accession No. ML113640138). The NRC staff issues revisions to SRP sections to facilitate timely implementation of the current staff guidance and to facilitate reviews to amendments to licenses for operating reactors or for activities associated with review of applications for early site permits and combined licenses for the Office of New Reactors. The NRC staff will also incorporate Revision 4 of SRP Section 8.1 into the next revisions of the Regulatory Guide 1.206, ''Combined License Applications for Nuclear Power Plants,'' and related guidance documents.

Disposition: On May 31, 2011 (76 FR 31381), the NRC published for public comment the proposed Revision 4 on Section 8.1 on ''Electric Power—Introduction,'' (ADAMS Accession No. ML111180542) and the companion BTP 8–8 (ADAMS Accession No. ML111180521). There were two comments received on the proposed revision (ADAMS Accession Nos. ML11172A125 and ML11180A204). These comments were incorporated as appropriate and the details of disposition of the stakeholder's comments are available under (ADAMS Accession No. ML113640144). The Redline version that shows the difference between the proposed notice and current is also made public (ADAMS Accession No.ML113640140).

Congressional Review Act: In accordance with the Congressional Review Act, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

ADDRESSES: The NRC maintains ADAMS, which provides text and image files of the NRC's public documents. 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.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's Public Document Room reference staff at 1–800–397–4209, 301–415–4737, or by email at *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy E. Cubbage, Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone at 301–415–2875 or email at *amy.cubbage@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC posts its issued staff guidance on the NRC external web page (*http://www.nrc.gov/reading-rm/doc-collections/isg/*).

Dated at Rockville, Maryland, this15th day of February 2012.

For the Nuclear Regulatory Commission.

Amy E. Cubbage,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2012–4651 Filed 2–27–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–9091–MLA; ASLBP No. 12–915–01–MLA–BD01]

Atomic Safety and Licensing Board Panel; Strata Energy, Inc.; Memorandum and Order (Notice of Hearing)

February 22, 2012.

Before the Licensing Board: G. Paul Bollwerk, III, Chair, Dr. Richard F. Cole, Dr. Kenneth L. Mossman.

This proceeding concerns the January 4, 2011 application of Strata Energy, Inc., (SEI) for a combined source and Atomic Energy Act (AEA) section 11e(2) byproduct materials license pursuant to 10 CFR part 40.* If issued, that license would authorize SEI to construct and operate an in situ recovery (ISR) uranium project at the Ross site in Crook County, Wyoming. In response to an October 27, 2011 notice of hearing and opportunity to petition for leave to intervene, *see* [SEI], Ross [ISR] Uranium Project, Crook County, WY; Notice of Materials License Application, Opportunity to Request a Hearing and to Petition for Leave to Intervene, and Commission Order Imposing Procedures for Document Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation, 76 FR 41,308 (July 13, 2011), on October 27, 2011, two public interest groups, the Natural Resources Defense Council and the Powder River Basin Resource Council (collectively Joint Intervenors), filed a timely request for hearing and petition for leave to intervene contesting the SEI ISR application. On November 2, 2011, this three-member Atomic Safety and Licensing Board was established to preside over this proceeding. *See* [SEI]; Establishment of Atomic Safety and Licensing Board, 76 FR 69,295 (Nov. 8, 2011).

On December 20, 2011, the Board conducted a one-day initial prehearing conference, with counsel for SEI, the NRC staff, and the Joint Intervenors. During that prehearing conference, which was held in the Licensing Board Panel's Rockville, Maryland hearing room, the Board heard oral presentations concerning Joint Intervenors' standing to intervene and the admissibility of their five proffered environmental contentions. Thereafter, in a February 10, 2012 issuance, finding that each of the Joint Intervenors had established the requisite standing to intervene in this proceeding and that they had submitted four admissible contentions concerning the SEI application, the Board admitted Joint Intervenors as parties to this proceeding. *See* LBP–12–3, 75 NRC __ (Feb. 10, 2012), *appeals pending.*

In light of the foregoing, please take notice that a hearing will be conducted in this proceeding. The hearing will be governed by the informal hearing procedures set forth in 10 CFR part 2, Subparts C and L, 10 CFR 2.300–2.390, 2.1200–2.1213.

During the course of this proceeding, the Board may conduct an oral argument, as provided in 10 CFR 2.331; may hold additional prehearing conferences pursuant to 10 CFR 2.329; and may conduct evidentiary hearings in accordance with 10 CFR 2.327–2.328, 2.1206–2.1208. The public is invited to attend any oral argument, prehearing conference, or evidentiary hearing. Notices of those sessions will be published in the **Federal Register** and/or made available to the public at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and through the NRC Web site, *www.nrc.gov.*

Additionally, as provided in 10 CFR 2.315(a), any person not a party to the

* As outlined by the Commission in its decision in *Sequoyah Fuels Corp.* (Gore, Oklahoma Site), CLI–03–15, 58 NRC 349 (2003), section 11e(2) byproduct material is that material, as defined by AEA section 11e(2), 42 U.S.C. 2014e(2), that is ''the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.'' This byproduct material category was created in 1978 by the Uranium Mill Tailings and Reclamation Act to afford the NRC regulatory jurisdiction over mill tailings at active and inactive uranium milling sites. *See Sequoyah Fuels,* CLI–03–15, 58 NRC at 353–54.

proceeding may submit a written limited appearance statement. Limited appearance statements, which are placed in the docket for this proceeding, provide members of the public with an opportunity to make the Board and/or the participants aware of their concerns about matters at issue in the proceeding. A written limited appearance statement can be submitted at any time and should be sent to the Office of the Secretary using one of the methods prescribed below:

Mail to: Office of the Secretary, Rulemakings and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–1101 (verification (301) 415–1966).

Email to: hearing.docket@nrc.gov.

In addition, a copy of the limited appearance statement should be sent to the Licensing Board Chairman using the same method at the address below:

Mail to: Administrative Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, Mail Stop T–3F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Fax to: (301) 415–5599 (verification (301) 415–7550).

Email to: paul.bollwerk@nrc.gov.

Further, at a later date, the Board may conduct oral limited appearance sessions regarding this ISR proceeding at a location, or locations, in the vicinity of the Ross site. Notice of any oral limited appearance sessions will be published in the **Federal Register** and/or made available to the public at the NRC PDR and on the NRC Web site, *www.nrc.gov.*

Documents relating to this proceeding are available for public inspection at the Commission's PDR or electronically from the publicly available records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS, including its adjudicatory proceeding-related Electronic Hearing Docket, is accessible from the NRC Web site at *www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). 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 by telephone at 1–800–397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

It is so ordered.

Dated: February 22, 2012.

For the Atomic Safety and Licensing Board.

G. Paul Bollwerk, III,

Chair.

[FR Doc. 2012–4621 Filed 2–27–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting

The ACRS Subcommittee on Reliability and PRA will hold a meeting on March 6, 2012, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, March 6, 2012—1 PM until 5 PM

The Subcommittee will discuss the Level 3 Probabilistic Risk Assessment (PRA) development project plan. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 17, 2011, (76 FR 64126–64127).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: February 22, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–4653 Filed 2–27–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Act Meeting Notice

DATES: Weeks of February 27, March 5, 12, 19, 26, April 2, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of February 27, 2012

Tuesday, February 28, 2012

9:30 a.m.—Briefing on the Threat Environment Assessment (Closed—Ex. 1).

Week of March 5, 2012—Tentative

There are no meetings scheduled for the week of March 5, 2012.

Week of March 12, 2012—Tentative

There are no meetings scheduled for the week of March 12, 2012.

Week of March 19, 2012—Tentative

There are no meetings scheduled for the week of March 19, 2012.

Week of March 26, 2012—Tentative

Tuesday, March 27, 2012

9 a.m.—Briefing on License Renewal for Research and Test Reactors (Public Meeting), (Contact: Jessie Quichocho, 301–415–0209).

This meeting will be Webcast live at the Web address—*www.nrc.gov.*

Week of April 2, 2012—Tentative

There are no meetings scheduled for the week of April 2, 2012.

* * * * *

*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 email 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 email to *darlene.wright@nrc.gov.*

Dated: February 23, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–4814 Filed 2–24–12; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0048]

Proposed Generic Communication; Regulatory Issue Summary 2012–XX: Developing Inservice Testing and Inservice Inspection Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary: request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is seeking public comment on a draft regulatory issue summary that would describe an acceptable approach for holders of combined licenses under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' to satisfy the requirements in 10 CFR 50.55a, ''Codes and standards,'' regarding implementation of inservice inspection and inservice testing programs during the initial 120-month program interval following nuclear power plant startup.

DATES: Submit comments by April 13, 2012. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and is publicly-available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0048. You may submit comments by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0048. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Andrea Russell, Project Manager, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, Mail Stop: OWFN–12–D20, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8553, email: *Andrea.Russell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0048 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly-available, by the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0048.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email *to pdr.resource@nrc.gov.* The Draft Regulatory Issue Summary ''Developing Inservice Testing and Inservice Inspection Programs Under 10 CFR part 52,'' is available electronically under ADAMS Accession Number ML111360204.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0048 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Discussion

Addressees

All current and potential applicants for and holders of a combined license (COL) or standard design certification for a nuclear power plant under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, ''Licenses, Certifications, and Approvals for Nuclear Power Plants.''

Intent

The U.S. Nuclear Regulatory Commission (NRC) is issuing this regulatory issue summary (RIS) to describe an acceptable approach for COL holders (licensees) to satisfy the requirements in 10 CFR 50.55a, ''Codes and standards,'' regarding implementation of inservice inspection (ISI) and inservice testing (IST) programs during the initial 120-month program interval following plant startup. In addition, this RIS discusses acceptable approaches for developing preservice inspection programs and Risk-Informed ISI and IST programs. This RIS does not transmit any new requirements and does not require any specific action or written response.

Background Information

The regulations in 10 CFR 50.55a(f)(4)(i) and (g)(4)(i) require, in part, that inservice tests to verify the operational readiness of safety-related pumps and valves and inservice examinations of components and system pressure tests conducted during the initial 120-month testing and inspection interval must comply with the requirements in the latest edition and addenda of the American Society of Mechanical Engineers (ASME) Boiler & Pressure Vessel Code (B&PV Code) and ASME Code for Operation and Maintenance of Nuclear Power Plants (OM Code) incorporated by reference in 10 CFR 50.55a, on the date that occurs 12 months before the date scheduled for initial loading of fuel under a COL issued under 10 CFR part 52 (or the optional ASME Code cases listed in NRC Regulatory Guide (RG) 1.147, ''Inservice Inspection Code Case Acceptability, ASME Section XI, Division 1,'' and RG 1.192, ''Operation and Maintenance Code Case Acceptability, ASME OM Code,'' that are incorporated by reference in 10 CFR 50.55a).

In addition, the NRC regulations in 10 CFR 52.47(a)(3)(i) require, in part, that a design certification application must contain the principal design criteria for the facility. Appendix A to 10 CFR part 50, general design criteria (GDC), establishes minimum requirements for the principal design criteria. GDCs 32, 36, 37, 39, 40, 42, 43, 45, and 46 require that safety-related components and systems shall be designed to permit appropriate periodic inspection of important components to assure their integrity and capability of the system and periodic testing to assure (1) the structural and leak-tight integrity of its components; (2) the operability and performance of the active components of the system; and (3) the operability of the system as a whole. The periodic inspections and testing programs are required to meet the ASME B&PV Code and OM Code, respectively, in accordance with 10 CFR 50.55a.

Lastly, the NRC regulations in 10 CFR 52.79(a)(11) require that the COL applicant describe the programs (such as ISI and IST programs) and their implementation, necessary to ensure that the systems and components meet the requirements in the ASME OM Code and ASME B&PV Code, Section XI. These operational programs are required to be fully described when the COL application is submitted to the NRC for review.

The requirements in the above three NRC regulations appear to provide overlapping and conflicting requirements on establishing the applicable editions and addenda of the ASME B&PV and OM Codes to be used for the initial 120-month ISI and IST program intervals and have caused confusion during the NRC staff's review of design certification and COL applications. This RIS describes how the NRC staff, design certification applicants and COL applicants have addressed these requirements in the reviews of design certification and COL applications under 10 CFR part 52.

Summary of Issue

The NRC regulations in 10 CFR part 52 allow a two-step process for licensing new nuclear power plants where a Standard Design Certification is granted with subsequent issuance of a COL referencing the certified design. Under this process, the regulations in 10 CFR 52.47 require the design certification application to contain a level of design information sufficient to enable the Commission to judge the applicant's proposed means of assuring that construction conforms to the design and to reach a final conclusion on all safety questions associated with the design before the certification is granted. A Design Control Document (DCD) supporting a design certification application may provide general information on operational programs (such as ISI and IST programs) with allowance for flexibility by the COL applicant when developing plant-specific operational programs. The NRC staff reviews the general description of the operational programs in the DCD to ensure an adequate foundation for the plant-specific operational programs to be developed by COL applicants. With respect to IST programs, the NRC staff review of the DCD focuses on accessibility for the performance of IST activities. To reduce the amount of information needed in subsequent COL applications, some design certification applicants provide more detailed descriptions of ISI and IST operational programs in their DCDs than required by the NRC regulations for a design certification application.

The NRC regulations in 10 CFR 52.79(a)(11) require a COL applicant to provide, in its safety analysis report, a description of the programs and their implementation necessary to ensure that the systems and components meet the requirements of the ASME B&PV Code and ASME OM Code in accordance with 10 CFR 50.55a at a level sufficient to enable the NRC to reach a final conclusion on all safety matters that must be resolved before COL issuance. In SECY–05–0197, ''Review of Operational Programs in a Combined License Application and General Emergency Planning Inspections, Tests, Analyses, and Acceptance Criteria [ITAAC],'' (Agencywide Documents Access and Management System (ADAMS) Accession No. ML052770257) dated October 28, 2005, the NRC concluded that operational programs (such as ISI and IST programs) could be fully described in a COL application and recognized that some operational programs would not be available at the time of COL issuance. In accordance with this guidance, the description of the program would contain the information necessary for the NRC staff to make a reasonable assurance finding on the acceptability of the operational program in the review of a COL application. This information would specify an edition and addenda of the ASME B&PV Code and OM Code that would be the basis for the ISI and IST program described in the COL application. The NRC staff developed license conditions to provide certainty as to when the operational programs would be implemented in support of plant startup.

Following COL issuance, the NRC regulations in 10 CFR 50.55a(f)(4)(i) and (g)(4)(i) require, in part, that inservice tests verify the operational readiness of safety-related pumps and valves and inservice examinations of components and system pressure tests conducted during the initial 120-month testing and inspection interval must comply with the requirements in the latest edition and addenda of the ASME B&PV Code and OM Code incorporated by reference in 10 CFR 50.55a, on the date that occurs 12 months before the date scheduled for initial loading of fuel under a COL issued in accordance with 10 CFR part 52 (or the optional ASME Code cases listed in NRC RG 1.147 and

RG 1.192 that are incorporated by reference in 10 CFR 50.55a).

Several years may elapse between the time when a design certification is granted and when a COL application is submitted referencing that certified design. Further, the construction of a nuclear power plant will require several years from the time of COL issuance until the commencement of fuel loading. Therefore, design certification and COL applicants and holders need to be aware of the interrelated requirements in 10 CFR 50.55a and 10 CFR part 52 regarding the development and implementation of ISI and IST programs for nuclear power plants to be licensed under 10 CFR part 52.

Design Certification and COL Applicants

The NRC regulations in 10 CFR 52.79(a)(11) require that the COL applicant describe the IST and ISI programs and their implementation, necessary to ensure that the systems and components meet the requirements in the ASME OM Code and ASME B&PV Code, Section XI. NRC RG 1.206, ''Combined License Applications for Nuclear Power Plants (LWR Edition),'' and SECY–05–0197 provide guidance for COL applicants in describing their IST and ISI programs in support of the COL applications. As part of its description of the IST and ISI programs, the COL applicant must identify the edition and addenda of the ASME OM Code and ASME B&PV Code, Section XI, to be used in developing its IST and ISI programs, respectively. In some cases, it may be the same edition and addenda used in the design certification. In other cases, it may be the latest edition and addenda of the ASME OM Code or ASME B&PV Code, Section XI, incorporated by reference in 10 CFR 50.55a at the time of the COL application. In describing IST and ISI programs, COL applicants should recognize that the NRC regulations in 10 CFR 50.55a require updating of ISI and IST programs prior to fuel loading. Design certification applicants should also be aware of this 10 CFR 50.55a requirement when describing IST and ISI programs in their DCDs for reference by COL applicants.

COL Licensees

After the COL is issued, the COL licensee will initiate development of the ISI and IST programs to allow implementation of those programs in preparation for plant operation. During development of the ISI and IST programs, the COL licensee should be aware of the NRC regulations under 10 CFR 50.55a(f)(4)(i) and 10 CFR 50.55a(g)(4)(i) that require the COL licensee to develop its initial 120-month interval IST and ISI programs using the latest edition and addenda of the ASME OM Code and ASME B&PV Code, Section XI, incorporated by reference in 10 CFR 50.55a(b) on the date that occurs 12 months before the date scheduled for initial loading of fuel. Therefore, the COL licensee should anticipate that the ASME B&PV Code and OM Code might be revised to incorporate industry operating experience and technological advances prior to fuel loading for its nuclear power plant.

NRC Staff Position

The NRC staff recognizes that a COL licensee might encounter significant logistical and scheduling issues when converting its IST and ISI programs from the edition and addenda of the ASME OM Code and ASME B&PV Code specified in the COL application to the edition and addenda of these codes incorporated by reference in 10 CFR 50.55a on the date that occurs 12 months before fuel loading.

The NRC regulations allow alternatives to the requirements of 10 CFR 50.55a to be used if the applicant demonstrates that (1) the proposed alternative would provide an acceptable level of quality and safety, or (2) compliance with the specified requirements of 10 CFR 50.55a would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety. Therefore, a COL licensee may request authorization by the NRC staff to use an edition and addenda of the ASME OM Code for developing its initial 120-month IST program that is earlier than that required under 10 CFR 50.55a(f)(4)(i) and, similarly, to use an edition and addenda of the ASME B&PV Code, Section XI, for developing its initial 120-month ISI program that is earlier than that required under 10 CFR 50.55a(g)(4)(i).

One acceptable approach would be for the COL licensee to submit to the NRC a request to authorize, as an alternative, the use of the *same* edition and addenda of the ASME OM Code or ASME B&PV Code, Section XI, that was specified in the design certification or COL application for the *initial* 120-month IST and ISI programs. In its request for authorization of an alternative, the COL licensee would need to demonstrate that it meets one of the conditions described in 10 CFR 50.55a. In addition, a COL licensee may request exemptions or departures for IST and ISI programs in accordance with Section VIII, ''Processes for Changes and Departures'' which is located in each of the Appendices A–D of 10 CFR part 52.

When evaluating a proposed alternative under 10 CFR 50.55a, the NRC staff will compare the IST and ISI provisions in the proposed code edition and addenda to the required edition and addenda of these codes incorporated by reference in 10 CFR 50.55a on the date that occurs 12 months before fuel loading. As part of its review, the NRC staff will evaluate the differences between the IST and ISI provisions in those respective code editions and addenda. The NRC staff will also consider whether the alternative enables the testing and inspections applicable to NUREG–0933 generic safety issues and operational lessons learned that are incorporated into the design under 10 CFR 52.47(a)(21)and (22). Therefore, the design certification and COL applicants should consider the edition and addenda of the ASME OM Code and ASME B&PV Code, Section XI, specified in the descriptions of the IST and ISI programs in their design certification and COL applications, and whether those code editions and addenda reflect lessons learned from operating experience at nuclear power plants (including IST and ISI activities) and industry and regulatory research programs that will be incorporated into later code addenda and editions.

Preservice Inspection Using ASME B&PV Code, Section III

The NRC staff has received inquiries from design certification and COL applicants about the edition and addenda of ASME B&PV Code, Section III that they should use for developing a preservice inspection (PSI) program. The NRC regulations in 10 CFR 50.55a(g)(3)(i) and (ii) require, in part, that Class 1 components and supports, and Class 2 and 3 components and supports for Class 1 components must meet the preservice examination requirements set forth in the editions and addenda of Section III or XI of the ASME B&PV Code (or ASME OM Code for snubber examination and testing) incorporated by reference in 10 CFR 50.55a that apply to the construction of the particular component. A design certification applicant may specify the edition and addenda of Section III of the ASME B&PV Code that has been incorporated by reference in 10 CFR 50.55a for the *design* of its Class 1, 2, and 3 components. A COL licensee may use this same edition and addenda of Section III to develop its PSI program. However, the staff prefers that COL applicants specify the latest edition and addenda of ASME B&PV Code, Section III that is incorporated by reference in

10 CFR 50.55a. This action effectively minimizes the differences in preservice examination requirements when developing the ISI program but is not mandatory.

For its initial 120-month interval, a COL licensee may submit to the NRC a request to authorize an alternative to use a different edition and addenda of ASME B&PV Code, Section III, than that established in the design certification application, or an earlier edition and addenda of ASME B&PV Code, Section XI, than that required by 10 CFR 50.55a(g)(3)(i), for developing its PSI program. According to 10 CFR 50.55a, the COL licensee would need to demonstrate that (1) this edition and addenda of ASME B&PV Code, Section III or XI, would provide an acceptable level of quality and safety, or (2) compliance with the specified requirement to use the latest edition and addenda would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

Risk-Informed IST and ISI Programs

On several occasions, the NRC staff has been asked to define its position on Risk-Informed IST and ISI program submittals during the COL application process. A COL applicant or licensee may submit Risk-Informed IST and ISI programs for NRC staff review and authorization as an alternative to the regulations as described in 10 CFR 50.55a. The COL applicant or licensee will need to satisfy the requirements for authorization of an alternative as specified in 10 CFR 50.55a.

The NRC staff recommends that a conventional IST or ISI program be in place or developed before preparing a Risk-Informed IST or ISI program to facilitate the evaluation of the acceptability of the alternative program. This recommendation is based solely on the fact that the existing design certification applications, the Standard Review Plan acceptance criteria, the applicable NUREG documents, and the COL applications conform to the premise that conventional IST/ISI programs have been developed prior to a Risk-Informed program. No regulation requires that a conventional IST/ISI program be developed prior to a Risk-Informed IST or ISI program submission as an alternative. However, the NRC staff considers this approach to provide the most expedient course for review and approval of a Risk Informed IST or ISI program.

Backfit Discussion

This RIS clarifies current regulatory requirements and provides voluntary options that a COL licensee may propose. The RIS imposes no new requirements and necessitates no action or written response. Therefore, it does not constitute a backfit under 10 CFR 50.109, ''Backfitting,'' and the staff did not perform a backfit analysis.

Congressional Review Act

[Discussion to be provided in the final RIS.]

Paperwork Reduction Act Statement

This RIS does not contain new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Office of Management and Budget (OMB) approved the existing requirements under OMB approval numbers 3150–0011 and 3150–0151.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the requesting document displays a currently valid OMB control number.

Contact

Please direct any questions about this matter to Andrea Russell, Project Manager, telephone 301–415–8553, or email *Andrea.Russell@nrc.gov.*

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 16th day of February 2012.

Kimyata Morgan-Butler,

Acting Chief, Generic Communications Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–4647 Filed 2–27–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 1, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 1, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

February 23, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–4808 Filed 2–24–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66442; File No. SR–FINRA–2012–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating To Raising the Limit for Simplified Arbitration

February 22, 2012.

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 February 9, 2012, 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, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA's Customer and Industry Codes

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of Arbitration Procedure to raise the limit for simplified arbitration from $25,000 to $50,000.

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 is proposing to amend FINRA Rules 12401 (Number of Arbitrators) and 12800 (Simplified Arbitration) of the Code of Arbitration Procedure for Customer Disputes (''Customer Code''), and FINRA Rules 13401 (Number of Arbitrators) and 13800 (Simplified Arbitration) of the Code of Arbitration Procedure for Industry Disputes (''Industry Code''), to raise the limit for simplified arbitration from $25,000 to $50,000.

Currently, FINRA offers streamlined arbitration procedures for claimants seeking damages of $25,000 or less. Under the simplified arbitration rules, one chair-qualified arbitrator decides a claim and issues an award based on the written submissions of the parties, unless, in a customer case, the customer requests a hearing, or, in an industry case, the claimant requests a hearing. FINRA also streamlines discovery for these cases.

The $25,000 threshold has been in place since 1998 [3] and, at that time, captured 21 percent of all cases filed with the forum. Currently, the $25,000 threshold captures ten percent of FINRA's caseload. Statistics for 2011 indicate that raising the threshold to $50,000 would increase the percentage of claims administered under simplified arbitration to 17 percent of the claims filed with the forum. FINRA staff believes that raising the threshold for simplified arbitration to $50,000 would benefit forum users in a number of ways.

First, forum fees for simplified arbitration claims would be reduced. Under FINRA Rules 12800 and 13800, no hearing is held unless the customer or claimant requests one.[4] Under the current fee schedule, FINRA charges $450 per hearing session for claims between $25,000 and $50,000. Under the proposed rule change, parties who choose to have their dispute resolved ''on the papers'' (*i.e.,* based on the pleadings and other materials submitted by the parties) would save the $450 hearing session fee.[5] In the event that a case would have required two hearing sessions (one full day), the fee savings would be $900.[6] Further, under Rules 12903 and 13903 (Process Fees Paid by Members), members are assessed a non-refundable hearing process fee of $1,000 for claims between $25,000.01 and $50,000 when a hearing date and location are set. Under the proposal, if the dispute is resolved on the papers, members would not have to pay this fee.

Second, parties would save the time and expense of preparing for, scheduling, and traveling to the hearing.

Third, customers who are not able to retain an attorney to handle their case because of the small amount in dispute, and who are not comfortable appearing at an evidentiary hearing without representation, would have the flexibility to choose whether to request a hearing.

Finally, raising the limit for cases decided on the papers would reduce the time to process the cases because the arbitrator and parties would not need to coordinate their calendars to schedule a hearing.

For the reasons stated above, FINRA is proposing to amend Rules 12401(a) and 13401(a) to provide that if the amount of a claim is $50,000 or less, exclusive of interest and expenses, the panel would consist of one arbitrator and the claim would be subject to the simplified arbitration rules. FINRA would amend Rules 12401(c) and 13401(c) to state that if the amount of a claim is more than $50,000, but not more than $100,000, exclusive of interest and expenses, the panel will consist of one arbitrator unless the parties agree in writing to three arbitrators. The provisions relating to claims of more than $100,000 would remain the same.

FINRA is proposing to amend Rules 12800(a) and 13800(a) to provide that the simplified arbitration rules apply to claims involving $50,000 or less, exclusive of interest and expenses. FINRA would amend Rules 12800(e) and 13800(e) to state that if any pleading increased the amount in dispute to more than $50,000, FINRA would no longer administer the claim under the simplified arbitration rules.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that raising the threshold for simplified arbitration would, as referenced above, improve efficiency and reduce fees for claims up to $50,000, enhancing the forum for its users.

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:

[3] In 1998, FINRA raised the amount in dispute for simplified arbitration from $10,000 to $25,000. *See* NASD, *Notice to Members* 98–90 (New Arbitrator List Selection Rules And Monetary Thresholds For Simplified And Single Arbitrator Cases Take Effect).

[4] Under the simplified procedures for customer cases, only the customer may request a hearing (regardless of whether the customer or the firm initiated the arbitration). Under the simplified procedures in the Industry Code, only the claimant may request a hearing.

[5] Under Rules 12100(n) and 13100(n), a hearing session means any meeting between the parties and arbitrators of four hours or less, including a prehearing conference.

[6] Since the arbitrator assesses the hearing session fees, either the claimant or the respondent could realize the savings.

[7] 15 U.S.C. 78o-3(b)(6).

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2012–012 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–2012–012. This file number should be included on the subject line if email 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 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 Number SR–FINRA–2012–012 and should be submitted on or before March 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4596 Filed 2–27–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66440; File No. SR–BX–2012–010]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Certain External and Inter-Cabinet Connectivity Fees

February 22, 2012.

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 February 14, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify certain external and inter-cabinet connectivity fees. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7034(b) to reduce fees for low latency connectivity to Toronto and Chicago venues; and to increase certain fees for other forms of connectivity.

Low Latency Connectivity

On December 20, 2011, the Commission approved the Exchange's offering of low latency point-to-point telecommunications connectivity from the Exchange's co-location facility to select financial trading and co-location venues in the metropolitan New York/New Jersey area, Toronto, and Chicago.[3] The enhanced point-to-point connectivity provides the Exchange's co-location customers the opportunity to obtain low latency network connectivity with greater ease and at a competitive price.[4]

The Exchange now proposes a pass-through reduction in the fees for connectivity to Toronto and Chicago venues as follows: (1) For 100MB connectivity to the Toronto area, a reduction of the installation fee from $5,150 to $4,850, and a reduction of the per-month connectivity fee from $4,350 to $4,100; (2) for 1G connectivity to the Toronto area, a reduction of the installation fee from $8,200 to $7,700, and a reduction of the per-month connectivity fee from $10,450 to $9,850; (3) for 10G connectivity to the Toronto area, a reduction of the installation fee from $15,150 to $14,200, and a reduction of the per-month connectivity fee from $32,400 to $28,400; (4) for 100MB connectivity to the Chicago area, a reduction of the installation fee from $4,850 to $3,500, and a reduction of the per-month connectivity fee from $8,350 to $7,350; (5) for 1G connectivity to the Chicago area, a reduction of the installation fee from $5,900 to $4,900, and a reduction of the per-month connectivity fee from $16,400 to $12,800; (6) for 10G connectivity to the Chicago area, a reduction of the installation fee from of [sic] $12,050 to $10,650, and a reduction of the per-month connectivity fee from $39,750 to $26,900.

The reductions in fees are the result of the Exchange obtaining a reduction in the fees charged to the Exchange by the Toronto and Chicago low latency

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66012 (December 20, 2011), 76 FR 80998 (December 27, 2011) (SR–BX–2011–073).

[4] *Id.* at 80998.

telecommunication carriers. The Exchange is passing along the entire savings of the reduction in fees to the subscribers of the Toronto and Chicago low latency connectivity service.

Increasing the 1Gb Connectivity Fees

The Exchange further proposes to raise the 1Gb connectivity fees to The NASDAQ Stock Market LLC (''NASDAQ'').[5] More specifically, the Exchange proposes to raise the per-month fiber connectivity fee to NASDAQ from $500 to $1,000. The Exchange also proposes to raise the one-time installation fee for the 1Gb copper connectivity to NASDAQ from $100 to $1,000, and the per-month connectivity fee from $250 to $1,000. Due to the Exchange's continued efforts to upgrade its networks, the cost to maintain the 1G network connections and infrastructure continues to grow. The increased fees serve to cover the increased costs associated with maintaining the 1Gb connections and the related infrastructure.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange believes the proposed fees are reasonable and equitable for the reasons below.

Low Latency Connectivity

In SR–BX–2011–073,[8] the Commission determined that the original fees established for low latency connectivity were reasonable, equitable, and not unfairly discriminatory because the connectivity options are uniformly available to all members that opt to pay for them, because they enable the Exchange to cover its costs, because they are comparable to fees charged by other trading venues for comparable services, and because they are designed to promote competition by offering members additional service options. These determinations apply with equal weight to the reduced fees, which enhance the reasonableness and competitiveness of the service by passing on reduced costs to members that opt to receive the connectivity options in question.

Increasing the 1Gb Connectivity Fee

The Exchange believes the proposal to increase the 1Gb connectivity to NASDAQ is reasonable because the costs are associated with the Exchange's continued efforts to upgrade its networks by maintaining the 1Gb network connections and infrastructure as the need for such connections continues to grow. The costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and providing the Exchange a profit to the extent the costs are covered. In this instance, the current fees charged for the 1Gb network connections does [sic] not cover the costs of maintaining the connections, resulting in a loss for the Exchange on this service. The Exchange is proposing to raise the fees for the 1Gb network connections to cover its costs, and to the extent the costs are covered, allow the Exchange to earn a profit.

More specifically, the Exchange proposes to raise the per-month 1Gb per-month [sic] fiber connectivity fee to NASDAQ from $500 to $1,000 to cover the increasing cost to continually improve this lower bandwidth network, which includes continuous improvements in reducing latency, upgrading equipment, and adding functionality to this network. The cost to maintain this lower bandwidth network also continues to rise as the network gets older, equipment must be replaced and resources must be dedicated to monitor and ensure any issues are dealt with quickly and do not cause any client outages or connectivity issues. Due to the continuous growth of the size of consolidated and proprietary market data feeds that can be provided over these 1G network connections, as per client request, additional NASDAQ network resources are required to monitor and interface with clients when data spikes and data gapping issues occur. The Exchange has not increased the fees for these services in over six years, while the costs have continued to rise.

The Exchange also proposes to raise the one-time installation fee for the 1Gb copper connectivity to NASDAQ from $100 to $1,000 to cover the increasing costs to install connections to this lower bandwidth network. The copper installation requires the same amount of resources, tools, and time to install, enable data and test connectivity as the fiber installation which is already priced at $1,000. While the costs have increased, the Exchange has not adjusted the price on this connection for more than six years.

Additionally, the Exchange proposes to raise the per-month 1Gb copper connectivity to NASDAQ from $250 to $1,000 to cover the increasing costs to improve and maintain this lower bandwidth network, which includes continuous improvements in reducing latency, upgrading equipment, and adding functionality to this network. The cost to maintain this lower bandwidth network also continues to rise as the network gets older, equipment must be replaced and resources must be dedicated to monitor and ensure any issues are dealt with quickly and do not cause any client outages or connectivity issues. Due to the continuous growth of the size of consolidated and proprietary market data feeds that can be provided over these 1G network connections, as per client request, additional NASDAQ network resources are required to monitor and interface with clients when data spikes and data gapping issues occur. The Exchange has not increased the fees for these services in over six years, while the costs have continued to rise. In addition, the copper connections provide the same services and latency as the fiber connections. The Exchange proposes to standardize the fees for these connections as it does with the inter-cabinet connectivity fees of this rule.

The Exchange further believes that the proposed fees are reasonable in that the Exchange's proposed fees are less than those charged by other trading venues for comparable services.[9]

The Exchange also believes the proposed increase in the fees for the 1Gb connectivity to NASDAQ, both fiber and copper, is equitably allocated and non-discriminatory in that all Exchange members have the option of selecting the 1Gb connections to NASDAQ and there is no differentiation among members with regard to the fees charged for such costs.

[5] All co-location services are provided by NASDAQ Technology Services LLC.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 66012 (December 20, 2011), 76 FR 80998 (December 27, 2011) (SR–BX–2011–073).

[9] *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010)(SR–NYSEArca–2010–100) at page 70049. The Exchange's proposed monthly fee of $1,000 for a 1Gb is less than NYSE's fee of $5,000 for the same bandwidth connection to the data center.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Moreover, the Exchange believes that its changes with respect to fees for the 1Gb connectivity will not burden competition because the applicable fees remain competitive with those charged by other venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–010 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–2012–010. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2012–010, and should be submitted on or before March 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4687 Filed 2–27–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66439; File No. SR–NASDAQ–2012–025]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Certain External and Inter-Cabinet Connectivity Fees

February 22, 2012.

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 February 14, 2012, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify certain external and inter-cabinet connectivity fees. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7034(b) to reduce fees for low latency connectivity to Toronto and Chicago venues; and to increase certain fees for other forms of connectivity.

Low Latency Connectivity

On December 20, 2011, the Commission approved the Exchange's offering of low latency point-to-point telecommunications connectivity from the Exchange's co-location facility to select financial trading and co-location venues in the metropolitan New York/New Jersey area, Toronto, and Chicago.[3] The enhanced point-to-point connectivity provides the Exchange's co-location customers the opportunity to obtain low latency network connectivity with greater ease and at a competitive price.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66013 (December 20, 2011), 76 FR 80992 (December 27, 2011) (SR–NASDAQ–2011–146).

[4] *Id.* at 80992.

The Exchange now proposes a pass-through reduction in the fees for connectivity to Toronto and Chicago venues as follows: (1) For 100MB connectivity to the Toronto area, a reduction of the installation fee from $5,150 to $4,850, and a reduction of the per-month connectivity fee from $4,350 to $4,100; (2) for 1G connectivity to the Toronto area, a reduction of the installation fee from $8,200 to $7,700, and a reduction of the per-month connectivity fee from $10,450 to $9,850; (3) for 10G connectivity to the Toronto area, a reduction of the installation fee from $15,150 to $14,200, and a reduction of the per-month connectivity fee from $32,400 to $28,400; (4) for 100MB connectivity to the Chicago area, a reduction of the installation fee from $4,850 to $3,500, and a reduction of the per-month connectivity fee from $8,350 to $7,350; (5) for 1G connectivity to the Chicago area, a reduction of the installation fee from $5,900 to $4,900, and a reduction of the per-month connectivity fee from $16,400 to $12,800; (6) for 10G connectivity to the Chicago area, a reduction of the installation fee from of [sic] $12,050 to $10,650, and a reduction of the per-month connectivity fee from $39,750 to $26,900.

The reductions in fees are the result of the Exchange obtaining a reduction in the fees charged to the Exchange by the Toronto and Chicago low latency telecommunication carriers. The Exchange is passing along the entire savings of the reduction in fees to the subscribers of the Toronto and Chicago low latency connectivity service.

Increasing the 1Gb Connectivity Fees to NASDAQ

The Exchange further proposes to raise the per-month 1Gb fiber connectivity fee to the NASDAQ data center from $500 to $1,000. The Exchange also proposes to raise the one-time installation fee for the 1Gb copper connectivity to the NASDAQ data center from $100 to $1,000, and the per-month connectivity fee from $250 to $1,000. Due to the Exchange's continued efforts to upgrade its networks, the cost to maintain the 1G network connections and infrastructure continues to grow. The increased fees serve to cover the increased costs associated with maintaining the 1Gb connections and the related infrastructure.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange believes the proposed fees are reasonable and equitable for the reasons below.

Low Latency Connectivity

In SR–NASDAQ–2011–146,[7] the Commission determined that the original fees established for low latency connectivity were reasonable, equitable, and not unfairly discriminatory because the connectivity options are uniformly available to all members that opt to pay for them, because they enable the Exchange to cover its costs, because they are comparable to fees charged by other trading venues for comparable services, and because they are designed to promote competition by offering members additional service options. These determinations apply with equal weight to the reduced fees, which enhance the reasonableness and competitiveness of the service by passing on the reduction in low latency connectivity fees to the Toronto and Chicago venues to the members that opt to receive the connectivity options in question.

Increasing the 1Gb Connectivity Fee

The Exchange believes the proposal to increase the 1Gb connectivity to NASDAQ is reasonable because the costs are associated with the Exchange's continued efforts to upgrade its networks by maintaining the 1Gb network connections and infrastructure as the need for such connections continues to grow. The costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and providing the Exchange a profit to the extent the costs are covered. In this instance, the current fees charged for the 1Gb network connections does [sic] not cover the costs of maintaining the connections, resulting in a loss for the Exchange on this service. The Exchange is proposing to raise the fees for the 1Gb network connections to cover its costs, and to the extent the costs are covered, allow the Exchange to earn a profit.

More specifically, the Exchange proposes to raise the per-month 1Gb fiber connectivity fee to the NASDAQ data center from $500 to $1,000 to cover the increasing cost to continually improve this lower bandwidth network, which includes continuous improvements in reducing latency, upgrading equipment, and adding functionality to this network. The cost to maintain this lower bandwidth network also continues to rise as the network gets older, equipment must be replaced and resources must be dedicated to monitor and ensure any issues are dealt with quickly and do not cause any client outages or connectivity issues. Due to the continuous growth of the size of consolidated and proprietary market data feeds that can be provided over these 1G network connections, as per client request, additional NASDAQ network resources are required to monitor and interface with clients when data spikes and data gapping issues occur. The Exchange has not increased the fees for these services in over six years, while the costs have continued to rise.

The Exchange also proposes to raise the one-time installation fee for the 1Gb copper connectivity to the NASDAQ data center from $100 to $1,000 to cover the increasing costs to install connections to this lower bandwidth network. The copper installation requires the same amount of resources, tools, and time to install, enable data and test connectivity as the fiber installation which is already priced at $1,000. While the costs have increased, the Exchange has not adjusted the price on this connection for more than six years.

Additionally, the Exchange proposes to raise the per-month 1Gb copper connectivity to the NASDAQ data center from $250 to $1,000 to cover the increasing costs to improve and maintain this lower bandwidth network, which includes continuous improvements in reducing latency, upgrading equipment, and adding functionality to this network. The cost to maintain this lower bandwidth network also continues to rise as the network gets older, equipment must be replaced and resources must be dedicated to monitor and ensure any issues are dealt with quickly and do not cause any client outages or connectivity issues. Due to the continuous growth of the size of consolidated and proprietary

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] Securities Exchange Act Release No. 66013 (December 20, 2011), 76 FR 80992 (December 27, 2011) (SR–NASDAQ–2011–146).

market data feeds that can be provided over these 1G network connections, as per client request, additional NASDAQ network resources are required to monitor and interface with clients when data spikes and data gapping issues occur. The Exchange has not increased the fees for these services in over six years, while the costs have continued to rise. In addition, the copper connections provide the same services and latency as the fiber connections. NASDAQ proposes to standardize the fees for these connections as it does with the inter-cabinet connectivity fees of this rule.

The Exchange further believes that the proposed fees are reasonable in that NASDAQ's proposed fees are less than those charged by other trading venues for comparable services.[8]

The Exchange also believes the proposed increase in the fees for the 1Gb connectivity to NASDAQ, both fiber and copper, is equitably allocated and non-discriminatory in that all NASDAQ members have the option of selecting the 1Gb connections to NASDAQ and there is no differentiation among members with regard to the fees charged for such costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Moreover, the Exchange believes that its changes with respect to fees for the 1Gb connectivity will not burden competition because the applicable fees remain competitive with those charged by other venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[9] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–025 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–2012–025. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2012–025, and should be submitted on or before March 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4686 Filed 2–27–12; 8:45 am]

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[8] *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010)(SR–NYSEArca–2010–100) at page 70049. The Exchange's proposed monthly fee of $1,000 for a 1Gb is less than NYSE's fee of $5,000 for the same bandwidth connection to the data center.

[9] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66441; File No. SR–FINRA–2012–011]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Mediator Selection

February 22, 2012.

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 February 9, 2012, 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, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 14107 of the Code of Mediation Procedure (''Mediation Code'') to provide the Director of Mediation (''Mediation Director'') with discretion to determine whether parties to a FINRA mediation may select a mediator who is not on FINRA's mediator roster.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 is proposing to amend the Mediation Code to provide the Mediation Director with discretion to determine whether parties to FINRA mediation may select a mediator who is not on FINRA's mediator roster.

Currently, the Mediation Code permits parties to mediation to select a mediator either from a list of FINRA mediators supplied by the Mediation Director, or from a list or other source of their own choosing. Although parties usually select a FINRA mediator, under the current provision, parties may select a mediator who is not on FINRA's roster. In 1995, when FINRA implemented its mediation program, FINRA determined to permit parties to select non-FINRA mediators to ensure that parties had access to a sufficient number of mediators.

After over 15 years of administering the mediation program, FINRA's mediator roster includes many seasoned securities mediators and selection of a non-FINRA mediator raises concerns for the forum. FINRA staff carefully screens every mediator applicant, and the National Arbitration and Mediation Committee [3] (through its Mediation Subcommittee), reviews and approves each application before FINRA places an applicant on the roster. FINRA staff conducts a background check of approved applicants before placing them on the mediator roster.[4] FINRA staff elicits evaluations of its mediators from parties and counsel and conducts periodic quality control reviews of FINRA mediators. Non-FINRA mediators are not subject to FINRA's screening process, background check, and periodic evaluation.

If a mediator expresses an interest in applying to be a FINRA mediator, and FINRA's program would benefit by adding the mediator, FINRA staff believes it would be prudent to permit a non-FINRA mediator to serve on a case.[5] However, if a mediator has no interest in applying for FINRA's roster or FINRA believes the mediator is not appropriate for its forum, then the Mediation Director should have the discretion to deny the parties' mediator selection. Therefore, FINRA is proposing to amend Rule 14107(a) to state that a mediator may be selected, with the Mediation Director's approval upon receipt of the parties' joint request, from a list or other source the parties choose. If the Mediation Director rejects the mediator selected, the parties would still be able to select a FINRA approved mediator or a different non-FINRA mediator subject to the same conditions as the rejected mediator, or to mediate their dispute elsewhere.

FINRA Rule 14107(c) provides that a mediator selected or assigned to mediate a matter must comply with FINRA rules relating to disclosures required of arbitrators unless, with respect to a mediator selected from a source other than a list provided by FINRA, the parties elect to waive such disclosure. FINRA is proposing to amend Rule 14107(c) to make clear that the paragraph applies to a non-FINRA mediator who is approved to serve on a FINRA mediation.

FINRA is also proposing two housekeeping amendments to Rule 14107. First, to improve user citation to Rule 14107(a), FINRA is proposing to change the bullets in Rule 14107(a) to numbers. Second, FINRA is proposing to amend Rule 14107(c) to update the citation to Rule 12408 of the Customer Code of Arbitration Procedure. Rule 12408 was re-numbered as part of another FINRA proposed rule change and is now identified as Rule 12405.[6]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that giving the Mediation Director discretion to determine whether parties may select a mediator who is not on FINRA's mediator roster would protect the quality and integrity of the process for users of FINRA's mediation program.

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:

[3] The National Arbitration and Mediation Committee (NAMC) makes recommendations to FINRA staff regarding recruitment, qualification, training, and evaluation of arbitrators and mediators. The NAMC also makes recommendations on rules, regulations, and procedures that govern the conduct of arbitration, mediation, and other dispute resolution matters before FINRA.

The NAMC members include investor representatives, securities industry professionals and FINRA arbitrators and mediators. A majority of the NAMC members and its chair are public (non-industry) representatives. This diverse composition ensures a neutral approach in the administration of Dispute Resolution's forum, promoting fairness to all parties.

[4] Upon approval to join the roster, FINRA mediators pay an annual $200 fee to remain active on the roster. Additionally, FINRA deducts $150 for each FINRA mediation from the mediator's compensation (which typically ranges from $250 to $500 per hour).

[5] If the SEC approves the proposed rule change, FINRA would require any non-FINRA mediator who serves on a case to pay the $200 annual fee charged to FINRA mediators who are active on the roster prior to serving on the case, as well as the $150 mediation case fee. Further, FINRA would require the non-FINRA mediator to complete the application process for inclusion on the mediator roster.

[6] *See* Securities Exchange Act Release No. 63799 (Jan. 31, 2011), 76 FR 6500 (Feb. 4, 2011) (Order Approving File No. SR–FINRA–2010–053).

[7] 15 U.S.C. 78o–3(b)(6).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2012–011 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–2012–011. This file number should be included on the subject line if email 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 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 Number SR–FINRA–2012–011 and should be submitted on or before March 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4595 Filed 2–27–12; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66438; File No. SR–Phlx–2012–16]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Certain External and Inter-Cabinet Connectivity Fees

February 22, 2012.

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 February 14, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify certain external and inter-cabinet connectivity fees. The text of the proposed rule change is available at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Phlx Fee Schedule, Section X(b), to reduce fees for low latency connectivity to Toronto and Chicago venues; and to increase certain fees for other forms of connectivity.

Low Latency Connectivity

On December 20, 2011, the Commission approved the Exchange's offering of low latency point-to-point telecommunications connectivity from the Exchange's co-location facility to select financial trading and co-location venues in the metropolitan New York/New Jersey area, Toronto, and Chicago.[3] The enhanced point-to-point connectivity provides the Exchange's co-location customers the opportunity to obtain low latency network connectivity with greater ease and at a competitive price.[4]

The Exchange now proposes a pass-through reduction in the fees for connectivity to Toronto and Chicago venues as follows: (1) For 100MB connectivity to the Toronto area, a reduction of the installation fee from $5,150 to $4,850, and a reduction of the per-month connectivity fee from $4,350 to $4,100; (2) for 1G connectivity to the Toronto area, a reduction of the installation fee from $8,200 to $7,700, and a reduction of the per-month connectivity fee from $10,450 to $9,850; (3) for 10G connectivity to the Toronto area, a reduction of the installation fee from $15,150 to $14,200, and a reduction of the per-month connectivity fee from $32,400 to $28,400; (4) for 100MB connectivity to the Chicago area, a reduction of the installation fee from $4,850 to $3,500, and a reduction of the per-month connectivity fee from $8,350 to $7,350; (5) for 1G connectivity to the Chicago area, a reduction of the installation fee from $5,900 to $4,900, and a reduction of the per-month connectivity fee from $16,400 to $12,800; (6) for 10G connectivity to the Chicago area, a reduction of the installation fee from of [sic] $12,050 to $10,650, and a reduction of the per-month connectivity fee from $39,750 to $26,900.

The reductions in fees are the result of the Exchange obtaining a reduction in the fees charged to the Exchange by the Toronto and Chicago low latency telecommunication carriers. The Exchange is passing along the entire savings of the reduction in fees to the subscribers of the Toronto and Chicago low latency connectivity service.

Increasing the 1Gb Connectivity Fees

The Exchange further proposes to raise the 1Gb connectivity fees to The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66011 (December 20, 2011), 76 FR 80999 (December 27, 2011)(SR–Phlx–2011–142).

[4] *Id.* at 80999.

NASDAQ Stock Market LLC (''NASDAQ'').[5] More specifically, the Exchange proposes to raise the per-month fiber connectivity fee to NASDAQ from $500 to $1,000. The Exchange also proposes to raise the one-time installation fee for the 1Gb copper connectivity to NASDAQ from $100 to $1,000, and the per-month connectivity fee from $250 to $1,000. Due to the Exchange's continued efforts to upgrade its networks, the cost to maintain the 1G network connections and infrastructure continues to grow. The increased fees serve to cover the increased costs associated with maintaining the 1Gb connections and the related infrastructure.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The Exchange believes the proposed fees are reasonable and equitable for the reasons below.

Low Latency Connectivity

In SR–Phlx–2011–142,[8] the Commission determined that the original fees established for low latency connectivity were reasonable, equitable, and not unfairly discriminatory because the connectivity options are uniformly available to all members that opt to pay for them, because they enable the Exchange to cover its costs, because they are comparable to fees charged by other trading venues for comparable services, and because they are designed to promote competition by offering members additional service options. These determinations apply with equal weight to the reduced fees, which enhance the reasonableness and competitiveness of the service by passing on the reduction in low latency connectivity fees to the Toronto and Chicago venues to the members that opt to receive the connectivity options in question.

Increasing the 1Gb Connectivity Fee

The Exchange believes the proposal to increase the 1Gb connectivity to NASDAQ is reasonable because the costs are associated with the Exchange's continued efforts to upgrade its networks by maintaining the 1Gb network connections and infrastructure as the need for such connections continues to grow. The costs associated with operating a co-location facility, like the costs of operating the electronic trading facility with which the co-location facility is associated, are primarily fixed costs, and in the case of co-location are primarily the costs of renting or owning data center space and retaining a staff of technical personnel. Accordingly, the Exchange establishes a range of co-location fees with the goal of covering these fixed costs, covering less significant marginal costs, such as the cost of electricity, and providing the Exchange a profit to the extent the costs are covered. In this instance, the current fees charged for the 1Gb network connections does [sic] not cover the costs of maintaining the connections, resulting in a loss for the Exchange on this service. The Exchange is proposing to raise the fees for the 1Gb network connections to cover its costs, and to the extent the costs are covered, allow the Exchange to earn a profit.

More specifically, the Exchange proposes to raise the per-month 1Gb fiber connectivity fee to NASDAQ from $500 to $1,000 to cover the increasing cost to continually improve this lower bandwidth network, which includes continuous improvements in reducing latency, upgrading equipment, and adding functionality to this network. The cost to maintain this lower bandwidth network also continues to rise as the network gets older, equipment must be replaced and resources must be dedicated to monitor and ensure any issues are dealt with quickly and do not cause any client outages or connectivity issues. Due to the continuous growth of the size of consolidated and proprietary market data feeds that can be provided over these 1G network connections, as per client request, additional NASDAQ network resources are required to monitor and interface with clients when data spikes and data gapping issues occur. The Exchange has not increased the fees for these services in over six years, while the costs have continued to rise.

The Exchange also proposes to raise the one-time installation fee [sic] the 1Gb copper connectivity to NASDAQ from $100 to $1,000 to cover the increasing costs to install connections to this lower bandwidth network. The copper installation requires the same amount of resources, tools, and time to install, enable data and test connectivity as the fiber installation which is already priced at $1,000. While the costs have increased, the Exchange has not adjusted the price on this connection for more than six years.

Additionally, the Exchange proposes to raise the per-month 1Gb copper connectivity to NASDAQ from $250 to $1,000 to cover the increasing costs to improve and maintain this lower bandwidth network, which includes continuous improvements in reducing latency, upgrading equipment, and adding functionality to this network. The cost to maintain this lower bandwidth network also continues to rise as the network gets older, equipment must be replaced and resources must be dedicated to monitor and ensure any issues are dealt with quickly and do not cause any client outages or connectivity issues. Due to the continuous growth of the size of consolidated and proprietary market data feeds that can be provided over these 1G network connections, as per client request, additional NASDAQ network resources are required to monitor and interface with clients when data spikes and data gapping issues occur. The Exchange has not increased the fees for these services in over six years, while the costs have continued to rise. In addition, the copper connections provide the same services and latency as the fiber connections. The Exchange proposes to standardize the fees for these connections as it does with the inter-cabinet connectivity fees of this section of the Fee Schedule.

The Exchange further believes that the proposed fees are reasonable in that the Exchange's proposed fees are less than those charged by other trading venues for comparable services.[9]

The Exchange also believes the proposed increase in the fees for the 1Gb connectivity to NASDAQ, both fiber and copper, is equitably allocated and non-discriminatory in that all Exchange members have the option of selecting the 1Gb connections to NASDAQ and there is no differentiation among members with regard to the fees charged for such costs.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[5] All co-location services are provided by NASDAQ Technology Services LLC.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] *See* Securities Exchange Act Release No. 66011 (December 20, 2011), 76 FR 80999 (December 27, 2011) (SR–Phlx–2011–142).

[9] *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010)(SR–NYSEArca–2010–100) at page 70049. The Exchange's proposed monthly fee of $1,000 for a 1Gb is less than NYSE's fee of $5,000 for the same bandwidth connection to the data center.

Moreover, the Exchange believes that its changes with respect to fees for the 1Gb connectivity will not burden competition because the applicable fees remain competitive with those charged by other venues.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–16 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–2012–16. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2012–16, and should be submitted on or before March 20, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–4685 Filed 2–27–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: American United Gold Corporation, AMS Homecare Inc., Aucxis Corp., and CYOP Systems International Inc.; Order of Suspension of Trading

February 24, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American United Gold Corporation because it has not filed any periodic reports since the period ended June 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of AMS Homecare Inc. because it has not filed any periodic reports since the period ended February 28, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Aucxis Corp. because it has not filed any periodic reports since the period ended September 30, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of CYOP Systems International Inc. because it has not filed any periodic reports since the period ended December 31, 2006.

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 companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EST on February 24, 2012, through 11:59 p.m. EST on March 8, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–4807 Filed 2–24–12; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 7808]

Culturally Significant Objects Imported for Exhibition Determinations: ''Constable: Oil Sketches From the V & A''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Constable: Oil Sketches from the V & A'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Princeton University Art Museum, Princeton, NJ, from, on or about March 17, 2012, until on or about June 10, 2012; the Frist Center for the Visual Arts, Nashville, TN, from on or about June 22, 2012, until on or about September 30, 2012,

and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 22, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–4652 Filed 2–27–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7807]

Culturally Significant Objects Imported for Exhibition Determinations: ''Colorful Realm: Japanese Bird-and-Flower Paintings by Itō Jakuchū (1716–1800)''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Colorful Realm: Japanese Bird-and-Flower Paintings by Itō Jakuchū (1716–1800),'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about March 30, 2012, until on or about April 29, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: February 22, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–4655 Filed 2–27–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2004–16951]

Notice of Request for Approval of a New Information Collection: Exemptions for Air Taxi Operations

AGENCY: Office of the Secretary (OST), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, this notice announces the intention of the Department of Transportation (DOT), OST, to request that the Office of Management and Budget (OMB) approve the following collection: Exemptions for Air Taxi Operations, responsibility for which has been transferred from the Federal Aviation Administration (FAA) to OST. The collection involves a classification of air carriers known as air taxi operators and their filing of a one-page form that enables them to obtain economic authority from DOT. The information to be collected is necessary for DOT to determine whether an air taxi operation meets DOT's criteria for an economic authorization in accordance with DOT rules. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by April 30, 2012.

ADDRESSES: You may submit comments [identified by Docket No. DOT–OST–2004–16951] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Vanessa Balgobin, U.S. Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE., Room W86–463, Washington, DC 20590. Phone: (202) 366–9721. Email: *vanessa.balgobin@dot.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–XXXX.

Title: Exemptions for Air Taxi Operations.

Form Number: OST Form 4507.

Type of Review: New Information Collection.

Background: Part 298 of Title 14 of the Code of Federal Regulations, Exemptions for Air Taxi Registration, establishes a classification of air carriers known as air taxi operators that offer on-demand passenger service. The regulation exempts these small operators from certain provisions of the Federal statue to permit them to obtain economic authority by filing a one-page, front and back, OST Form 4507, Air Taxi Operator Registration, and Amendments under Part 298 of DOT's Regulations.

Currently, OST Form 4507 is electronically available to the public; however, the form cannot be filled out electronically. DOT is proposing to amend this form so that it can be filled out electronically and saved for future amendments. However, this new fillable form will still require original signatures and may not be filed electronically.

DOT expects to receive 200 new air taxi registrations and 2,200 amended air taxi registrations each year, resulting in 2,400 total respondents. Further, DOT expects filers of new registrations to take 1 hour to complete the form, while it should only take 30 minutes to prepare amendments to the form. Thus, the total annual burden is expected to be 1,300 hours.

Lastly, the information captured in OST Form 4507 is currently collected under OMB Control No. 2120–0633. The responsibility for this collection of information has been transferred from the FAA to OST; therefore, OST is requesting that OMB assign a new control number to this information collection.

Respondents: U.S. air taxi operators.

Number of Respondents: 2,400.

Frequency: On occasion.

Number of Responses: 2,400.

Total Annual Burden: 1,300 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for DOT's performance; (b) the accuracy of the estimated burden; (c) ways for DOT to

enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on February 21, 2012.

Lauralyn Remo,

Chief, Air Carrier Fitness Division, Office of Aviation Analysis, Office of the Secretary.

[FR Doc. 2012–4620 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification: Airmen Other Than Flight Crewmembers, Subpart C, Aircraft Dispatchers and App. A Aircraft Dispatcher Courses

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2011, vol. 76, no. 246, page 79753–79754. The respondents to this information collection are FAR Part 135 and Part 121 operators seeking airman certification and approval of aircraft dispatcher courses. The FAA uses the information to ensure compliance and adherence to the regulations.

DATES: Written comments should be submitted by March 29, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0648.

Title: Certification: Airmen Other Than Flight Crewmembers, Subpart C, Aircraft Dispatchers and App. A Aircraft Dispatcher Courses.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Each applicant for an aircraft dispatcher certificate or FAA approval of an aircraft dispatcher course much comply with 14 CFR Part 65, Subpart C and Appendix A. Any paperwork is provided to the local Flight Standards District Office of the FAA which oversees the certificates and FAA approvals.

Respondents: Approximately 36 applicants.

Frequency: Information is collected as needed.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 4,679 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on February 21, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–4693 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2011, vol. 76, no. 246, page 79752–79753. The FAA uses the information collected on form 7460–1 to determine the effect a proposed construction or alteration would have on air navigation and the National Airspace System (NAS), and the information collected on form 7460–2 to measure the progress of actual construction.

DATES: Written comments should be submitted by March 29, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0001.

Title: Notice of Proposed Construction or Alteration, Notice of Actual Construction or Alteration, Project Status Report.

Form Numbers: FAA Forms 7460–1 and 7460–2.

Type of Review: Renewal of an information collection.

Background: 49 U.S.C. 44718 states that the Secretary of Transportation shall require notice of structures that may affect navigable airspace, air commerce, or air capacity. These notice requirements are contained in 14 CFR part 77. The information is collected via FAA forms 7460–1 and 7460–2.

Respondents: Approximately 110,325 airports.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Approximately 15 minutes.

Estimated Total Annual Burden: 22,425 hours.

ADDRESSES: Interested persons are invited to submit written comments on

the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on February 21, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–4706 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Recording of Aircraft Conveyances and Security Documents

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 22, 2011, vol. 76, no. 246, page 79754. Approval is needed for security reasons such as mortgages submitted by the public for recording against aircraft, engines, propellers, and spare parts locations.

DATES: Written comments should be submitted by March 29, 2012.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.A.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0043.

Title: Recording of Aircraft Conveyances and Security Documents.

Form Numbers: FAA Form 8050–41.

Type of Review: Renewal of an information collection.

Background: Title 49, U.S.C. 44108 provides for establishing and maintaining a system for the recording of security conveyances affecting title to, or interest in U.S. civil aircraft, as well as certain specifically identified engines, propellers, or spare parts locations, and for recording of releases relating to those conveyances. The original security conveyance is examined by the Civil Aviation Registry to insure that it meets recording requirements as set forth in FAR Part 49. If it does, it is given a recording number and made a permanent part of the aircraft record.

Respondents: Approximately 45,469 lienholders.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 45,469 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on February 21, 2012.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2012–4701 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

56th Meeting: RTCA Special Committee 186, Automatic Dependent Surveillance—Broadcast (ADS–B)

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

ACTION: Notice of RTCA Special Committee 186, Automatic Dependent Surveillance—Broadcast (ADS–B).

SUMMARY: The FAA is issuing this notice to advise the public of the 56th meeting of RTCA Special Committee 186, Automatic Dependent Surveillance—Broadcast (ADS–B)

DATES: The meeting will be held March 20, 2012, from 8:30 a.m.–4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street, MacIntosh—NBAA Room and Colson Board Room, NW., Suite 910, Washington, DC 20036

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC, 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *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., App.), notice is hereby given for a meeting of Special Committee 186. The agenda will include the following:

March 20, 2012

Joint Session with EUROCAE Working Group 51

- Chairman's Introductory Remarks
- Review of Meeting Agenda
- Review/Approval of the Fifty-Fifth Meeting Summary, RTCA Paper No. 256–11/SC186–319
- FAA Surveillance and Broadcast Services (SBS) Program—Status
- Working Group Reports
  - Traffic Situation Awareness with Alerts (TSAA)—Status
  - TSAA Functionality with respect to Existing Traffic Safety Nets
  - EUORCAE WG51 TSAA Perpective
  - Flight-deck Interval Management (FIM)—Status.

- WG–1—Operations and Implementation—no report
- WG–2—TIS–B MASPS—no report
- WG–3—1090 MHz MOPS—no report
- *Corrigendum-1 for DO–260B/ED–102A approved by PMC,* Dec. 13, 2011
- WG–4—Application Technical Requirements—Status
- WG–5—UAT MOPS—no report
- *Corrigendum-1 for DO–282B approved by PMC, Dec. 13, 2011*
- WG–6—Combined ADS–B & ASA MASPS—(See agenda item #7.)
- Date, Place and Time of Next Meeting

SC186 Only Agenda Items

- Document Approval: DO-xxx—Minimum Aviation System Performance Standards (MASPS) for ADS–B Traffic Surveillance Systems and Application (ATSSA)
- New Business
- Other Business
- Review Action Items/Work Programs
- Adjourn Plenary

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 23, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–4710 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

88th Meeting: RTCA Special Committee 159, Global Positioning System (GPS)

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

ACTION: Notice of RTCA Special Committee 159, Global Positioning System (GPS).

SUMMARY: The FAA is issuing this notice to advise the public of the 88th meeting of RTCA Special Committee 159, Global Positioning System (GPS).

DATES: The meeting will be held March 13–16, 2012, from 9 a.m.–4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *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., App.), notice is hereby given for a meeting of Special Committee 159. The agenda will include the following:

March 13, 2012

- All Day Working Group 2 Meeting, GPS/WAAS, MacIntosh-NBAA Room and Colson Board Room

March 14, 2012

- All Day Working Group 2 Meeting, GPS/WAAS, MacIntosh-NBAA Room and Colson Board Room
- All Day Working Group 4, Precision Landing Guidance (GPS/LAAS), A4A Room and ARINC Room

March 15, 2012

- All Day Working Group 4, Precision Landing Guidance (GPS/LAAS), Hilton-A4A Room and ARINC Room.

March 16, 2012

- Chairman's Introductory Remarks
- Approval of Summary of the 87th Meeting held November 17th, 2012, RTCA Paper No. 023–12/SC159–199
- Review Working Group (WG) Progress and Identify Issues for Resolution
  - GPS/3nd Civil Frequency (WG–1)
  - GPS/WAAS (WG–2)
  - GPS/GLONASS (WG–2A)
  - GPS/Inertial (WG–2C)
  - GPS/Precision Landing Guidance (WG–4)
  - GPS/Airport Surface Surveillance (WG–5)
  - GPS/Interference (WG–6)
  - GPS/Antennas (WG–7)
- Review of EUROCAE Activities
- LightSquared Initiative- Report/Discussion
- Assignment/Review of Future Work
- Other Business
- Date and Place of Next Meeting
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 22, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–4698 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Kapka Butte Sno-Park Construction

AGENCY: Western Federal Lands Highway Division, Federal Highway Administration, DOT.

ACTION: Notice of the Federal Highway Administration's designation as Joint-Lead Agency for the Kapka Butte Sno-Park Construction project.

SUMMARY: The FHWA is issuing this notice to advise the public that the FHWA is officially designated as the Joint-Lead Agency pursuant to 23 U.S.C. 139(c)(1) for the Kapka Butte Sno-Park Construction project which is being studied in an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA).

DATES: Comments concerning this notice must be received by 30 days following the date this notice appears in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David K. Kennedy—Environmental Program Manager, Western Federal Lands Highway Division, 360–619–7967.

SUPPLEMENTARY INFORMATION: On January 2, 2009 the United States Forest Service (USFS) published a ''Notice of Intent'' in the **Federal Register** at (**Federal Register**/Vol. 74, No. 1/Friday, January 2, 2009/Notices) to develop an Environmental Impact Statement (EIS) for the Kapka Butte Sno-Park Construction project. FHWA is providing funding to the USFS, the Federal Lead Agency, for the proposed project. The project includes construction of a new sno-park to accommodate motorized and non-motorized trail use.

The proposed sno-park would be located on National Forest lands on the Deschutes National Forest between Kapka Butte and the junction of Forest Road 46 (Cascade Lakes Highway) and Forest Road 45 (Sunriver cutoff). The proposed sno-park area is located about 30 miles west of Bend, Oregon; it is

located in Section 35, Township 18S, Range 9E.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: February 22, 2012.

David K. Kennedy,

Environmental Program Manager, Federal Highway Administration, Vancouver, Washington.

[FR Doc. 2012–4623 Filed 2–27–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice (76 FR 67250) with a 60-day comment period soliciting comments on the following collection of information was published on October 31, 2011, and comments were due by December 30, 2011. As such, no comments were received. The total number of response hours reported in the prior 60-day **Federal Register** Notice was 4,075 hours. As reflected below, this number has decreased to 606 hours due primarily to a change in the number of Listening Sessions from five (5) to one (1) and a change in the number of One-on-One Interviews from 80 to 30.

DATES: Comments must be submitted on or before March 29, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Yvette M. Fields, Director, Office of Deepwater Ports and Offshore Activities, Maritime Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–0926; or Email: *Yvette.Fields@dot.gov.* Copies of this information collection can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration.

Title: Maritime Administration's Panama Canal Expansion Study Outreach Program.

OMB Control Number: 2133–NEW.

Type of Request: New Information Collection.

Affected Public: Federal Government; State, Local, or Tribal Governments; Shippers; Maritime Related Organizations and Associations; Local Municipal Planning Organizations; Rail and Land Transportation Companies.

Forms: Shipper Survey.

Abstract: This three-tiered information collection process will directly support the Maritime Administration's efforts to evaluate and assess the impacts of the Panama Canal Expansion on U.S. Ports and infrastructure when the expansion of the Panama Canal is completed in 2014. First, as part of its Panama Canal Outreach Program, the Maritime Administration will conduct one public Listening Session to provide a forum for stakeholders to present their views on the issues that the Maritime Administration should consider in the development of the Panama Canal Expansion Study, and to assess the various infrastructure requirements that will be associated with future trade involving the Panama Canal. Second, the Maritime Administration will conduct one-on-one interviews with key executives from various U.S. ports, port operators, and transportation service providers to identify their specific plans, investment strategies, and perspectives concerning market trends, which are a critical part of the subject Study. Finally, the Maritime Administration will conduct an on-line Panama Canal Shipper Survey in an effort to garner information regarding the current decision processes used by ''Beneficial Cargo Owners'' (i.e., international shippers) to determine potential changes to their logistics, networks and the contingency plans that have been developed (or will be developed) to address the potential impacts on their costs and routing strategies as a result of the expansion project.

Annual Estimated Burden Hours: 606.

Addresses: Send comments regarding these information collection activities to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC 20503, Attention: MARAD Desk Officer. Alternatively, comments may be sent via email to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, at the following address: *oira.submissions@omb.eop.gov.*

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 best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC, on February 22, 2012.

Julie Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2012–4586 Filed 2–27–12; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35592]

RailAmerica, Inc., Palm Beach Holding, Inc., RailAmerica Transportation Corp., RailTex, Inc., Fortress Investment Group, LLC, and RR Acquisition Holding, LLC—Control Exemption—Marquette Rail, LLC

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice instituting proceeding and request for comments.

SUMMARY: RailAmerica, Inc. (RailAmerica), Palm Beach Holding, Inc. (Palm Beach), RailAmerica Transportation Corp. (RTC), RailTex, Inc., Fortress Investment Group, LLC (Fortress), and RR Acquisition Holding, LLC (RR Acquisition) (collectively, Petitioners), seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 to acquire control of Marquette Rail, LLC (Marquette Rail), a Class III rail carrier. The Board seeks comments on Petitioners' proposed acquisition of control of Marquette Rail.

DATES: Comments are due by March 19, 2012. Replies are due by March 26, 2012.

ADDRESSES: Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should

attach a document and otherwise comply with the instructions found on the Board's Web site at *www.stb.dot.gov* at the E–FILING link. Any person submitting a filing in the traditional paper format should send an original and ten (10) copies referencing Docket No. FD 35592 to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. Additionally, send one copy of any comments to Petitioners' representative: Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

FOR FURTHER INFORMATION CONTACT: Marc Lerner at (202) 245–0390. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On February 3, 2012, Petitioners filed a petition for exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323–25 to acquire control of Marquette Rail. Under 49 U.S.C. 11323(a)(5), the acquisition of control of a rail carrier by a person that is not a rail carrier, but that controls any number of rail carriers, requires the approval of the Board. Because Petitioners are noncarriers that control a number of rail carriers, and because they seek to acquire control of Marquette Rail, the proposed transaction is within the jurisdiction of the Board. Petitioners request expedited handling of this petition.

According to the petition, RTC entered a Purchase and Sale Agreement dated January 30, 2012 (the Agreement), with Marquette Rail, Marquette Rail Corp., Farmrail System, Inc., Transportation Solutions, Inc., RC Rail Investments, LLC, Progressive Rail, Inc., JG–MQT–RR Holdings, LLC, and Richard W. Jany (collectively, Sellers). Under the Agreement, RTC will acquire control of Marquette Rail from the Sellers.

Fortress' noncarrier affiliate, RR Acquisition, currently owns about 60% of the publicly traded shares and controls the noncarrier RailAmerica, which directly controls the noncarrier Palm Beach, which directly controls the noncarrier RTC.

RailAmerica states that it controls the following Class III rail carriers: (1) Alabama & Gulf Coast Railway LLC; (2) Arizona & California Railroad Company; (3) Bauxite & Northern Railway Company; (4) California Northern Railroad Company; (5) Cascade and Columbia River Railroad Company; (6) Central Oregon & Pacific Railroad, Inc.; (7) The Central Railroad Company of Indiana; (8) Central Railroad Company of Indianapolis; (9) Connecticut Southern Railroad, Inc.; (10) Conecuh Valley Railway, LLC; (11) Dallas, Garland & Northeastern Railroad, Inc.; (12) Delphos Terminal Railroad Company, Inc.; (13) Eastern Alabama Railway, LLC; (14) Huron & Eastern Railway Company, Inc.; (15) Indiana & Ohio Railway Company; (16) Indiana Southern Railroad, LLC; (17) Kiamichi Railroad Company, LLC; (18) Kyle Railroad Company; (19) The Massena Terminal Railroad Company; (20) Mid-Michigan Railroad, Inc.; (21) Missouri & Northern Arkansas Railroad Company, Inc.; (22) New England Central Railroad, Inc.; (23) North Carolina & Virginia Railroad Company, LLC; (24) Otter Tail Valley Railroad Company, Inc.; (25) Point Comfort & Northern Railway Company; (26) Puget Sound & Pacific Railroad; (27) Rockdale, Sandow & Southern Railroad Company; (28) San Diego & Imperial Valley Railroad Company, Inc.; (29) San Joaquin Valley Railroad Company; (30) South Carolina Central Railroad Company, LLC; (31) Three Notch Railway, LLC; (32) Toledo, Peoria & Western Railway Corporation; (33) Ventura County Railroad Corp.; and (34) Wiregrass Central Railway, LLC.

Further, Fortress, on behalf of other equity funds managed by it and its affiliates, directly controls the noncarrier FECR Rail LLC, which directly controls FEC Rail Corporation, which directly controls Florida East Coast Railway, LLC, a Class II rail carrier.

Petitioners state that Mid-Michigan Railroad, Inc. (MMRR), which is controlled by RailAmerica, operates between milepost 137.8 at Lowell, Mich., and milepost 159.5 at Walker, Mich., and is crossed by CSX Transportation, Inc. (CSXT) at MMRR milepost 2.9. Marquette Rail's line [1] physically ends north of the MMRR line at Turner Avenue NW. Thus, to facilitate interchange with CSXT, Marquette Rail uses CSXT's track that crosses the MMRR line to reach CSXT's Wyoming Yard, the point of interchange for cars received from Marquette Rail. According to Petitioners, the only way for Marquette Rail to reach Wyoming Yard is by operating over the CSXT line. Petitioners further state that the diamond over the MMRR track is used by Marquette Rail solely for the purpose of interchanging traffic with CSXT at Wyoming Yard and that Marquette Rail has no other rights to use the crossing track.

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). Comments on the proposed acquisition of control may be filed as set forth above.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov*''.

Decided: February 23, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–4679 Filed 2–27–12; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board previously granted Marquette Rail an exemption to lease from CSXT approximately 129.03 miles of rail line in *Marquette Rail, LLC—Lease & Operation Exemption—CSX Transp., Inc.,* FD 34728 (STB served Oct. 26, 2005).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35496]

Denver & Rio Grande Railway Historical Foundation d/b/a Denver & Rio Grande Railroad, L.L.C.—Petition for Declaratory Order

AGENCY: Surface Transportation Board.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a petition filed by the Denver & Rio Grande Railway Historical Foundation, Inc. (DRGHF) on July 12, 2011, the Board is instituting a declaratory order proceeding under 49 U.S.C. 721 and 5 U.S.C. 554(e). DRGHF requests that the Board issue an order declaring that municipal zoning law is preempted with respect to DRGHF's activities on a parcel of land leased by DRGHF in Monte Vista, Colo.

DATES: DRGHF's opening evidence is due by March 26, 2012. Replies are due by April 26, 2012. DRGHF's rebuttal is due by May 11, 2012.

ADDRESSES: Any filing submitted in this proceeding must be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E–FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies (and also an electronic version), referring to Docket No. FD 35496, to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, 1 copy of each filing in this proceeding must be sent to each of the following: (1) Donald H. Shank, Denver & Rio Grande Railway Historical

Foundation, 20 North Broadway Street, Monte Vista, CO 81144–2401; (2) Eugene L. Farish, City Attorney, P.O. Box 430, Monte Vista, CO 81144 (representing the City of Monte Vista); and (3) John D. Heffner, Strasburger & Price, 1700 K Street NW., Suite 640, Washington, DC 20006 (representing the San Luis & Rio Grande Railroad).

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 245–0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1–800–877–8339.]

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

SUPPLEMENTARY INFORMATION: DRGHF's petition requests an order declaring that its activities on a parcel of land in Monte Vista, CO, fall under the Board's jurisdiction, preempting municipal zoning regulation of those activities. DRGHF states that it uses this parcel as a railcar rehabilitation and restoration facility. This petition raises questions regarding the Board's jurisdiction under 49 U.S.C. 10501(a) and preemption under 49 U.S.C. 10501(b).

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. The issues raised by DRGHF merit further consideration, and a declaratory order proceeding is thus instituted here. For further information, please see the Board's decision served on February 23, 2012 in Docket No. FD 35496.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: February 22, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–4682 Filed 2–27–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0674]

Proposed Information Collection (Clarification of a Notice of Disagreement) Activity Comment Request

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Board of Veterans' Appeals (BVA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to clarify actions taken by the agency of original jurisdiction regarding a claimant's disagreement with his or her rating decision.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Sue Hamlin, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *sue.hamlin@va.gov.* Please refer to ''OMB Control No. 2900–0674'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Sue Hamlin at (202) 632–5100 or fax (202) 632–5841.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, BVA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of BVA's functions, including whether the information will have practical utility; (2) the accuracy of BVA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Clarification of Notice of Disagreement.

OMB Control Number: 2900–0674.

Type of Review: Extension of a currently approved collection.

Abstract: A Notice of Disagreement (NOD) is a written communication from a claimant or his or her representative to express disagreement or dissatisfaction with the result of an adjudicative determination by the agency of original jurisdiction (AOJ). The data collected will be used by the AOJ to reexamine the issues in dispute and to determine if additional review or development is warranted.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 135,505.

Estimated Average Burden per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 125,505.

Dated: February 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–4587 Filed 2–27–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0701]

Proposed Information Collection (Bereaved Family Member Satisfaction Survey) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information to needed to assess the quality of care provided to veterans prior to his or her death.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 30, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System

(FDMS) at *www.Regulations.gov*; or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov*. Please refer to ''OMB Control No. 2900–0701'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Bereaved Family Member Satisfaction Survey, VA Form 10–21081(NR).

OMB Control Number: 2900–0701.

Type of Review: Extension of a currently approved collection.

Abstract: The data collected on VA Form 10–21081(NR) will be used to survey family members of deceased veterans on their satisfaction with the quality care provided to their loved one prior to his or her death at a VA facility.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,833 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 11,000.

Dated: February 22, 2012.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2012–4588 Filed 2–27–12; 8:45 am]

BILLING CODE 8320–01–P



FEDERAL REGISTER

Vol. 77 Tuesday,
No. 39 February 28, 2012

Part II

Department of Commerce

Foreign-Trade Zones Board

15 CFR Part 400
Foreign-Trade Zones in the United States; Final Rule

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

15 CFR Part 400

[Docket No. 090210156–1664–02; Order No. 1815]

RIN 0625–AA81

Foreign-Trade Zones in the United States

AGENCY: Foreign-Trade Zones Board, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Foreign-Trade Zones Board (the Board) hereby revises its regulations issued pursuant to the Foreign-Trade Zones (FTZ) Act of 1934, as amended (the Act), concerning the authorization and regulation of foreign-trade zones and zone activity in the United States. The rule is comprehensive and constitutes a complete revision, replacing the present version of 15 CFR part 400. The changes simplify many of the Board's procedures, including those for users to obtain authority related to manufacturing and value-added activity, and include new rules designed to address compliance with the Act's requirement for a grantee to provide uniform treatment for the users of a zone. The new rules improve flexibility for U.S.-based operations, including export-oriented activity; enhance clarity; and strengthen compliance and enforcement. The revisions also reorganize the regulations in the interest of ease-of-use and transparency.

DATES: *Effective Date:* April 30, 2012, except for §§ 400.21–400.23, 400.25 and 400.43(f) which contain information collection requirements that have not yet been submitted for OMB review. The Board will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Andrew McGilvray, Executive Secretary, Foreign Trade Zones Board, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 2111, Washington, DC 20230, (202) 482–2862 or Matthew Walden, Senior Attorney, Office of Chief Counsel for Import Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 4610, Washington, DC 20230, (202) 482–2963.

SUPPLEMENTARY INFORMATION:

Background

Foreign-Trade Zones (FTZs or zones) are restricted-access sites in or near U.S. Customs and Border Protection (CBP) ports of entry. The zones are licensed by the Board and operated under the supervision of CBP (see 19 CFR part 146). Specifically, zones are physical areas into which foreign and domestic merchandise may be moved for operations involving storage, exhibition, assembly, manufacture or other processing not otherwise prohibited by law. Zone areas ''activated'' by CBP are considered outside of U.S. customs territory for purposes of CBP entry procedures. Therefore, the usual formal CBP entry procedure and payment of duties is not required on the foreign merchandise in FTZs unless and until it enters U.S. customs territory for U.S. domestic consumption. In fact, U.S. duties can be avoided on foreign merchandise re-exported from a FTZ, including after incorporation into a downstream product through activity in the FTZ. Zones have as their public policy objective the creation and maintenance of employment through the encouragement of operations in the United States which, for customs reasons, might otherwise have been carried on abroad.

Domestic goods moved into a zone for export may be considered exported upon entering the zone for purposes of excise tax rebates and drawback. ''Subzones,'' sites established for specific uses, are authorized by the Board through grantees of general-purpose zones, including where certain requirements, such as ''adjacency'' (distance/driving time), for general-purpose zone sites cannot be met. Goods that are in a zone for a *bona fide* customs reason are exempt from State and local *ad valorem* taxes.

Zones and subzones are operated by corporations that have met certain regulatory criteria for submitting applications to the Board to operate zones. Under the FTZ Act, zones must be operated under public utility principles, and provide uniform treatment to all that apply to use the zone. The Board reviews and approves applications for authority to establish zone locations and to conduct certain activity within zones, and oversees zone grantees' compliance with the Board's regulations. The Board can limit or deny zone use on a case-by-case basis on public interest grounds. In response to applications and notifications, the Board can also provide the applicant with specific authority to choose whether to pay duties either on the original foreign material or on a downstream product incorporating the foreign material.

To receive approval to operate a zone, an applicant must demonstrate the need for zone services, a workable plan that includes suitable physical facilities for zone operations, and financing for the operation. Successful applicants are granted licenses to operate zones. License grantees' sponsorship of specific sites for proposed FTZ designation is based on the grantees' determinations regarding the sites' appropriateness and potential for FTZ use, and a grantee may subsequently request removal of FTZ designation from a site based on factors such as the grantee's determination that projected FTZ use has not occurred.

Through this action, the Board is updating and modifying the rules for FTZs. Continued interest in zones, on the part of both communities providing zone access as part of their economic development efforts and firms using zone procedures to help improve their international competitiveness, demonstrates zones' importance to international trade and to investment in the domestic economy. These regulations generally simplify and clarify requirements pertaining to FTZ use, while also helping to ensure compliance with specific statutory and regulatory requirements. The regulations are also intended to improve access and flexibility for U.S. manufacturing and value-added operations, and to enhance safeguards in order to avoid potential negative economic consequences from certain zone activity.

In developing the final rule, the Board considered all of the comments received in response to its **Federal Register** notice of December 30, 2010 (75 FR 82340) proposing revisions to 15 CFR part 400. The comments received in response to the notice and the Board's positions on the points raised in the comments are summarized below. The sections listed in the headings are those of the final rule, and references are made to the previous **Federal Register** notice when appropriate.

Discussion of Comments Received

Based on substantive changes made in response to comments submitted (as described below), a number of sections of the proposed regulations have been renumbered and certain section titles have been modified. Key changes to section numbers include: Adopted §§ 400.14(b), (d) and (e) parallel proposed §§ 400.14(c), (f) and (g), respectively; adopted §§ 400.22 and 400.23 replace proposed § 400.22(a); adopted § 400.24 was renumbered from

proposed § 400.23; adopted § 400.25 replaces proposed § 400.22(b); adopted § 400.26 replaces proposed §§ 400.24 and 400.25(b); adopted § 400.27 replaces proposed § 400.25(a); adopted § 400.41(b) replaces proposed § 400.44; adopted §§ 400.28, 400.29. 400.36, and 400.38 were renumbered from §§ 400.26, 400.27, 400.35 and 400.36, respectively; adopted §§ 400.44, 400.45, 400.46, 400.47, 400.48 and 400.49 were renumbered from proposed §§ 400.45, 400.46, 400.47, 400.48, 400.49 and 400.38, respectively; and adopted § 400.63 was renumbered from proposed § 400.64.

Section 400.1—Scope

Section 400.1(a)

Comment: One commenter proposed adding a sentence regarding the Board's policy objective of encouraging activity in the United States that might otherwise be conducted abroad.

Board position: The policy objective in question is addressed in the Preamble. Duplication in this section is not warranted.

Section 400.1(c)

Comment: Numerous commenters proposed inserting language regarding the status of FTZs and zone merchandise relative to certain trade agreements and program(s), and deleting a phrase regarding production activity.

Board position: It is not necessary to address or describe in the Board's regulations trade agreements and trade programs, which may change during the effective period of the regulations. The phrase regarding production activity has been retained because it clarifies that production activity is the mechanism through which a product emerging from a zone could differ from the material admitted to the zone. Retaining the phrase helps reinforce that production activity is subject to specific requirements in these regulations.

Section 400.2—Definitions

Comments: Numerous commenters proposed adding definitions for the following terms: Activation; administrator (to replace the term ''agent''); alternative site framework (ASF); Board Order; domestic status; free trade agreement; general-purpose zone; inverted tariff; modification; NAFTA; non-privileged foreign status; privileged foreign status; service area; Special Tariff Treatment Program; traditional site framework; grantee; and zone restricted status. One or more commenters stated that the proposed definition of agent is or may be too broad, may potentially extend beyond the statutory reach of the Board, and appears to be focused on an agent of the grantee although there are other agency relationships in the FTZ program.

Board position: We have added definitions for the terms alternative site framework, Board Order, inverted tariff, modification, and service area in response to comments submitted. We have not defined either ''agent'' or ''administrator.'' We have not adopted the term ''administrator'' as a substitute for the proposed term ''agent'' because the final provisions of section 400.43 instead simply refer to a party that undertakes a function ''on behalf of a grantee'' (thereby eliminating the need to use or define any more specific term(s) such as agent or administrator). Regarding addition of a definition for ''grantee,'' the proposed regulations already contained a definition of ''zone grantee.'' We have retained that term and definition to help clarify that the zone grantee is the overall sponsor of the zone and recipient of the authority from the FTZ Board, and that zone participants are not also ''grantees'' of some sort.

The terms, activation, domestic status, non-privileged foreign status, privileged foreign status, and zone restricted status are defined in CBP's FTZ regulations (19 CFR part 146), and CBP is the primary agency using these terms. Defining these terms in two agencies' separate regulations would significantly complicate any potential refinement or redefinition of them that might prove necessary in the future. In addition, the commenters' proposed definition of activation differs from the definition of that term in the FTZ regulations of CBP, the agency responsible for activation. For these reasons, we have not added definitions of the terms in question.

It is not clear we need to add definitions for the terms free trade agreement, NAFTA, and Special Tariff Treatment Program. These terms are not used elsewhere in the Board's regulations. Further, these terms may be defined by other agencies that make use of the terms, so that any definition adopted by the Board could create a risk of inconsistency with the other agencies' definitions. Therefore, we have not added definitions for these terms.

We have not added a definition for general-purpose zone because the specific use of this term is tied to comments submitted regarding the need to simplify the Board's structure and processes for designating zone sites. In a subsequent rule, we intend to evaluate adding a definition of this term in concert with simplifying the parallel site-designation frameworks that currently exist, as noted in response to comments on § 400.11. As a result of our intent to simplify the site-designation frameworks, the specific implications of a definition of traditional site framework might evolve. Therefore, at this point we have not added a definition of traditional site framework for this final rule.

Comments: Numerous commenters proposed revising the definitions for the following terms: Foreign-trade zone; grant of authority; person; port of entry; site; subzone; zone; zone operator; zone participant; zone project; zone site; and zone user. One commenter stated that the definition of zone operator should not be limited to an entity physically on-site at the zone or subzone.

Board position: We have modified the definitions of foreign-trade zone, grant of authority, and person in response to comments submitted. For the term ''port of entry,'' commenters proposed adding ''customs station'' to the definition, but did not explain the implications or impact of their proposed change. The term ''port of entry'' has long had a specific meaning, but the meaning of the proposed additional phrase is unclear and not explained by the commenters. In that context, we have left the definition of port of entry unchanged.

In response to comments submitted and taking into account changes adopted elsewhere in these regulations in response to comments (*e.g.,* § 400.24(c) allowing designation of general-purpose zone space as a subzone, where warranted), we have revised the definition of subzone. Our tying subzone designation to a specific use should provide some additional flexibility relative to commenters' suggested language tying a subzone to a specific company. Our definition also reflects our agreement with commenters that a subzone can have multiple sites. The definition of a subzone may also be addressed in a subsequent rule simplifying the parallel site-designation frameworks that currently exist, as noted in response to comments on § 400.11. In harmony with changes adopted elsewhere in these regulations (*e.g.,* § 400.36(f)), we have also adopted a definition of ''activation limit.'' Key implications of that term are examined in response to comments on § 400.36.

For the terms ''zone'' and ''zone user,'' we have retained the definitions we proposed because changes suggested in comments did not, in our view, improve clarity or usability. For the term, ''zone participant,'' we have simplified the definition to improve clarity, in response to comments submitted. However, we have retained ''property owners'' within the definition

because the provisions of these regulations in which the term ''zone participant'' is used have relevance to property owners as well as to operators and users. We have also replaced the definition of ''zone project'' with a definition of ''zone plan'' (a term previously referenced within the definition of zone project) based on the zone plan's function as the benchmark that the Executive Secretary must use in gauging whether a modification is major or minor under § 400.24(a)(2). Based on the comments received, we have combined the definitions of zone site and site under the former term, so that the two terms will be interchangeable. We have also adopted a suggested change to replace the phrase, ''organized as an entity,'' with the phrase, ''organized and functioning as an integrated unit.'' Based on comments submitted, we have also added ''contiguous'' to the definition but have modified it with ''generally'' to allow for unusual circumstances in which parcels are in close proximity to each other and appropriately constitute a single site, although they are not actually contiguous.

We have not added suggested language to the definition of zone operator because the language could have the unintended effect of reducing flexibility in local zone oversight and related arrangements at individual zones. However, given the elimination of proposed § 400.43(b)'s requirement for agreements to be made directly with a zone's grantee, we have modified the definition of zone operator to reflect that an operator's activity could be under the terms of an agreement with a third party that acts on behalf of a grantee. With regard to the comment that a zone operator should not be limited to an entity physically on-site at the zone or subzone, the comment accurately characterizes the intent of the definition of zone operator for purposes of the Board's regulations. Nothing in that definition should be construed as requiring a zone operator to be an entity physically on-site at the zone or subzone site being operated. Finally, we have modified the definition of private corporation (adding the words ''operating and maintaining'') to parallel the statutory definition of that term.

Comments: Two commenters supported the proposed definition of production, while numerous commenters suggested various revisions to the proposed definition.

Board position: We have revised the definition of production based on comments submitted, including those expressing concerns about defining companies' authorized production entirely on the basis of customs classifications. Our revised definition of production therefore incorporates language from the definition of manufacturing in the FTZ Board's prior regulations but also includes language from our proposed definition of production and from comments submitted. This revised definition is intended to reinforce the fact that any operation engaged in manufacturing activity authorized under prior FTZ Board regulations would not need to request new authority based solely on this revised definition. Further, the requirements in other sections of these regulations pertaining to application and notification documents (*e.g.,* §§ 400.23 and 400.24) maintain the Board's existing practice of requiring a description of materials, components, and finished products (accompanied by the 6-digit HTSUS category that constitutes the best match for the material, component, or finished product). Therefore, the changes reflected in this and other production-related provisions have no effect on a zone operation's existing scope of authority in terms of materials, components, and their associated finished products described in a notification or application authorized by the Board. The Board may address through a subsequent notice-and-comment rulemaking process a further simplified definition of production.

Comment: One commenter requested clear definitions of capacity and fraudulent intent, and also asked whether convenience of commerce and public interest are interchangeable and whether it is possible to define one of those terms and apply it uniformly.

Board position: We have not added definitions of ''capacity'' and ''fraudulent intent.'' Capacity has a commonly understood meaning, and only one commenter requested addition of a specific definition to this section of the regulations. Further, our revised approach to production authority no longer incorporates capacity as an ordinary element of a production operation's scope of authority. In this context, there is no need to include a definition of capacity. The sole use in the proposed regulations of the phrase ''fraudulent intent'' was in the section allowing for prior disclosure of violations. That section has been eliminated from these regulations for the reasons delineated in response to comments on § 400.62, thereby eliminating any need to define fraudulent intent. The terms ''convenience of commerce'' and ''public interest'' appear in distinct contexts in the FTZ Act, and are by no means interchangeable. Public interest is a commonly used concept (*i.e.,* it exists in many contexts outside the FTZ Act) that is associated with the well-being of the general public. Convenience of commerce is a distinct phrase in the FTZ Act that pertains to whether the needs of businesses engaged in international trade are adequately served by zones.

Section 400.3—Authority of the Board

Comment: Numerous commenters proposed adding a section stating that the Board has the authority to award the lowest available duty rate including trade agreement preferences and deleting language stating that Board decisions must be by unanimous vote and be recorded.

Board position: We have not made the proposed change pertaining to trade agreement preferences. The Board does not have the authority to ''award'' a duty rate. The Board may allow activity to occur in a zone that results in the entry of a finished product with a customs classification that is different than the customs classification of a component admitted to the zone. The applicability of duty rates specific to one or more particular trade agreements to entries from a zone is statutorily determined rather than a matter for decision by the Board. Finally, we have retained language stating that Board decisions must be by unanimous vote and be recorded. Recording Board votes is essential to proper record-keeping for the program. However, based on the comments submitted and in light of changes to other sections (such as the adoption of the process for notifications under § 400.37), we have deleted the provision stating that Board decisions in proceedings will take the form of Board Orders.

Comment: One commenter stated that the authority to fulfill the Assistant Secretary for Import Administration's responsibilities when that position is vacant should be clarified.

Board position: The authority to carry out actions for the Assistant Secretary for Import Administration is not a matter of Board policy, but rather of delegation carried out within the Department of Commerce. That delegation could be subject to change over time, and is not an appropriate matter for delineation within the FTZ Board's regulations.

Section 400.4—Authority and Responsibilities of the Executive Secretary

Comment: Numerous commenters suggested adding a neutrality requirement and general authority to

give temporary approvals pending Board action.

Board position: We have not adopted the specific suggested revisions which, in our view, would not improve the clarity or effectiveness of the regulations. However, the Board has given a relatively narrow authority to the Executive Secretary to allow production activity to occur on an interim basis in certain circumstances (see § 400.37(d)).

Comment: One commenter proposed defining a process and timeline for issuance of forms and other documents pertaining to the submission of applications.

Board position: As noted in response to a comment on § 400.21, in these regulations, the Board has allowed an application format to remain in use for a period of one year after it has been superseded by a revised format. That period provides zone users with significantly more time to adapt than the 30-day period proposed by the commenter. Further, as originally proposed, any revised application format would be published in the **Federal Register**. That requirement should provide the written notice sought by the commenter.

Section 400.5—Authority To Restrict or Prohibit Certain Zone Operations

Comments: Numerous commenters proposed changing the order of this section's two subsections, as well as changing one word within one subsection. One commenter suggested adding a word to clarify that the section would only apply to ''zone'' operations in a zone.

Board position: We have reordered the content of the subsections, added the word ''zone'' as proposed, and combined the subsections.

Section 400.7—CBP Officials as Board Representatives

Comment: Numerous commenters proposed adding a section explaining the CBP port director's role as the Board's representative, including timeframes for the port director's response to a request from the Board and for activation of a zone operation that the Board has expedited for public policy reasons. Those commenters also proposed revising the definition in these regulations of the term ''port director.''

Board position: We have adopted the commenters' proposal for a separate section specifically concerning CBP's role as the Board's representative. This section substantively parallels and replaces the content of the sentence in § 400.41 of the proposed regulations pertaining to the role of the CBP port director. We have revised the language proposed by the commenters for this section (and made adjustments to other sections which had references to the port director) to reflect the fact that the specific official within CBP with responsibility for a particular matter may vary over time for CBP operational reasons. Therefore, we have adopted language making a general reference to CBP, and we have eliminated from these regulations a definition of port director. We have not incorporated into the section commenters' proposed timeframes. Timeframes for responses to requests for FTZ authority are already addressed in the application-specific sections of the regulations. Details of the activation process are addressed by the customs regulations, and therefore are not appropriate for inclusion in the FTZ Board's regulations.

Subpart B

Comment: Numerous commenters proposed changing the word ''ability'' to ''authority'' in the title of Subpart B. nn

Board position: We have not adopted the proposed change. Subpart B addresses matters pertaining to whether parties are able to apply to establish a zone or subzone. Therefore, the word ''ability'' is appropriate for the title.

Section 400.11—Number and Location of Zones and Subzones

Comment: Numerous commenters proposed that adjacency-related measurements be conducted by the grantee or zone participant with the concurrence of the CBP port director.

Board position: Based on the comments received, we have modified the language of this section to allow the CBP official with oversight authority to concur on a measurement of adjacency.

Comments: One commenter suggested eliminating the distinct concept of subzone and allowing the adjacency standard specifically proposed for subzones to be applied to any zone site. Another commenter proposed eliminating the term ''subzone,'' and treating authority for production activity as a distinct matter from designation of a site. In response to a comment submitted, one commenter objected to the idea of eliminating the subzone concept, because of potential CBP operational advantages for subzones and the dependence of a number of grantees on the subzone mechanism so long as those grantees remain under the traditional site framework. One commenter stated that both subzones and ASF usage-driven sites should be treated equally in a manner that minimizes burden and facilitates administration of the facilities in question.

Board position: The Board received several comments pertaining to various sections of the regulations indicating that current distinctions between types of zone sites may not constitute the most efficient and effective mechanism for facilitating zone use. Given those considerations and the importance of adopting the least burdensome mechanism to accomplish the Board's regulatory objectives, the Board plans to simplify the parallel site-designation frameworks in a subsequent rule. Further, recognizing the overall functional equivalence between subzones and ASF usage-driven sites, and the importance of enabling zone users to maximize operational efficiencies, we have changed the minor modification provision (§ 400.24(c)) so that an existing or potential usage-driven site could be designated as a subzone if such designation would better meet the needs of the zone grantee and zone participant(s).

Section 400.12—Eligible Applicants

Comment: Numerous commenters proposed modifying the standard for applications to be ''not inconsistent'' with the applicant's charter or organizational papers rather than ''consistent.''

Board position: We have made the proposed change to state that applications must be ''not inconsistent'' with the charter or organizational papers. This language reflects the reality that many grantees' charters or organizational papers provide for broad powers; a requirement to demonstrate consistency would be excessively burdensome in that context.

Section 400.13—General Conditions, Prohibitions and Restrictions Applicable to Authorized Zones

Comments: Numerous commenters proposed the following revisions to this section: changing the order of certain subsections; removing the concurrence of the CBP port director from the subsection pertaining to erection of buildings; applying the five-year lapse provision on a site-specific basis; requiring expedited review of any application to reestablish designation at a lapsed zone; stating that private ownership is allowed of a zone ''site'' rather than zone ''land;'' adding evidentiary standards for Board actions to prohibit or restrict activity; and adding a paragraph allowing certain activities to take place at an operator's site under the operator's responsibility. One commenter stated that the five-year lapse provision does not take into

account the three-year ''sunset lapse'' for usage-driven sites designated under the ASF.

Board position: Based on comments received, we have reordered certain of the subsections and modified the reference to the CBP port director to clarify that concurrence only applies to activated zone space. We have not adopted the proposal to expedite reviews of applications to reestablish FTZ designation at lapsed zones because it is appropriate for the Board to evaluate the individual circumstances prior to determining whether to give priority to a particular application to reestablish a zone that has lapsed. However, we have added a specific reference to Board Order 849, which addresses conditions for ''reinstatement'' of FTZ authority. We have made minor language changes pertaining to the procedures and the standards for Board actions to prohibit or restrict activity, including to reflect the revised approach to production authority adopted in § 400.14(a). However, we have not accepted most of the proposed changes because the statutory authority is broad and the proposed language could inappropriately preclude the Board from addressing future situations in circumstances that no one can currently foresee.

We have not accepted the proposed substitution of the word ''site'' for the word ''land,'' because we want to emphasize that no one may own the FTZ designation associated with a particular parcel of land. The FTZ Act states that zone designation is a privilege that the Board authorizes. The Board's authorization of designation for a piece of land, therefore, belongs to no one. The regulatory provision at issue simply clarifies that FTZ designation may be authorized for privately owned land under certain conditions.

The Board plans in a subsequent rule to simplify the lapse provision, which commenters proposed be applied on a site-specific basis, and that one commenter claims fails to take into account the three-year ''sunset lapse'' for usage-driven sites under the ASF. This simplification is expected to encompass questions of lapse and sunset provisions. Until we issue a final rule on that issue, the lapse provision will continue to apply as it has since its institution in 1991 to a zone (or individual subzone) based on activation. The lapse provision that applies to an overall zone (or individual subzone) on a one-time basis is distinct from the ''sunset'' time limits that the Board has commonly imposed via Board Order as a site-specific condition on approval of new sites of a zone. A sunset limit automatically removes zone designation from a site at the end of the sunset period if the site has not been used for zone activity during the period.

Finally, for activity that does not require specific Board authorization, questions of whether the activity may be conducted at an operator's site under the operator's responsibility fall within the jurisdiction of CBP. Therefore, a provision pertaining to such activity would not be relevant for inclusion in the Board's regulations.

Comment: One commenter stated that under the Board's authority to review zone activity and prohibit or restrict activity found not to be in the public interest, an existing zone operation previously approved by the Board would be at risk of losing its authority.

Board position: Inherent in the Board's ability to review and restrict or prohibit ongoing FTZ activity is the possibility that an existing zone operation approved by the Board could lose its authority. Given that it is impossible to foresee every type of circumstance at the time that the Board evaluates an application, it could be necessary at some later point in time for the Board to restrict or prohibit the activity in question. However, such circumstances have been extremely rare in the history of the FTZ program. Further, based on comments received on other sections of the proposed regulations, we have incorporated in certain sections of the regulations additional language designed to appropriately balance the interests of zone users and of parties that might be concerned about negative impacts from certain zone uses.

Section 400.14—Production—Requirement for Prior Authorization; Restrictions

Comments: We received a broader range of comments on this section than on any other. Commenters were concerned with numerous aspects of the production-related provisions and, as discussed below, we have significantly modified this section based on their comments. Although the comments are numerous and diverse, we summarize them all here because they are all related to § 400.14.

Numerous commenters proposed a major overhaul of this section to require FTZ users apply for and the Board issue on an expedited basis approvals for production activity. Those commenters stated that applicants' and FTZ users' uncertainties should be minimized, and that advance approvals are necessary in most cases because use of zone procedures requires significant upfront investment. They proposed requiring that a Board Order approving production activity for export be issued within 30 days of the submission of an application, and that the Board Order be published within 15 days after issuance. Those commenters also proposed the following changes: authorizing the Executive Secretary to approve certain other production-related benefits on an interim basis pending Board action; eliminating the Board's proposed provision for production changes; and delegating authority to the Executive Secretary to approve production activity when (1) the applicant demonstrates the activity could be conducted under CBP bonded procedures, (2) the sole benefit is for scrap/waste, or (3) the activity is the same in terms of intermediate/finished products as activity recently approved by the Board and similar in circumstances. One commenter supported authorizing the use of any components needed to make the intermediate or finished products approved by the Board unless certain categories of components are excluded by the Board, with the Board listing excluded components on its Web site for compliance by all operators/users. One commenter supported the proposed regulations' approaches to advance approval requirements and authority to review and restrict activity.

Numerous commenters suggested shifting the proposed delegation of authority for certain approvals from the Assistant Secretary for Import Administration to the Executive Secretary, as well as adding a provision largely paralleling prior § 400.32(b)(1)(i), which pertained to activity that is the same as activity recently approved by the Board. Three commenters indicated that, for interim approval of production authority, it is not necessary to have the CBP port director concur since the port director's approval would be required for activation of the operation in question. One commenter specifically supported the interim authority provision as proposed. One commenter stated that companies will not make decisions to invest in production activity based on temporary or interim approvals from the Board, so the Board should shorten its docketing and review times for applications.

One commenter stated that the production-change provisions in proposed §§ 400.14 and 400.37 seem unnecessarily complicated and difficult to administer. That commenter proposed simply allowing FTZ users to notify the Board of any component not subject to an AD/CVD or Section 337 order, and that deadlines should be the same for notifications of production

changes and capacity increases. Numerous commenters proposed eliminating the proposed procedures for notifications and adopting a different approach to authority for production activity focused on intermediate and finished products (rather than specifying inputs to be used in production activity). Those commenters state that § 400.37 as proposed would create a significant new burden both initially and quarterly. One commenter indicated that the proposed notification provision would be unmanageable and proposed that the Board focus production authority on end products. For any required notifications of a new input, the commenter proposed a *de minimis* standard tied to FTZ savings associated with the new input, with changes below the *de minimis* threshold reported to the Board in the zone's annual report. One commenter stated that the requirement for prior approval of a 4-digit HTSUS list for use of the notification provision is not practical, and that the public comment period following any notifications would allow for adequate oversight. The commenter also expressed concern that the retrospective nature of the notifications would create uncertainty for FTZ manufacturers, given that there would be a real potential for denial of the FTZ benefits, and a possibility that duties would be applied retroactively. One commenter requested clarification of the meaning of ''production change,'' and proposed shifting reporting from a quarterly basis to an annual basis. Several commenters stated that the requirements for the proposed annual reporting of production activity should be clarified and take into account that companies do not necessarily track foreign-sourced components that are in domestic (duty-paid) status.

Three commenters stated that requiring what they characterized as a one-time re-filing of a manufacturer's scope of authority, and then quarterly reports thereafter, is excessively burdensome for users, especially because failing to re-file the scope would potentially subject users to fines. One commenter claimed that the proposed notification procedure for production changes would result in temporary/interim authorization, and that the procedure could only be used after the completion of a process that would subject all of the operation's current activity to new public review and comment. One commenter stated that quarterly filings would add to workload and the retrospective nature of notifications would create uncertainty for users. The same commenter stated that, in the context of quarterly retrospective filings, the Board should only deny FTZ benefits prospectively. Another commenter stated that what it characterized as quarterly reports should not be required. As an alternative to quarterly retrospective reporting, one commenter proposed a provision similar to the prospective notification provision in the original § 400.28(a)(3), but expanded to allow for new finished products. One commenter also proposed a notification procedure for all activity not requiring advance approval, with the Board issuing written confirmation of each notification. Another commenter stated that if a Board Order is not possible for export authority, the Board should increase certainty for users and for CBP by allowing a standardized submission from the company to the Board, and for a standard response from the Executive Secretary. One commenter stated that companies must be able to obtain written confirmation of authority from the Board for CBP and other purposes.

One commenter requested clarification whether advance approval is required for all production activity and, in the context of production activity already authorized by the Board, for new inputs used to produce an approved product, for new part numbers associated with a component under an approved HTSUS category, and for new inputs under HTSUS categories not already approved but used to produce an approved product. Several commenters stated that reliance on HTSUS numbers to track which components are authorized for a production operation is too burdensome or impractical. One commenter stated that even the use of 6-digit HTSUS categories is impractical. Another commenter proposed that the Board provide public access to a database of components and finished products for approved production operations.

Numerous commenters proposed eliminating the Board's proposed provision concerning capacity increases and eliminating capacity as an element of production authority. One commenter proposed that, if capacity cannot be eliminated as a constraint on ongoing production activity, the Board should adopt an annual reporting requirement for capacity increased beyond a specific threshold. Another commenter proposed that capacity be reported to the Board annually. One commenter proposed including a clear statement that production only for export would generally not require application to and authorization by the Board. One commenter proposed including a provision concerning the Board's temporary/interim manufacturing (T/IM) procedure.

One commenter proposed that foreign components subject to AD/CVD orders be exempt from the requirement for advance approval when they are used in production for export, maintaining that to do otherwise would run contrary to what the commenter claimed is longstanding Board policy that admission to zones of merchandise subject to AD/CVD orders is non-controversial. The commenter further stated that the Board's proposed approach for production activity involving a component subject to an AD/CVD order will significantly complicate the Board's proceedings, requiring more extensive factual records and decision documents, create additional burden for the Board, and substantially increase complexity and costs for zone users. One commenter stated that the Board should not require new approval due to changes in the HTSUS or due to imposition of an AD/CVD order on a component already approved by the Board. One commenter also questioned the practicality of requiring further Board approval when an AD/CVD order is imposed on a component already approved by the Board, and suggested that quarterly retrospective notifications may be adequate in such circumstances.

One commenter stated that because merchandise subject to an AD/CVD order must be admitted to a zone in privileged-foreign status, requiring an approval process for ongoing production involving such merchandise adds no benefit and is excessively burdensome. Another commenter stated that the Board's prior regulations adequately provided for approval and ongoing oversight of changes in AD/CVD status of components already authorized or changes in duty rates and capacity, and that the proposed regulations could result in duplicative public comment processes and evaluating activity already approved by the Board. One commenter stated that the prior regulations' requirement for election of privileged-foreign status on admission of merchandise subject to AD/CVD orders reflected an appropriate balance of avoiding circumvention of AD/CVD orders while enabling export-oriented activity to take place in FTZs. Another commenter stated that the privileged foreign-status requirement for merchandise subject to AD/CVD orders should be adequate to address potential concerns pertaining to ongoing activity, and proposed a blanket Board Order authorizing any production for export provided the components are placed in

privileged-foreign status prior to the production activity.

Several commenters supported the proposed requirement for advance approval from the Board for any new production activity involving a component subject to an AD/CVD order. Those commenters also supported the proposed requirement that a production operation with existing authority obtain additional approval from the Board to use any component subject to an AD/CVD order that was not in effect at the time of the Board's prior authorization action. One commenter proposed that the requirement for additional approval from the Board be extended to a component (1) not identified at all—or not identified as being subject to an AD/CVD order—in the production operation's original application; or (2) identified but not sourced from a country subject to an AD/CVD order at the time of the application, and that will now be sourced from a country subject to an AD/CVD order. Several commenters also proposed requiring reporting and related procedures to ensure notice to affected parties. Certain commenters further proposed modifying practices to ensure compliance with authority approved by the Board. One commenter proposed requiring applicants for production authority involving a component subject to an AD/CVD order to demonstrate that the authority would not adversely affect the AD/CVD relief in place.

One commenter stated that provisions requiring further approval from the Board if a component already used by a zone manufacturing operation becomes subject to a new or increased rate of duty, a new AD/CVD order, or a new order of the International Trade Commission pursuant to 19 U.S.C. 1337 (section 337), would be disruptive to current zone operations, and that there should be a transition rule. Another commenter indicated that notification should not be required as envisioned in § 400.14(a)(4) for new AD/CVD or Section 337 orders and that, if necessary, zones' annual reports could be used to report the information in question. One commenter stated that the absence of an advance approval process for production activity would mean the Board might be unaware of merchandise subject to certain Department of Agriculture requirements and be unable to alert the grantee or operator to those requirements.

In response to other comments submitted, one commenter supported only requiring advance approval for production activity involving inverted tariffs. That commenter also supported the provision for advance approval of a broad list of categories to enable future notifications, but opposed other commenters' proposals to modify the application process to focus purely on intermediate and finished products. One commenter stated that a proposal from other commenters requiring the Board to issue an Order approving export activity within 30 days of receiving an application should not apply to activity involving a component subject to an AD/CVD order. That commenter stated that the Board has recognized that such activity may raise public-interest concerns and that the proposed 30-day process would eliminate all of the procedural safeguards in the proposed regulations. The commenter opposed another commenter's proposal that no advance approval be required for production for export involving a component subject to an AD/CVD order, stating that the change would negate the Board's ability to evaluate whether such activity would undermine trade relief measures in effect. That commenter also disagreed with another commenter's claim that the Board's proposed approach for production activity involving a component subject to AD/CVD order will significantly complicate proceedings, create additional burden for the Board and increase complexity and costs for zone users.

In response to other comments submitted, multiple commenters supported the requirement for advance approval for any production activity involving a component subject to an AD/CVD order, with one of those commenters supporting such a requirement when a component previously authorized for a zone production operation becomes newly subject to an AD/CVD order. One commenter stated that concerns expressed by only a few commenters should not lead the Board to adopt unduly burdensome processes for applications and management of ongoing operations. The commenter stated that the proposed processes would be detrimental to many program users, discourage overall FTZ use, discourage domestic manufacturing for both the U.S. and export markets, and also create significant burden for the Board's staff. One commenter stated that there is no reason to impose additional conditions or restrictions on the use in production of material subject to AD/CVD orders beyond those already proposed by the Board. That commenter cited Executive Order 13563 as instructing agencies to achieve policy goals through the least burdensome means.

One commenter opposed the proposal from other commenters requiring advance approval for production involving a component subject to an AD/CVD order, and stated that the requirement for the election of privileged-foreign status at the time merchandise is admitted to a zone is adequate to ensure that AD/CVD duties are not circumvented. One commenter opposed any requirement for company-specific advance approval of production for export. That commenter also recommended the Board retain what the commenter claimed was the prior regulations' presumption that production for export is in the public interest.

Board position: After considering all comments submitted and the importance of adopting the least burdensome mechanisms to accomplish the Board's policy objectives, we have modified this section (with related changes in other sections, including §§ 400.22 and 400.37) to implement a revised approach to authorizing production activity. The foundation for the revised approach is a simple notification process in advance of any new production activity (including use of new materials/components at a previously approved production operation). This approach also incorporates a more extensive application process for circumstances where the Board reviews a notification and determines that further review is warranted.

Among other considerations, the revised procedures balance the need expressed by many commenters for generally shorter timeframes for action on requests for production authority and the perspective emphasized by other commenters that potentially affected parties must be able to provide comments to the Board regarding the impact of proposed production activity. Although the FTZ Act does not require companies to obtain approval prior to conducting production (manufacturing) activity in zones, the Act authorizes the Board to prohibit activity that ''in its judgment is detrimental to the public interest, health, or safety'' (19 U.S.C. 81o(c)). Since 1972, the Board has required either notification or application in advance of the conduct of manufacturing activity (this type of requirement was first implemented through conditions of individual Board Orders and then adopted in the Board's 1991 regulations). The revised approach continues to require zone users to obtain approval in advance from the Board before conducting manufacturing activity. Consistent with the many comments submitted regarding the need for simplified, expedited processes, our revised approach generally reduces both

the burden associated with a company's standard submission to the Board requesting authorization to conduct production activity and the standard timeframe for processing that request. This rule's simple notification process is akin to that suggested in certain comments, and incorporates a standard 120-day timeframe for the Board to process notifications received. That timeframe cuts by two-thirds the one-year standard timeframe in both the prior regulations and the proposed regulations to process applications for manufacturing (production) authority. This revision also significantly reduces the information burden associated with authorizing production activity. As noted above, these regulations also include a detailed application process for cases that are determined to warrant further review as a result of the initial notification. Further, unlike the application process suggested by many commenters for certain categories of production activity, all notifications for production authority would be subject to a public comment period before any potential Board action to authorize the activity. Allowing public comments on all proposed production activity is the cornerstone of procedures designed to ensure that production activity conducted in FTZs is in the public interest. Recognizing the time-sensitive nature of some requests for authority to conduct production activity, we have also adopted a provision enabling authorization on an interim basis until the Board is able to complete its processing of a notification. Unlike the Board's prior process for giving temporary/interim manufacturing (T/IM) authority, the new provision is not constrained by a requirement that activity meet a specific standard for similarity to previous applications; the adopted provision therefore should be more flexible and more useful than the T/IM procedure.

The procedures adopted in this section are designed to simplify and increase certainty of the procedures for approving production authority. The prospective nature of the notification process—in contrast to the retrospective process delineated in the proposed regulations—enables the Board to eliminate the proposed requirement for advance approval of a list of 4-digit HTSUS headings within which future notifications would be made. In addition, the basic notification process for all production activity should generally enable zone users to obtain a formal decision on authorization of the activity within 120 days of requesting it, thereby accelerating certainty in order to better meet the needs of zone users. We have not made provision for extensions of comment periods on notifications because the review procedures are designed to allow the Board to determine within the 120-day timeframe which notifications warrant further review. (Further review requires submission of a detailed application and then a period for public comment on the application, which is subject to requests for extensions.) Therefore, if concerns about notifications arise—including as a result of comment submissions explaining why additional time is needed for public comment or for affected parties to assess the impact of proposed activity—the Board would be able to conduct further review and trigger the more extensive requirements for such a review.

By requiring FTZ users to provide us with information through the notification process, we can eliminate the reporting requirement we proposed in this section (although production activity will remain subject to the general requirements of § 400.51). The requirement for prospective notifications and the associated publication of a **Federal Register** notice for each notification also effectively addresses the concern raised by one commenter that eliminating public notice could lead to compliance problems pertaining to certain Department of Agriculture requirements. Finally, it should be noted that the adopted procedures create no new requirements for activity approved under the prior regulations (*i.e.*, approved activity that was the subject of prior applications and notifications remains authorized, as limited by any restrictions associated with the specific proceedings in question).

We have also added a subsection (§ 400.14(c)) mandating that information regarding authorized production operations be made available on the Board's Web site. This provision will enhance the transparency of the FTZ program and enable parties to assess whether changed circumstances exist that would warrant review by the FTZ Board under § 400.49(a). Requiring advance approval from the FTZ Board for authority to continue activity whenever certain circumstances have changed (such as proposed §§ 400.14(a)(4)(i)–(iii)) is not the least burdensome means for the Board to accomplish its policy objectives of enhancing U.S. competitiveness through the availability of zone procedures, while ensuring that zone activity remains in the public interest. With regard to materials or components subject to AD/CVD orders or proceedings, these regulations provide no special application-related procedures. We have determined that the standard procedures applicable to any material/component for which authorization is requested will allow the Board to address concerns about negative impacts from the proposed activity. Therefore, we have adopted neither (1) the approaches proposed by certain commenters to eliminate any advance approval process for export-oriented activity involving materials/components subject to AD/CVD orders/proceedings, or to make a presumption in favor of authorizing such activity, nor (2) provisions proposed by certain commenters to create new carve-outs from the general framework for production authority, with additional procedural burdens imposed with respect to those carve-outs. Under the new rule, materials/components cannot be used in a zone production operation without specific prior authorization through the notification process (and subsequent application process, where warranted), including publication of a notice in the **Federal Register** and invitation for public comment. The adopted procedure substantively parallels the requirements of the Board's prior regulations, which did not permit any manufacturing activity without Board approval. The Board's prior regulations also contained a standard provision for a public comment period on applications requesting manufacturing authority, so that the Board could evaluate the comments of potentially affected parties in determining whether to approve a given application. Practice has shown those types of requirements to be adequate to enable the Board to determine whether negative impacts would result from proposed zone activity.

Section 400.14(b)—Scope of Authority

Comments: Numerous commenters proposed focusing the scope of authority for a production operation on intermediate and finished products rather than the components used in the operation, with any component used to make an authorized intermediate or finished product considered within the scope of approved authority. One commenter proposed clarifying that this provision's reference to inputs is limited to imported inputs. One commenter stated that the Board should not use HTSUS numbers to define a production operation's scope of authority because HTSUS numbers are subject to change beyond the company's control, with such changes potentially leading to non-compliance with approved scope and

requiring further FTZ Board processes to rectify. Two commenters expressed concerns about other commenters' proposals to focus applications for production authority on intermediate and finished products without specifying the components to be used in such production, stating that the change would defeat the purpose and undermine the effectiveness of the advance approval requirement.

Board position: We have not adopted commenters' proposal to define a zone user's authorized scope for production activity based on intermediate and finished products, with no delineation of the materials or components to be used in producing the intermediate or finished products. We agree with the commenters that stated that this change would defeat the purpose and undermine the effectiveness of the advance approval requirement. As a general matter, the potential impact of proposed production activity on U.S. producers of materials or components is tied to the identities of the specific foreign-status materials/components that would receive the benefits of zone use. Identifying only the intermediate or finished products would not allow affected parties or the Board to assess the impact of the proposed zone activity, because the component or input materials would be unknown.

Based on comments received, we have clarified that this section only applies to imported materials or components admitted in foreign status for a production operation in a zone. With regard to the use of HTSUS numbers to define scope of authority, these regulations focus scope of authority first on the written descriptions of the materials, components and finished products, with HTSUS numbers primarily serving to supplement the written descriptions. This approach continues the Board's existing practice and reflects our recognition of the practical difficulties that shifting to an HTSUS-driven approach would create for zone users.

Based on the comments submitted, we have eliminated the provision on notification of increases in production capacity (as well as inclusion of production capacity as a standard element of scope of authority). Since 1991, FTZ users have had to obtain the Board's prior authorization to manufacture beyond the level of capacity already approved by the Board for the operation in question. However, in the twenty years that the requirement has been in effect, actual increases in capacity have not proven to be controversial or to result in negative impacts. Consequently, there is no justification for requiring companies ordinarily to provide a capacity level to the Board for authorization, and then requiring additional authorization for subsequent activity at higher capacity levels. If zone activity ultimately raises public interest concerns, the Board retains the ability to conduct reviews pursuant to § 400.49.

Section 400.14(e)—Restrictions on Items Subject to Antidumping and Countervailing Duty Actions

Comments: Numerous commenters proposed adding a requirement that the Board approve production activity for exports of products incorporating components subject to antidumping duty or countervailing duty (AD/CVD) orders whenever it finds that there would be a positive impact on U.S. competitiveness, and that similar activities are authorized in other countries. Two commenters stated that the additional language proposed for this section by certain commenters would undercut the Board's policy of preventing the use of zones to circumvent AD/CVD orders and negate the standards the Board applies in determining whether proposed zone activity is in the public interest.

Board position: We have not adopted the suggested additional language for this section, which could result in applications involving components that are subject to AD/CVD orders benefiting from an evaluative standard more favorable than the standards applied to all other types of cases involving production activity. The proponents of that approach have not presented a substantive justification for giving preferential treatment to activity involving components subject to AD/CVD duties.

Section 400.15—Production Equipment

Comments: Numerous commenters proposed modifying this section to apply to all zone activity (rather than only production activity) for reasons of the Congressional intent claimed by the commenters. One commenter stated that such a modification would result in all zone operators being treated uniformly. Numerous commenters proposed adding a subsection providing for expedited temporary approvals of zone designation to enable use of the production equipment benefit (with zone designation to be terminated once entry is made on the production equipment). One commenter supported the proposed provision as published.

Board position: We have not adopted the changes proposed in these comments. In September 2010, the Executive Secretary examined the applicability of the production equipment provision in depth, and issued a memorandum to FTZ grantees detailing the analysis and findings. The memo has been available on the Board's Web site since its issuance. No arguments have been presented to alter the memorandum's fundamental findings that the clearest indications based on the record associated with the passage of the statutory provision are that Congress intended the provision to apply to equipment used in production (as the term is commonly understood) in zones. Further, the proposed provision to allow expedited temporary zone designations to enable use of the production equipment provision appears to envision obtaining FTZ benefits on the assembly of equipment that will then be used for non-zone activity. Our position is that the statutory provision is intended to provide benefits solely on equipment that will be used in zone activity.

Section 400.16—Exemption From State and Local Ad Valorem Taxation of Tangible Personal Property

Comments: Numerous commenters proposed revising this provision to simply repeat the statutory provision. Two commenters suggested reviewing this provision based on a concern that the meaning could be more restrictive than the statutory provision, and potentially confuse affected parties. Two commenters proposed specific revised language for this section to clearly harmonize its meaning with § 400.1(c) of the prior regulations and eliminate any confusion.

Board position: Given the concerns raised in comments, we have modified this section to use the statutory language *verbatim.*

Section 400.21—Application to Establish a Zone

Comments: Numerous commenters proposed changes that: characterize the section as applying only to the establishment of new general-purpose zones; indicate that applications will conform to instructions and guidelines set out in the regulations; require application letters and resolutions to be dated no more than six months prior to submission of the application; remove language specific to explanation of the degree to which a proposed site duplicates types of facilities at other sites, to environmentally sensitive areas, and to encouraging submission of draft applications; and add certain language pertaining to the ASF. Several commenters stated that the ASF should be detailed in the regulations. One commenter stated that the requirements

and distinctions of the ASF relative to the traditional site framework should be delineated in the regulations and that both frameworks should be maintained. One commenter agreed that applications should comply with instructions and related documents published in the **Federal Register** and made available on the Board's Web site, but suggested requiring a 30-day minimum written notice before implementing such changes in cases where notice in the **Federal Register** is not warranted. One commenter stated that full information about the ASF should be included in the regulations, that application processes should be defined, and that there should be some control on the web-based application guidelines developed by the Board.

Board position: This section establishes general requirements for applications to the Board, with variations specific to certain types of authority described in subsequent sections. Based on the comments received, we have made several changes to this section. In reference to the dating of the application letter and the resolution, we replaced the words ''currently'' or ''current'' with language allowing for the documents to be dated up to six months prior to submission of the application.

We have also added basic references to key concepts under the ASF in recognition of the certainty that grantees and program users seek as they consider or use the ASF. However, given that the ASF had only recently become part of the Board's practice at the time that the proposed regulations were drafted, no attempt was made to incorporate the details of the ASF in the proposal. Comments have not only proposed that the regulations include details of the ASF and contrast the ASF with the traditional site framework (TSF), but have also proposed simplifying the parallel ASF and TSF approaches within the Board's practice. As noted in response to comments on § 400.11, recognizing that codifying the intricacies of current practice in regulations may not be the least burdensome means to accomplish the Board's policy goals, the Board plans to propose simplifying the site-designation frameworks in a subsequent rule. We have retained the proposed approach of having the Executive Secretary develop formats for individual types of applications based on the regulations' requirements. This provision is specifically designed to enable us to adopt user-friendly question-and-answer formats while also allowing occasional adjustments to those formats if certain questions prove unsuccessful in eliciting the needed information from applicants. Recognizing potential concerns about transparency and parties' need to ensure that a particular application format will be accepted by the Board, the provision also stated that application formats will be published both in the **Federal Register** and on the Board's Web site. The provision for publication in the **Federal Register** was specifically designed to maximize transparency. However, based on one comment noted above, and to ensure that changes in formats do not impose undue burdens on applicants, we have specifically stated that the Board will continue to accept applications for a period of one year after a given format has been superseded; this is a significantly longer period than the 30 days suggested by a commenter, and should provide zone users with ample time to adapt to any format revision. We also have not made suggested changes that would have further burdened applicants by adding elements to the requirements for application letters or application contents. Finally, we have not followed suggestions that we remove language specific to explanations of the extent to which facilities at a proposed site duplicate the types of facilities at other sites, to environmentally sensitive areas, and to encouraging submission of draft applications. Except for sites designed to serve specific, existing tenants, any proposal to add a new site to a zone should include a justification of the need for the site when there are already sites authorized for the zone. There are a significant number of entirely unused FTZ sites nationwide. Such sites appear to constitute a large majority of all FTZ sites. Given that each such site was approved by the FTZ Board based on information from the grantee that the site was needed to serve trade-related needs, it is entirely appropriate for the FTZ Board to require that a proposal for a new site explain the services or amenities to be provided by the new site that are not provided by the grantee's existing sites. Separately, given the commercial and industrial uses that FTZs serve, there appears to be no need to make allowance for the inclusion of environmentally sensitive areas within designated FTZs. Finally, submitting a draft application can be a useful tool for any organization that is preparing an application, and it is appropriate for the regulations to provide for that tool.

Section 400.23—Application for Production Authority

Comments: Numerous commenters proposed establishing a stand-alone section concerning applications for production authority. Those commenters proposed replacing most of the proposed § 400.22 with the Board's current application format for establishing manufacturing subzones and for obtaining manufacturing authority for existing zone space. Addressing the requirement in proposed § 400.22 for certain information regarding products or materials/components, one commenter proposed that zone users be allowed to notify the Board of the HTSUS chapters within which new products or components fall. For any application for production authority involving a component subject to an AD/CVD order, one commenter supported requiring that the application state that the proposed authority involves a component subject to an AD/CVD order. That commenter also proposed requiring that the applicant demonstrate that its requested authority would not reduce the effectiveness of the AD/CVD remedy.

Board position: In response to comments received, we have created new §§ 400.22 and 400.23 specifically setting forth requirements for notifications and applications for production authority (distinct from requirements for subzone applications in § 400.25, which only pertain to approving FTZ designation for a specific location without addressing the separate matter of production authority). As with § 400.25, we have not incorporated in this section questions from the current application format for manufacturing subzones, in part for the reasons noted in our response to comments on §§ 400.21 and 400.25. We have not adopted the proposed change to notifications of new products or components because comments submitted have led us to adopt a revised approach to the application process for production authority. Finally, for both notifications and applications for production authority under revised § 400.14, we have maintained the requirement that the applicant state whether any component is subject to an AD/CVD order. We have not adopted the proposed requirement that the applicant address whether its proposed activity under FTZ procedures would reduce the effectiveness of the AD/CVD remedy because that requirement would increase the burden on applicants even in situations where the activity may not be of concern to an AD/CVD petitioner. The Board would be able to assess the potential impact on AD/CVD remedies if public comments in response to a notification or application for production authority raise concerns

about proposed FTZ production activity.

Section 400.24—Application for Expansion or Other Modification to Zone

Comment: Numerous commenters indicated that they proposed significant changes to this section (which those commenters also proposed renumbering to become § 400.25); however, the proposed text provided by those commenters was in fact identical to the text proposed by the Board, with the sole exception of the deletion of the original **Federal Register** citations for the Board's adoption of the ASF. As noted above regarding § 400.11, one commenter indicated that there are potential CBP operational advantages for subzones relative to usage-driven sites (which are most commonly designated through a minor-modification process). One commenter stated that the Board should clarify that there is no functional distinction between subzones and usage-driven sites under the ASF. Another commenter stated that both subzones and ASF usage-driven sites should be treated in an equal manner that minimizes burden and facilitates administration of the facilities in question.

Board position: We have retained the ASF-related **Federal Register** citations because, as detailed in response to comments on § 400.21, we have not attempted to incorporate details of the ASF in these regulations given the need that has emerged for the Board to simplify the site-designation frameworks in a subsequent rule. However, as noted in response to comments on § 400.11, we have modified § 400.24(c) to allow an actual or potential usage-driven site to be designated as a subzone if such designation would better meet the needs of the zone grantee and zone participants. The modification recognizes the overall functional equivalence between subzones and ASF usage-driven sites and the importance of enabling zone users to maximize operational efficiencies. However, for the reasons described in response to comments on § 400.36, allowance for designation of a usage-driven site as a subzone is contingent on the subzone's remaining subject to the Board-established, zone-wide activation limit that applied to the usage-driven site.

Section 400.25—Application for Subzone Designation

Comments: Numerous commenters suggested limiting proposed § 400.22 to applications for subzones and establishing a separate section for applications for production authority. Those commenters suggested removing most of the language proposed by the Board and instead incorporating language from the Board's current application format for establishing manufacturing subzones and for obtaining manufacturing authority for existing zone space. One commenter proposed simplifying application requirements for subzones that would not be used for production activity based on what that commenter characterized as a dissimilar treatment under the proposed regulations for similar types of operations in subzones versus general-purpose zone sites.

Board position: In response to comments submitted and in recognition of the complete separation of production authority from subzone designation under these regulations, we have limited this section to subzone applications and have further simplified the application requirements. We have also made minor changes in other sections in order to implement this section properly. New §§ 400.22 and 400.23 are specific to the separate requirements for notifications and applications for production authority, as described in our response to comments on § 400.14. We have not incorporated into this section questions from the current application format for manufacturing subzones for the reasons noted in our response to comments on § 400.21, in part. A number of those questions pertain only to applications involving manufacturing (production) activity and therefore would be irrelevant to the many subzones that are used solely for distribution-related activities. Finally, several of those questions duplicate the requirements set forth in § 400.21. We have opted to include such requirements by reference rather than repeat the language in full.

Section 400.26—Criteria for Evaluation of Proposals, Including Expansions, Subzones or Other Modifications of Zones

Comments: Numerous commenters proposed the following changes: Eliminating reference to the port of entry area in proposed § 400.24(a); eliminating reference to compatibility with a master plan or economic development goals in proposed § 400.24(d); modifying proposed § 400.24(e) to consider views of those materially affected by FTZ benefits; and renumbering the section to become § 400.26. Those commenters also proposed replacing the separate criteria for subzone proposals in proposed § 400.25(b) with the criteria in proposed § 400.24, which would apply to both zone and subzone proposals that do not involve production activity. One commenter proposed modifying the criteria applicable to subzones (other than proposals involving production) to focus on disapproval if the proposed activity were not permissible under the FTZ Act, U.S. law, or a specific Board Order. Two commenters recommended that the Board no longer consider in evaluating subzone proposals whether the activity could be accommodated in multi-purpose FTZ facilities serving the area.

Board position: Based on the comments received, we have eliminated the separate criteria for evaluating subzone proposals (including whether activity could be accommodated in multi-purpose FTZ facilities serving the area). This change reflects a recognition that the types of distribution activities conducted in non-production subzones are indistinguishable from the types of activities that can be conducted in general-purpose sites (separate criteria will apply to applications for authority involving production activity). The separate criteria proposed for evaluation of subzone proposals did not represent the least burdensome means to accomplish the Board's policy objective of facilitating FTZ use in order to maximize the creation and retention of domestic economic activity and employment.

With regard to the specific text of proposed § 400.24, we have retained the reference to the port of entry area because the establishment of a zone under the FTZ Act is tied to the proposed zone's adjacency to a port of entry. We have also retained the reference to compatibility with master plans or economic development goals because it is relevant for the Board to consider the degree to which a zone proposal is linked to, and consistent with, official documents pertaining to a community's economic development planning. We have adopted the substance of the proposed change to consider the views of those ''materially affected'' rather than those merely ''affected'' by a proposal because the original, lower standard would potentially impose a burden on applicants to respond to comments from any person claiming to be affected by an application regardless of whether there would be a material impact on that person. We have also made a minor modification to the section's title to improve clarity.

Section 400.27—Criteria Applicable to Evaluation of Applications for Production Authority

Comments: Numerous commenters stated that proposed § 400.25 (which they would renumber to become § 400.24) should apply only to production activity. Those commenters proposed requiring the Board to consider companies' ability to conduct the same activity offshore, the precedential effect of prior Board decisions, and the effect on the U.S. economy, as well as revising the statement of Board policy to include reference to promoting U.S. competitiveness. Those commenters also proposed deleting a reference to ongoing activity in § 400.25(a)(1) and deleting the word ''significant'' from § 400.25(a)(3). One commenter stated that the Board should equalize tariff treatment for U.S. manufacturing operations relative to offshore alternatives, and should not give differential treatment to competitors within an industry or else potential users may no longer view the FTZ program as a viable option. That commenter also stated that U.S.-based manufacturing and exports are inherently in the public interest and should be treated as such, absent direct evidence of a net negative economic effect.

Board position: In response to comments received, we have limited this section to criteria for evaluating applications involving production activity and have required the Board to take into account companies' ability to conduct the same activity offshore and the effect on the U.S. economy. We have also added references to analyses carried out in connection with prior Board actions. We have not referred to the precedential effect of prior Board actions because such language could, *inter alia,* create a mistaken impression that the situation within a given industry inherently remains static over time. We have not modified the statement of Board policy to include a reference to promoting U.S. competitiveness, because the focus of the section is emphasizing that the Board's actions are consistent with broader trade-related public policy. For similar reasons, we have retained the statement that Board policy applies to ''ongoing'' activity in addition to proposed activity. We also have not modified the requirement that an application for production authority demonstrate a ''significant public benefit.'' However, the significance of the public benefit may be relative, depending on the size and employment level of the facility involved, so this standard is not inherently discriminatory against smaller facilities.

With regard to other comments received, the FTZ program can be used to equalize tariff treatment relative to offshore alternatives. However, obtaining authority for a given FTZ production use cannot be guaranteed. Rather, the Board's function continues to be ensuring that zone activity is in the public interest; assessing a range of factors is appropriate in making that determination. As for differential treatment for competitors in a given industry, the Board naturally seeks to avoid such differential treatment. However, one factor that some observers may fail to take into appropriate account is the cumulative effect of FTZ applications from multiple participants in a given industry, which could differ from the effect of an application from a single participant. The Board must continue to base its decisions on the facts and circumstances present at the time that a given decision is made.

Finally, while the changes to the production-related sections of these regulations should dramatically simplify and expedite the process of obtaining Board authorization for production authority in most cases, the regulations maintain appropriate procedures to ensure that the activity conducted is in the public interest. The Board does not need to shift presumptions about production activity for there to be an appropriately simplified and expedited process, as noted above.

Section 400.28—Burden of Proof

Comments: Numerous commenters proposed dividing this section into three subsections (general, comments, and rebuttal), requiring opponents of FTZ activity to demonstrate standing and submit evidence that would meet a specific standard that closely resembles the standard for applicants' responses to opponents' submissions, and eliminating the word ''significant'' preceding ''public benefit.'' One commenter stated that, for applications involving manufacturing or exports, the burden of proof should be shifted to any opponents.

Board position: As a result of the comments received, we have divided this section into four subsections: in general; comments on applications; requests for extensions of comment periods; and, responses to comments on applications. We have stated that parties submitting comments on FTZ applications should submit evidence that meets a standard closely resembling the standard for applicants' responses to such submissions. However, we have not adopted the suggested requirement that parties opposing FTZ applications demonstrate standing. Although the suggested standing requirement involved the addition of only a few words, the requirement could significantly complicate the processing of FTZ applications, and would appear to add more complexity and burden than can be justified based on the procedural benefits it might bring. We also have retained the full phrase ''significant public benefit'' to mirror the standard retained in § 400.27; that standard was addressed in response to comments on that section. Finally, the definitive wording of this section reflects a balancing of the standards applicable to both applicants and parties submitting comments on applications. It would not be appropriate to abandon that evenhanded approach for certain types of applications.

Section 400.31—General Application Provisions and Pre-Docketing Review

Comments: Numerous commenters proposed reducing standard timeframes to require the Board ordinarily complete its action on applications involving production authority within six months, and that Board action on other applications ordinarily be completed within five months. Those commenters also proposed the following changes: 30-day periods for responses from zone participants contacted by the Executive Secretary, and for the Executive Secretary to complete pre-docketing review after receiving additional information from an applicant; and returning pre-docketing applications to the applicant rather than discarding the application if noted deficiencies have not been corrected within 30 days. In response to other comments, two commenters stated that the suggestion to reduce timeframes for Board action was unreasonable. Those commenters stated that the reduced timeframes would impede potentially affected parties from receiving proper notice or having an adequate opportunity to comment, and would also prevent the Board from adequately developing a factual record, analyzing comments, and performing a thorough analysis of the application in question.

Board position: Based on the comments received and recognizing the need to provide expedited processing of requests, we have made a number of changes to procedures and timeframes. As noted in comments on § 400.14, we have adopted a revised approach to requests for authority to conduct production activity that incorporates a

standard notification process designed to take no more than 120 days (including a 40-day comment period). However, the revised approach also retains the full application process delineated in the proposed regulations, which would apply to any notification that is determined to require further review, as set forth in § 400.37. Given that such applications will tend to involve complex or controversial circumstances, we have retained in this section an ordinary 12-month timeframe to process such applications.

Based on changes to the subzone application requirements in response to comments received, we have also significantly modified the procedures for processing subzone applications. Those modified procedures are delineated in § 400.35. Based on the inherently less complex analysis associated with a single-user subzone proposal as compared with proposals to establish or expand general-purpose zones, § 400.35 sets forth simplified procedures designed to facilitate expedited processing of subzone applications. Expedited processing for subzone applications, like notifications for production authority, focuses on operations in existence or under construction that are or will be engaged in international trade-related activities. Establishing and reorganizing zones under the ASF similarly enables grantees to gain quick, simple access to FTZ procedures for operations actually engaged in such activities. In contrast, evidence indicates that other types of applications tend to be more speculative with regard to actual zone use. The procedures and timeframes contained in these regulations prioritize resources toward actual trade-related operations in order to maximize their positive competitiveness and employment impacts.

We have not made other changes to this section to reflect comments received because the changes proposed would not improve the efficiency of the overall application process. In particular, we have retained the provision for discarding an application if corrections are not made within the allotted timeframe, because it is appropriate to eliminate the burden associated with returning applications as one element of optimizing resource use towards rapid processing of docketed applications.

Section 400.32—Procedures for Docketing Applications and Commencement of Case Review

Comments: Numerous commenters proposed changes which would: Provide that untimely comments would not be considered; limit the number of parties that may submit rebuttals; broaden references to the applicant to include zone participants; limit the timeframe within which hearings could be arranged to 60 days after the end of the initial comment period on an application; and modify the timeframe for CBP's input on a pending application. One commenter proposed a reduction in the standard comment period for applications to either 15 days or 30 days, while another commenter proposed eliminating the public comment period for subzone applications. For any application for production authority involving a component subject to an AD/CVD order, one commenter proposed requiring the component be identified in the notice announcing review of the application, and that the applicant provide the names and addresses of each known U.S. producer of the component and send notice of the application to each such U.S. producer. Another commenter proposed that **Federal Register** notices announcing applications for production authority indicate the grantee of the zone and the nature of the activity but omit the identity of the zone user.

Board position: As a result of the comments received, we have added a requirement that a **Federal Register** notice announcing an application for production authority include information regarding any component subject to a trade-related measure or proceeding (such as an AD/CVD order). However, we have not adopted the proposed requirement that applicants provide the names and addresses of each known U.S. producer of the component in question and to send notice of the application to each such U.S. producer. This approach creates transparency through the enhanced requirement for information in **Federal Register** notices without imposing the potentially significant new burdens associated with the other proposed requirements. We also have not adopted the proposal that **Federal Register** notices of proposed production authority omit the identity of the zone user because such identifying information can be useful to other parties that wish to gauge the potential competitive impacts of the proposed authority.

We have not eliminated the public comment period on subzone applications, as proposed by one commenter. The ordinary procedure to designate a subzone, therefore, will differ in this regard from the procedure to designate usage-driven sites under the ASF (with the exception of situations under § 400.24(c) in which a site clearly eligible for usage-driven designation is instead being designated as a subzone based on the circumstances presented). Usage-driven sites can only be designated within a specific service area already authorized for the zone grantee through a Board process that includes a public comment period. However, in response to another comment, we have reduced the standard length of the comment period for subzone applications from 60 days to 40 days (the same duration as comment periods on notifications for production authority pursuant to § 400.37). The standard length of comment periods on other types of applications remains 60 days. The shorter comment period for subzone applications reflects the fact that these applications focus solely on designating the zone space needed for a single operation. Other types of applications inherently are broader in focus and, therefore, it is appropriate to allow additional time for the public to develop comments on such applications. In response to comments submitted, we have set the standard deadline for CBP comments on an application to match the end of the period for public comment; however, the wording of this provision reflects a recognition that additional time may be needed in exceptional circumstances.

To help ensure the proper balance between the interests of applicants and the interests of parties potentially opposed to applications, we have not adopted the proposed limit on the types of parties that may submit rebuttal comments. For the same reason, we have revised this section to refer to the standard that applies to submitted comments under § 400.27(b), and to further clarify that new evidence, new factual information, and written arguments submitted by parties, other than the applicant, after the comment period will not be considered. As noted in this section, new evidence or information submitted by the applicant could trigger the (re)opening of a comment period. We also have not imposed a limit on the period of time during which a hearing may be arranged. Although the need for such a hearing is generally rare, it is appropriate for the Board to clearly retain the flexibility to arrange a hearing at any point in time regarding any matter pending before the Board.

We have not adopted the proposed changes that would broaden references to the applicant to include zone participants. Such changes would inappropriately shift the emphasis away from the applicant. Further, for a given application, the number of zone participants could be significant (for

example, if the zone operator that is the subject of the application has a significant number of users). Therefore, the number of parties that would be involved in the process as a result of the proposed changes could represent an exponential increase in burden on the Board staff without necessarily leading to an improved outcome. Any applicant remains free to coordinate with zone participants on the matters addressed in this section.

Section 400.33—Examiner's Review—Application To Establish or Modify a Zone

Comments: Numerous commenters proposed reducing the timeframe for an examiner's development of a report and recommendations from 120 days to 60 days after the close of the comment period and removing explicit allowance for further comments from the CBP port director, when necessary.

Board position: In general, we have not adopted the proposed reduction in the timeframe for an examiner to develop a report and recommendations. Rather, in concert with changes to the timeframes for action on applications involving production authority, we have set the timeframe for development of the examiner's report/recommendations at 150 days (with the exception of reorganizations of zones under the ASF, for which we are setting the timeframe at 75 days in recognition of the generally simpler analysis involved and the greater potential for direct positive effects resulting from approval). The overall impact of adjustments to this section is to generally maintain the prior overall 10-month standard timeframe to process the cases subject to this section (with a general 75-day reduction in that timeframe for ASF reorganizations). As noted above in response to comments on § 400.31, this approach reflects a necessary prioritization of overall resources towards cases involving production authority and subzone designation, or which would facilitate future usage-driven designations, all of which tend to involve more significant direct positive competitiveness and employment effects.

We have retained explicit allowance for further comments from CBP because such a step may be warranted in certain cases. In that context, we believe that it is important to include a specific provision addressing that procedure (although the Board's broad, general authority would allow for such a step to be taken, when necessary, even in the absence of a specific regulatory provision).

Section 400.34—Examiner's Review—Application for Production Authority

Comments: Numerous commenters proposed the following changes to § 400.34(a): Reducing the general timeframe for an examiner's development of a report and recommendations from 150 days to 75 days after the close of the comment period; adding language regarding taking into account consistency with prior decisions; and replacing provision for industry surveys with language regarding conduct of independent and objective research. For § 400.34(b), those commenters proposed the following changes: Deleting the reference to ongoing activity in § 400.34(b)(1); adding a sentence from prior regulations regarding the process by which the net economic effect is determined; and adding language stating the objective of preventing competitive disadvantages between companies in the same industry as a result of Board actions. One commenter stated that the Board should reject changes proposed by other commenters that would skew the application process in favor of applicants for production authority.

Board position: We have not reduced the general timeframe for development of an examiner's report and recommendations consistent with the revised approach to proposed production authority established in § 400.14(a). Under that approach, applications subject to this section will involve circumstances that have been determined to warrant further review. Such applications will tend to be complex or controversial in nature. In that context, reducing our proposed standard timeframes would be inappropriate. Further, we have explicitly noted that certain circumstances (such as when the applicant or another party has obtained a time extension for a particular procedural step) may result in the processing of the application extending beyond the ordinary timeframe.

We have revised the provision on requests to parties for additional information to emphasize its broad potential reach, depending on the circumstances of an individual case. We have also broadened the provision to allow both industry surveys and industry research to be used as tools in evaluating potential impacts of proposed production activity. We have not stated that research or surveys would be independent and objective, because those qualities inherently are objectives for all of the work carried out by the Board and its staff. Nor have we referenced consistency with prior Board decisions, because such language could create a mistaken impression that the situation within a given industry inherently remains static over time. For similar reasons, we have not referred to potential competitive disadvantages as a result of Board actions, because the language of the proposed rule already contains an adequate provision establishing that prior decisions would be considered. We have retained the reference to ''ongoing activity'' because the provisions of this section may at times be used for reviews of ongoing activity. Finally, we have not adopted the suggested reinsertion of a sentence from the prior regulations regarding the process of determining the net economic effect. That sentence was intentionally removed in the proposed rule because we believe that weighing positive and negative effects is inherent in the definition of a ''net'' economic effect, thereby rendering the suggested sentence superfluous.

Sections 400.33 and 400.34—Examiner's Reviews of Applications

Comments: For both §§ 400.33 and 400.34, numerous commenters proposed the following changes: Broadening references to the applicant to include zone participants; allowing requests to extend the period for response to a preliminary negative recommendation, with such an extension not unreasonably withheld; and removing explicit allowance for notice and public comment on preliminary recommendations.

Board position: We have modified §§ 400.33 and 400.34 to allow an applicant to request extensions of the period of time to respond to a preliminary negative recommendation, with such extensions not unreasonably withheld. We have continued to allow notice and public comment on preliminary recommendations because such a step may be warranted in certain cases. In that context, we believe that it is important to include specific provisions addressing such allowance (although the Board's broad, general authority would allow for such a step to be taken, when necessary, even in the absence of specific regulatory provisions).

We have not adopted the proposed changes that would broaden references to the applicant to include zone participants. Such changes would inappropriately shift the emphasis away from the applicant. Further, for a given application, the number of zone participants could be significant (for example, if an affected zone operator has a significant number of users). Therefore, the number of parties that

would be involved in the process as a result of the proposed changes could represent an exponential increase that would create new burden without necessarily providing for an improved outcome. Any applicant remains free to coordinate with zone participants on the matters addressed in this section.

Section 400.36—Completion of Case Review

Comments: Numerous commenters proposed the following changes: Adding a deadline for CBP headquarters to concur with proposed Board actions, and to assume concurrence if it is not received by the deadline; notifying the grantee and directly affected zone participants and allowing for a meeting request if a Board decision is not favorable, or if the Board is not able to reach a unanimous decision; adding a reference to affected zone participant for failure to timely provide necessary information; allowing an extension of the period to provide necessary information when requested by the applicant or an affected zone participant, with such an extension not unreasonably withheld; deleting the provision allowing for termination of review if the Board is unable to reach a unanimous decision; when circumstances presented in an application are no longer applicable, limiting termination to situations where the applicant or an affected zone participant has notified the Board; and confirming termination of review in writing to the applicant and affected zone participant. Several commenters indicated that the applicant should always be notified (in writing) of the intent to terminate a review, with 30 days allowed for a response from the applicant. One commenter also stated that the term ''material change'' should either be defined or deleted. One commenter indicated that it did not understand the reason for allowing the review of an application to be terminated and, in particular, where the Board is unable to reach a unanimous decision.

Board position: In response to these comments, we have added a specific timeframe for CBP headquarters to provide its comments on applications to the Board. We have not adopted the proposal for CBP headquarters' concurrence to be assumed after 30 days have elapsed. There is no evidence of any actual need for that suggested provision.

The Board may only approve an application for Board action on a unanimous decision of the Board's members. If the Board is unable to reach a unanimous decision, approval is not possible. In those circumstances, it is more appropriate to terminate the review of the application than to maintain the application as technically pending before the Board. Similarly, if the overall circumstances presented in an application no longer exist as a result of a material change (*e.g.,* when the zone participant on whose behalf the application was submitted has subsequently vacated the facility), it would not be appropriate for the Board to consider approving the application. Therefore, if the applicant does not opt to withdraw the application, it would be appropriate to terminate the review of the application. For these reasons we have maintained the proposed provisions pertaining to such termination actions, but we have adopted certain changes to the language of this section in response to comments submitted.

Based on comments submitted, we have included a provision requiring notification to the applicant and allowing for a meeting at the request of the applicant if the Board is not able to reach a unanimous decision. That provision accords basic procedural rights in such a circumstance. However, we have not extended that provision to cover unfavorable decisions by the Board because §§ 400.33–400.35 already include procedural rights for the applicant in that circumstance (*i.e.,* when a case examiner has made an unfavorable recommendation on which the Board will be basing a decision). We have also retained the requirement that an applicant be notified of the Board's intent to terminate a review, clarified that such notification would be in writing, and continued to allow a 30-day period for a response. We also have adopted the substance of suggested changes pertaining to allowances for extending the period to provide necessary information and for confirming termination of a review in writing to the applicant.

We have not extended the provisions of this section to apply to zone participants because, as noted in response to comments on § 400.33, such changes would inappropriately shift the emphasis of the Board's procedures away from the applicant. Further, for a given application, the number of zone participants could be significant. Therefore, the number of parties that would be involved in the process as a result of the proposed changes could increase exponentially and create substantial new burden without necessarily providing for an improved outcome. Any applicant remains free to coordinate with zone participants on the matters addressed in this section.

Based on a public comment, we have also delegated authority to the Executive Secretary to approve applications for subzone designation. However, we have limited that delegation to the circumstance where an approved subzone will be subject to the overall activation limit for the sponsoring zone as established by prior Board action (with certain language also added to § 400.24(d) specific to the establishment or modification of such activation limits). That limitation reflects the FTZ Act's requirement that ''[a]ny expansion of the area of an established zone shall be made and approved in the same manner as an original application.'' The meaning of the term ''zone'' in the FTZ Act is the physical space in which zone procedures are in use. For example, ''[f]oreign and domestic merchandise * * * may, without being subject to the customs laws of the United States * * * be brought into a zone and may be stored * * * and be exported, destroyed, or sent into customs territory of the United States therefrom * * * but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise'' (section 3 of the Act, 19 U.S.C. 81c). Given the separation in the 1970s of the FTZ Board zone-site designation process from the U.S. Customs Service (now CBP) process of activating portions of designated zone sites, the term ''zone'' as used in the FTZ Act now only applies to physical space that has been both designated and activated. In that context, designating a subzone would only require action by the Board if the subzone were not subject to an existing Board limit on the amount of space that could be activated (*i.e.,* used as a ''zone'' under the FTZ Act) within the zone in question. It should be noted that a similar analysis of the significance of the term ''zone'' in the FTZ Act was a basis for the FTZ Board's adoption of the ASF in 2008. The ASF allows designation of additional sites for specific operators/users without Board action provided that the additional sites will remain subject to a specific limit set by the Board on the overall amount of space that can be activated (thereby preserving the Board-approved ''area'' that functions as a ''zone'').

Finally, the Board received a number of comments pertaining to various sections of the regulations indicating that existing processes and distinctions between types of zone sites may not constitute the most efficient and effective mechanism for facilitating zone use. As noted in our response to

comments on § 400.11, a streamlining of the existing site-designation frameworks is a matter that the Board plans to address in a subsequent proposed rule.

Section 400.38—Procedure for Application for Minor Modification of Zone

Comments: Numerous commenters proposed that, when the CBP port director's concurrence does not accompany a request for a minor modification, the Executive Secretary should notify the port director of the request, and 15 days should be allowed for the port director's concurrence. One commenter stated that the 20-day timeframe for CBP port directors' reports provided in the prior regulations (15 CFR 400.27(f)(2)) should be maintained.

Board position: In response to these comments, we have incorporated a specific timeframe for CBP input on requests (*i.e.,* the 20-day period provided in the prior regulations). In addition, in this section and similar sections, we have used the general term ''comments'' in place of the more specific terms ''concurrence'' or ''report'' to reflect that any CBP input pertaining to a request may vary in nature and scope depending on the type of request and the specific circumstances involved.

Section 400.41—General Operation of Zones; Requirements for Commencement of Operations

Comments: Numerous commenters proposed the following revisions to this section: Changing the requirement for a grantee's approval for activation to a requirement for the grantee's concurrence; removing the reference to the grantee from the requirement that permits be obtained from governmental authorities; adding a reference to administrators; and removing the reference to CBP port directors due to those commenters' proposed creation of a separate section specific to the port director's role as a representative of the Board.

Board position: This section now combines proposed § 400.41 (''Operation of zones; general'') and proposed § 400.44 (''Requirements for commencement of operations in a zone''). Combining the two sections does not affect the substance of the provisions contained therein. Regarding changes proposed by commenters, we have not added a reference to administrators in this section. Although a grantee may engage a third party to conduct certain functions on its behalf, it remains the grantee's responsibility to ensure that the reasonable zone needs of the business community are served by the grantee's zone. We have modified this section to indicate that a grantee may either approve or concur on activation. That change is consistent with other regulations pertaining to the activation process. We have eliminated the reference to the grantee's obtaining permits because meeting any requirements concerning activity in a given zone operation should be the direct responsibility of the operator. We have retained the reference to the role of CBP because it usefully reinforces the language of new § 400.7.

Section 400.42—Operation as Public Utility

Comments: Numerous commenters expressed concerns about what they characterize as significant new requirements in proposed § 400.42, indicating that the requirements would demand additional staffing and funding at grantee organizations at a time when such resources are scarce, and that the requirements could lead to grantees' relinquishing their roles due to the added burden. Those commenters proposed the following specific changes: using the phrase ''public utility principles'' to clarify that zones are not public utilities; deleting the word ''agent'' in general; adding the word ''administrator'' in several contexts; removing language indicating that grantees' fees recover costs incurred by those grantees; removing a requirement that any cost passed on to a zone participant based on a function that a grantee contracts to a third party must be based on going rates for such a function; and removing a requirement for fees to be paid directly to grantees (or public entities).

One commenter indicated that greater specificity on the public utility requirement was overdue and essential. One commenter agreed that rates and charges should be fair and reasonable and based on costs incurred by the grantee in the administration of the zone. One commenter stated that return on investment should be able to take into account past subsidies that an economic development organization provided to keep a zone active and viable.

One commenter stated that proposed § 400.42 appears to impose excessive burden and give rise to an inordinate amount of scrutiny over the internal management of a zone, and that each grantee should be allowed to operate in a way that best suits its zone. Another commenter stated that the regulations cite public utility as the basis for proposed changes, but that the FTZ program today is very different from the time when Congress originally envisioned the program (when the public utility concept made sense). The commenter stated that the proposed section takes away from grantees the authority to develop zone financing plans, that the Board should not try to take such authority away from grantees, and that a zone should be paid for by its users. That commenter also stated that the proposed regulations assume that zone users themselves must be allowed to act as operators, but that the assumption is not balanced against the interests of the grantee.

Addressing the proposed requirement that fees and penalties related to grantee functions be payable only to a zone's grantee (or a public agency under contractual arrangement), certain commenters stated that the provision should allow payment to private non-profit organizations under contractual arrangement, or to an ''administrator'' engaged by a grantee. Addressing the payment of fees and penalties to a zone's administrator, certain commenters stated that such an arrangement reduces a grantee's burden, provides incentive to the zone's administrator, and allows for provision of technical help to users. Those commenters concluded that precluding the payment of fees and penalties to an administrator needlessly intrudes on a grantee's management of its zone. One commenter stated that the changes proposed in § 400.42 would do more harm than good.

Additionally, one commenter proposed stating that each zone be operated as a public utility, and that the referenced rates and charges are specific to zone use and must be uniform. The same commenter indicated that there are many formulas that a grantee should be able to use to develop its fees, that basing fees on the benefits derived by a user should be an acceptable formula, and that there is no basis for authorizing the Board to decide which formula(s) are correct.

One commenter disagreed with the proposed approach in § 400.42, stating that it is contrary to Executive Order 12866, which requires agencies to assess available alternatives to regulations, and that the proposal would require grantees to establish rates based only on costs without taking into account funding sources available. The commenter stated that the provision would reduce a grantee's flexibility to set up an independent rate structure based on the area's economic development strategy. That commenter recommended giving grantees the flexibility to establish rate structures allowing distinct rates for

pilot projects, target industries, or differing types of zone operations.

Regarding a grantee's development of its fees, one commenter suggested that the Board provide clearer guidance on the time period over which costs could be recovered and how often the grantee would need to recalculate its fees. It specifically suggested allowing the grantee to recalculate fees at five-year intervals. The commenter proposed applying the ''going rate'' standard only to administrative service contracts due to difficulties in determining going rates for occasional, more specialized activities or functions. That commenter also sought Board guidance on acceptable methods for apportioning costs across users, noting that various grantees currently appear to use differing methods. The same commenter proposed that a grantee be allowed to discount its fees based on a range of circumstances, as long as the criteria for such discounts were published in the grantee's zone schedule and applied uniformly.

In response to other comments, one commenter stated that technical or other services are sometimes included or bundled into the fees paid by a zone user, that such services carry a real cost and that zone users should not, in effect, be required to contract with a particular technical expert in order to be able to operate within a zone.

Board position: We have made a number of revisions to this section based on public comments. We have retained the language stating that ''each zone shall be operated as a public utility'' because that language was drawn *verbatim* from the FTZ Act. We have also slightly modified the remainder of the sentence following the reference to the public utility requirement, so it now is also drawn *verbatim* from the FTZ Act.

In addition, in response to comments on uniform treatment and related issues, and the comment that zone users should not effectively be required to contract with a particular technical expert, we have stated that users may not be required to use or pay for a particular provider's zone-related products or services. Any effective requirement for a user to pay for additional products or services in order to be permitted to use the zone would be inconsistent with the principles associated with the Act's public utility requirement. This bar extends both to a direct requirement to procure a product or service and to an indirect requirement for such procurement (*e.g.,* through including costs associated with the availability of technical expertise as part of the zone's mandatory fees, or through favorable treatment given by, or on behalf of, the grantee to purchasers of a product/service from a particular vendor).

In response to the comment claiming that the evolution of the FTZ program has made the public utility concept less relevant, it is important to emphasize that the law continues to require that ''[e]ach zone shall be operated as a public utility'' (section 14 of the Act, 19 U.S.C. 81n); the Board has no discretion to authorize the operation of the program in a manner inconsistent with that requirement. The Board has never been a ''rate making'' agency (*i.e.,* it does not try to set specific fees of individual grantees). However, given the public utility requirement of the Act and grantees' specific requests for guidance on the implications of that requirement, it is appropriate to delineate in the regulations the general principles embodied in the requirement. We have modified the provision on recovery of costs through fees to clarify that fees may be imposed to recover costs, but that a grantee is not obligated to impose fees to recover its costs. The public utility requirement has the effect of setting a ceiling on grantees' fees at a general level that allows for recovery of costs associated with the grantee function plus a reasonable return on investment but not monopoly profit-taking (by the grantee or by a party contracted by the grantee for a zone-related function). The public utility requirement in no way mandates that a grantee collect fees for all or part of the costs associated with the grantee function if the grantee would prefer to subsidize that function or has alternate funding sources available to defray those costs.

Because cost recovery is at the heart of the public utility concept, we have retained the prohibition on a grantee's basing its fees on the benefits derived by those who make use of the zone. The public utility concept is inherently driven by the sponsoring organization's being able to recover the costs it incurs in making the zone available to users through fees paid by those users. Basing users fees on the level of benefit those users derive from the program is an entirely different model that is not inherently cost-based, and that is inconsistent with the Act's public utility requirement.

Certain commenters raised the issue of acceptable methods for a grantee to apportion costs to different categories of users. The Act's requirement that a grantee afford users uniform treatment under like conditions can also have implications for the apportionment of costs. Based on the public utility and uniform treatment requirements, a grantee may legitimately establish different levels of fees for (*i.e.,* apportion costs differently to) different categories of zone participants based on certain criteria (*e.g.,* an operator's square footage of activated FTZ space, the value of the operator's merchandise admitted to the zone in a given year, whether the operator qualifies as a small business under Small Business Administration (SBA) criteria, or whether the operator is in an industry sector targeted for attraction based on community economic development plans) so long as the criteria are applied uniformly to each zone participant, and the resulting fee structure is published in the grantee's zone schedule (see § 400.44). However, consistent with the provision that ''zone participants shall not be required (either directly or indirectly) to utilize or pay for a particular provider's zone-related products or services,'' different fees may not be applied to zone participants by (or on behalf of) a grantee based on whether a given zone participant has engaged a particular third party to provide FTZ-related services. Applying different fees on that basis would effectively require zone participants to procure products or services from a particular third party in order to qualify for a lower fee imposed by (or on behalf of) the grantee, which would be inconsistent with the principles established in section 3 of the Act (19 U.S.C. 81n). Within a legitimately differentiated category of zone participants (*e.g.,* those that qualify as small businesses under SBA criteria), a single level of fee(s) must be applied.

In response to comments, we have removed references to ''agent'' in this section but have not incorporated certain commenters' proposed references to ''administrator.'' Instead, where appropriate, we have simply mentioned that certain actions can be performed ''on behalf of'' a grantee. We also have removed both the requirement that third party costs passed on to zone participants be based on going rates, and the requirement for fees to be paid directly to grantees (or public entities). Both of those requirements were intended to bolster enforcement of the public utility requirement, but they do not represent the least burdensome means to accomplish the Board's policy goals. Combined with provisions such as § 400.45, which allows complaints pertaining to public utility, this section should be sufficient to ensure compliance with that the Act's public utility requirement.

We agree with commenters that return on investment may take into account past subsidies that a grantee provided to

sustain its zone. It does not seem appropriate to delineate a specific maximum period of time for cost recovery. Only one comment suggested a specific time period, and specifying a period in a regulation could affect a large number of grantees (the vast majority of which have not addressed this point). However, the five-year interval proposed by one grantee for recalculating its fees (which could include recapturing prior subsidies by the grantee to sustain the zone over that five-year period) is one reasonable approach. The fees in the resulting zone schedule could incorporate the recovery of costs incurred over the five-year period in question.

Finally, contrary to one commenter's assertion, the proposed regulations were not based on an assumption that zone users must be allowed to operate for themselves (rather than leaving the possibility open for the grantee to serve as operator). However, multiple comments on § 400.43 proposed providing potential and existing users the right to operate their own zone sites directly or through one or more contractors. We believe that this issue is properly within the realm of the Act's public utility requirement but, because it was not directly addressed in the proposed rule and is of potential interest to numerous parties, the Board intends to address it through a subsequent rule.

Section 400.43—Uniform Treatment

Comments: Numerous commenters supported the general concept of uniform treatment delineated in § 400.43, but expressed concerns about negative impacts that would result from specific provisions (especially the preclusion of conflicts of interest in § 400.43(e)). They perceived, *inter alia,* that grantees' ability to obtain needed zone-related advice and services would be adversely affected. Those commenters proposed an alternative approach that would require conflicted parties to disclose the conflict of interest and recuse themselves from decisions. The same commenters also proposed the following range of changes: adding the term ''administrator'' accompanying ''grantee;'' stating that zone participants include only operators and users, with property owners treated as a distinct category; including the right to modify standard contractual terms and stating that those terms should be specific to zone participation; replacing the requirement for standard contractual provisions to be included in a grantee's zone schedule with a requirement that standard provisions be provided to the public and the Board on request; modifying the provision on neutral criteria to be applied by grantees in evaluating proposals for FTZ sponsorship; adding that users may not be required to use or pay for zone-related products or services that they do not elect to procure; and allowing potential and existing users the right to operate their own zone sites directly or through one or more contractors. Two commenters stated that a grantee should not be forced to sponsor any project proposed for its zone. One commenter indicated a need for authority or a directive to require modification of operators' agreements that would be non-compliant under proposed § 400.43.

One commenter stated that regulations directing how a grantee manages services associated with its zone are likely to be counterproductive at both the local and national level. That commenter proposed revisions including that, in a given zone, there could not be a requirement that zone participants purchase zone-related services (such as inventory control systems, application preparation, or customs-related brokerage or consulting) from the zone's administrator or any other specific party. Another commenter stated that proposed § 400.43 appears to impose excessive burden and create inordinate scrutiny of the internal management of a zone, and that each grantee should be allowed to operate in a way that best suits its zone.

Two commenters stated that the regulations should continue to allow operator's agreements between the operator and the zone's administrator, with one commenter indicating that this existing type of arrangement can be more responsive to operators' needs when the grantee is a public agency with inherently time-consuming internal processes. One commenter indicated that the regulations should not preclude payment of fees to the zone's administrator rather than the grantee, stating that a public agency may prefer not to mingle zone-related fees with broader public finances.

One commenter stated that the Board's approach in § 400.43 reflects a failure to enforce existing law and punish wrongdoers, with the Board instead proposing to deny numerous rights and protections embodied in law and equity through an approach that is discriminatory, arbitrary and capricious. The commenter further states that § 400.43 contravenes the FTZ Act, claiming that the FTZ Act requires the Board to provide ''uniform treatment'' to those who ''participate in'' a zone. The commenter also states that the proposed provision would have a negative impact on the entire FTZ program.

One commenter stated that the proposed approach to uniform treatment ignores the positive role that third-party expertise has played in the success of various zones, and instead proposes all-encompassing mandates that would cripple grantees' abilities to adjust to local circumstances. Another commenter proposed to address uniform treatment by simply requiring contracts include a stipulation that all participants will be treated fairly and equally under the uniform treatment and public utility requirements of the FTZ Act.

One commenter stated that many grantees may not currently have evaluation criteria for reviewing FTZ proposals, and that the subsection on neutral criteria for evaluating proposals would seem to require grantees to develop such criteria, creating a burden that is unnecessary given other protections proposed in § 400.43, and also creating potential additional risks or liability for grantees.

One commenter supported the enhanced enforcement provisions proposed in this section but stated that the Board should not limit the conflict-of-interest preclusion to the proposed list of grantee functions.

Board position: The FTZ Act establishes a core requirement that a zone grantee afford ''uniform treatment under like conditions'' to zone participants. Therefore, a grantee may not manage its zone in any manner that it chooses. Management of a zone is constrained by the uniform treatment requirement (as well as other requirements of the Act, such as to operate the zone as a public utility). Given that grantees must comply with the law, it is beneficial to grantees for the Board's regulations to provide detail regarding the operational implications of the FTZ Act's requirements. Nevertheless, in response to comments submitted, we have simplified this section and removed several provisions. This section establishes requirements for (1) the application of uniform treatment in the evaluation of proposals from zone participants by grantees (and other parties acting on behalf of grantees, where applicable), in § 400.43(b), and (2) justification for any differing treatment afforded, in § 400.43(c). The range of functions targeted in proposed § 400.43(e) has been narrowed, and the provision has also been supplemented by allowing the Board to authorize waivers (see discussion below specific to adopted § 400.43(d) and in response to several additional comments). Therefore, as adopted, this section substantively addresses the concerns expressed about

potential impacts on the ability of grantees or zone participants to procure zone-related services while maintaining safeguards to ensure the integrity of the FTZ program.

In response to multiple commenters' proposals that the regulations state that users may not be required to use or pay for zone-related products or services that they do not elect to procure, we have inserted a new final sentence in § 400.42(a). We have also reinforced that principle by stating that treatment of a zone participant may not vary depending on whether the zone participant has procured any particular product or service, including from a particular supplier. In response to a comment, we have eliminated the requirement that a grantee apply neutral criteria in evaluating proposals from zone participants. The requirement seemed to imply that each grantee must establish such criteria, but many grantees in fact may not currently have specific criteria they apply. Developing those criteria would create a significant burden for grantees. Rather than impose such a new requirement on grantees, our revised approach focuses on gauging performance rather than dictating behavior.

We also have eliminated the requirement that agreements be made solely with the zone's grantee. That proposed provision would have affected a number of existing contractual arrangements and increased burden on a number of zone grantees. The provision did not represent the least burdensome means to accomplishing the Board's policy objectives. In concert with changes made elsewhere in these regulations, we also have substituted a reference to ''any person undertaking a zone-related function(s) on behalf of the grantee'' for the term ''agent'' in § 400.43(h).

We have retained the requirements for agreements to be made in writing. Evidence indicates that the vast majority of agreements between zone grantees and zone participants are already in writing, but a limited number of examples of purely oral agreements exist. The Board's ability to gauge the uniformity of treatment afforded by a grantee depends on agreements being in writing. This provision as adopted will also establish a foundation for enabling the Board to consider proposing in a subsequent rule a requirement that a grantee disclose to a zone participant contractual provisions concluded with other zone participants that differ from the provisions in effect or being offered to the zone participant in question.

As requested, we have retained the statement in § 400.43(b) that uniform treatment does not require acceptance of all proposals by zone participants. That subsection also requires that the bases for a grantee's decision on a proposal must be consistent with the uniform treatment requirement. However, we have not adopted in this section and in the definition section (at § 400.2(x)) commenters' proposed limitation of the term zone participant to exclude property owners. Given the role of the grantee (and other party acting on behalf of the grantee, where applicable) in evaluating proposals from property owners for participation in a zone, uniformity of treatment under like conditions should not be limited to zone operators and zone users.

Comment: Regarding the proposed requirement for a grantee to have standard contractual provisions that if offers to zone participants, one commenter stated that a grantee should have some limited latitude to change standard contract provisions through negotiation with individual zone participants and should make all participants aware of the provisions for which the grantee is willing to make changes. The commenter also stated that Board guidance would be helpful regarding which types of provisions should not be subject to negotiation.

Board position: We have eliminated the requirement for a grantee to have standard contractual provisions because of the new burden that it could create for a number of grantees. Further, grantee negotiations with zone participants regarding contractual provisions are commonplace, with the provisions of actual contracts often diverging in some manner from the standard provisions offered to zone participants. That divergence reflects the reality of the business environment, but also renders pointless a requirement for grantees to offer standard contractual provisions. As noted above, the Board will instead consider proposing in a subsequent rule a requirement that grantees disclose to zone participants contractual provisions concluded with other zone participants that differ from the provisions in effect or being offered to the zone participant in question. That requirement would be targeted directly to the disclosure of actual differences in treatment afforded to zone participants, thereby enabling them to evaluate whether a grantee's contracting practices violate the uniform treatment requirements of the FTZ Act and of these regulations.

400.43(d)—Avoidance of Non-Uniform Treatment

Comments: Numerous commenters opposed the proposed provisions in § 400.43(e) (''preclusion of conflicts of interest'') for reasons including: Likely reduction or elimination of grantees' ability to obtain needed professional advice and assistance; causing more harm than good; the Board should establish principles rather than attempt ''one-size-fits-all'' solutions; zone users are capable of defending their own interests without government interference in the guise of protection that is not actually needed; the provisions would limit freedom of choice for users and have a negative impact on grantees' operational costs and efficiencies; and the most talented and experienced experts would find representing users more lucrative than representing grantees, leaving grantees with either lower quality representation or higher costs to obtain quality representation. Certain commenters recommended that the Board find an alternative approach to ensuring uniform treatment. One of these commenters stated that legitimate concerns about uniform treatment should be addressed by stating clear performance objectives, with grantees and contractors given discretion as to how they meet those objectives. One commenter stated that this provision is not consistent with the basic regulatory philosophy and principles expressed in Executive Order 12866, which requires consideration of the costs to grantees and users, a focus on performance objectives rather than specific behavior, and narrow tailoring to impose the least burden.

One commenter indicated that § 400.43(e) was drafted too broadly and proposed an alternative approach in which the Board could review situations believed to be problematic and, after notice and appropriate due process, potentially restrict identified activities on a case-by-case basis. The commenter provided specific language that could be used to implement its approach. Another commenter stated that it generally supports the concept of preventing conflicts of interest, but expressed concern about the proposed provision's putting grantees at a competitive disadvantage in obtaining needed professional services. The commenter recommended modifying this provision either to define the targeted conflicts of interest more precisely or to limit the provision's effect to zones that have demonstrated actual uniform treatment problems (with the Board potentially reviewing zones' performance of key functions to determine whether non-uniform treatment exists). Another commenter stated that the proposed preclusion of

conflicts of interest would unintentionally restrict business relationships that are not actually of concern to the Board. This commenter proposed a revised provision that would allow the Board to review situations that may be problematic, gather relevant facts after notice and appropriate due process, and then restrict particular activities on a case-by-case basis as warranted.

One commenter stated that this provision appears to be overreaching and inconsistent with rules pertaining to conflicts of interest that already apply to attorneys, and could interfere with a party's right to select counsel of its choice. The commenter proposed a replacement provision based on the principle of informed consent by both parties. Another commenter stated that this provision as written, in combination with the proposed definition of agent in § 400.2(b), could unintentionally preclude zone operators from providing zone-related services (such as handling of merchandise or inventory management) to zone participants. Another commenter stated that the proposed provision precluding conflicts of interest is excessive and would deny operators freedom of choice in contracting for outside services.

In response to comments submitted, one commenter stated that zone users should not be forced, or feel implied pressure, to pay for consulting or expert services as a condition of participating in the federal FTZ program.

Board position: In response to comments, we have removed from this subsection one of the originally targeted functions (''collecting/evaluating annual report data from zone participants'') and narrowed the focus of another of the targeted functions (now limited to ''taking action on behalf of a grantee, or making recommendations to a grantee, regarding the disposition of proposals or requests by zone participants pertaining to FTZ authority or activity (including activation by CBP)''). To counterbalance the elimination of proposed § 400.43(b)'s requirement for agreements to be made directly with grantees, we have added to this subsection the additional key function of ''approving, or being a party to, a zone participant's agreement with the grantee (or person acting on behalf of the grantee) pertaining to FTZ authority or activity (including activation by CBP).''

Finally, in response to comments received, we have added new § 400.43(f) that will allow the Board to issue case-by-case waivers of the provision in § 400.43(d) that bars certain categories of persons from performing certain key functions. This approach strikes an appropriate balance in order to avoid the types of broad, negative impacts projected by commenters while continuing to reflect the fact that a zone grantee often has a monopoly in its region for valuable access to the federal privilege of FTZ use (with zone participants reluctant to make uniform treatment-related complaints to the FTZ Board because of a perceived risk of jeopardizing key relationships with grantees or with third parties undertaking key functions on behalf of grantees). The adopted provision reflects the Board's intended use of a standard format for applications for waivers, but also recognizes that the Board may need to ask follow-up questions before deciding on a given application (depending on the circumstances presented in the application). In considering whether to approve an individual application for a waiver, the Board will take into account the specific circumstances presented, and the Board will also impose conditions on individual waivers, as warranted. As raised by one commenter, a key factor the Board will consider is whether a grantee's specific arrangement presents a significant risk that zone users will experience implied pressure to procure a particular private party's services as a condition of obtaining access to the federal FTZ program. In total, the adopted provisions will allow the Board to respond to individual circumstances, and should avoid the ''one-size-fits-all'' impact about which some commenters expressed concern.

Section 400.44—Zone Schedule

Comments: Numerous commenters proposed the following revisions to this section: Eliminating the requirement for the zone schedule to be submitted to the CBP port director; including references to a zone's administrator (where applicable); removing the name of the preparer from the zone schedule; eliminating the requirement for a grantee to make its zone schedule available on its Web site; and not allowing the Board to amend the requirements of this section by Board Order, if warranted.

One commenter stated that the zone schedule should be required to include a summary of the grantee's standard contractual provisions, but not to contain the grantee's contract document(s). A number of commenters proposed eliminating the requirement for zone operators' fees to be included in the zone schedule. One commenter recommended that grantees instead retain copies of their operators' rates, charges and procedures and make them available to users on request. One commenter stated that a grantee's fees for zone operations should be included in the zone schedule if the grantee is the operator of the zone.

Another commenter expressed a concern about the potential impacts of requiring publication of zone schedules on the Internet. One commenter stated that it would be fair and reasonable for the Board to post all zone schedules on the Board's Web site. One commenter supported both the requirement for a grantee to post its zone schedule on the grantee's Web site and the provision for the Board to make zone schedules available on the Board's Web site.

Board position: We have eliminated the proposed requirement for a zone schedule to include a grantee's standard contractual provisions, which was intended to help ensure that zone participants receive uniform treatment. These regulations adopt other measures designed to ensure uniform treatment that will not increase burden for all grantees (see, *e.g.,* § 400.43), unlike the proposed requirement. We also have eliminated the requirement that a grantee make its zone schedule available on its Web site. The Board will instead make zone schedules available on its Web site, which should create transparency without placing a burden on each grantee to place its zone schedule on its own Web site.

In response to the comments, we have eliminated the requirement for the zone schedule to be submitted to CBP. Any CBP official will be able to request a copy of a grantee's zone schedule or access that zone schedule via the Internet, as needed. We have also eliminated the requirement to include the name of the preparer and have modified this section to allow for a zone schedule to contain information about any party that acts on behalf of the zone's grantee. We have not included the proposed requirement that a zone schedule's title page name a zone's administrator. The list of required elements for the title page in no way prevents a grantee from including other information on the title page. The decision regarding whether additional information is appropriate for inclusion on the title page is left to the grantee's judgment.

We have retained the provision allowing the Board to amend the requirements of this section via Board Order, if warranted. Although it currently appears unlikely that the Board would need to amend the requirements, it is important for the Board to have the ability to do so more quickly than the rulemaking processes would allow, should the need arise. At

the same time, the Board intends that any such amendment would only be made after an appropriate opportunity for the public to comment. Separately, we have added a phrase to § 400.44(a) further clarifying that amendments to zone schedules will not be effective until submitted to the Executive Secretary.

Finally, in response to a comment pertaining to the requirement for standard contractual provisions in proposed § 400.43, the Board intends to address through a subsequent rule potential mechanisms for a grantee to disclose to a zone participant substantive variations in contracted provisions. Such a provision would provide transparency in order to enable zone participants to assess whether uniform treatment had been afforded by the grantee, and should do so in manner that is less potentially problematic and burdensome than the proposed requirement that standard contractual provisions be published in zone schedules.

Section 400.45—Complaints Related to Public Utility and Uniform Treatment

Comments: Numerous commenters proposed requiring that affected grantees (and the grantee's administrator, as applicable) receive information in a complaint and have an opportunity to respond. Those commenters also proposed adding a provision for the Board or the Executive Secretary to initiate a review for cause based on a claim that no such provision existed in the proposed regulations. The same commenters also proposed revising the first factor for reviews of fairness and reasonableness by replacing the reference to actual costs incurred with a reference to the methodology supporting the rates and charges. One commenter recommended that the Board not apply the second factor for reviews of fairness and reasonableness, which cites the rates at like zone operations at similarly situated zones, until (1) the Board has classified zones into categories that enable grantees to determine which other zones are similarly situated, and (2) grantees are able to review other grantees' zone schedules once those schedules are made available on the Board's Web site.

One commenter stated that the right to due process requires that a complaint be disclosed to a party before any fine or ''other consequence'' could be imposed on that party as a result of the complaint. One commenter stated that allowing confidential complaints could lead to incorrect or misleading information being submitted to the Board without the affected grantee being able to counterbalance it or to prevent prejudicial conclusions from being reached. That commenter stated that the provision could lead to lawsuits or undermine transparency that the Board might be seeking to create. In response to other comments, one commenter expressed concern about allowing submission of confidential complaints and stated that due process should require that the target of a complaint be able to address the complaint before being subject to an unfavorable action.

Board position: We have retained the proposed provision allowing for confidential complaints and have not added any requirement for the disclosure of such complaints. Given the monopoly that a zone grantee generally has on access to FTZ benefits in the region served by the grantee, zone participants may fear direct repercussions from submitting a complaint to the FTZ Board pertaining to a grantee's compliance with law and regulations. To help ensure the integrity of the operation of the FTZ program, it is important for zone participants to have the ability to submit such complaints without fear of less favorable treatment or even retribution. However, commenters also have raised valid concerns about due process if a grantee or other party were to be subject to penalties based on complaints that remained confidential (*i.e.,* unavailable for review and response). Recognizing those concerns, the Board simply intends to use confidential complaints as a basis for determining whether the actions of a particular grantee or other party should be examined in more detail. Such an examination would enable the Board to gather information in a process transparent to the grantee (or other affected party) and then use the information gathered through that process to evaluate what further action(s) by the Board might be warranted. The Board would only use information gathered through the transparent investigation process as a basis for further Board action or restriction; information that is unknown to the affected party would not be used.

Regarding reviews of fairness and reasonableness, we have not replaced the reference to actual costs incurred. Numerous commenters proposed we reference the methodology supporting the rates and charges. The Board would indeed examine the methodology a grantee used to develop its rates and charges as part of any examination that might occur. However, the fairness and reasonableness of a rate or charge are questions that must be addressed under the public utility requirement of the FTZ Act. As described in response to comments on § 400.42, the public utility concept is fundamentally based on cost recovery. As such, the actual costs incurred are appropriate for the Board to consider in evaluating whether a rate or charge is fair and reasonable. In response to comments, we have eliminated the proposed second factor for reviews of fairness and reasonableness. We have instead incorporated language enabling the Board, where applicable, to examine if a fee a party charges to a grantee for undertaking a function on the grantee's behalf (passed on by the grantee to zone participants through the grantee's fees) represents a form of monopoly rent-seeking that would be inconsistent with the statutory public utility requirement.

Section 400.46—Grantee Liability

Comments: Numerous commenters proposed eliminating the word ''ordinarily'' and separately adding the term ''administrator'' to this section. One commenter supported this section as providing welcome clarification for public sector grantees. One commenter stated that the limitations on grantee liability in this section are obscured by penalty provisions in § 400.62, with the addition of penalties and the lack of clarity regarding grantee obligations leading to concern among grantees. One commenter stated that some degree of liability in specific situations is an appropriate tool to promote compliance, but did not elaborate on what those specific situations would be. One commenter stated that a grantee must be afforded the opportunity to oversee a zone user in order to protect the grantee and other zone users. One commenter stated that the regulations need to define more clearly which oversight activities are ''detailed'' and which are not.

One commenter stated that the proposed provision would do more harm to grantees than to operators or users that commit violations. The commenter recommended revising this section to state that a grantee should only be liable as an operator if the grantee acts as operator under its own CBP bond and under a user agreement with the grantee's customer. The commenter distinguished that situation from one where a grantee has signed an operator's agreement with a company that acts as its own operator and operates under its own CBP bond, in which case the company should be held liable for any violations attributed to the company's actions.

Board position: We have modified this section based on these comments. Specifically, we have eliminated the word ''ordinarily'' and added language

to clarify the circumstances in which the actions of a grantee (or a grantee's administrator, where applicable) could create liability that would not otherwise exist. Specifically, a grantee could create liability where it does not otherwise exist if it undertakes detailed operational oversight of or direction to zone participants. Detailed operational oversight of zone participants would place the grantee in a position to be aware of specific violations (with an obligation to ensure the violations are corrected, and liability if the violations are not), while detailed operational direction to zone participants (*e.g.,* dictating specific operational procedures) would make the grantee responsible for ensuring that the direction did not result in violations. We have included in this rule key examples of detailed operational oversight or direction, such as review of an operator's inventory-control or record-keeping systems and specifying requirements for such a system to be used by an operator.

Section 400.47—Retail Trade

Comments: Numerous commenters proposed replacing the concurrence of the CBP port director with notification to the port director, and adding statements that the retail trade provision only applies to activated zone space and does not apply to order fulfillment. One commenter proposed that the regulations define ''retail trade'' based on the activity covered by the North American Industry Classification System subsections pertaining to ''store based retail trade.'' One commenter stated that if CBP will no longer issue binding rulings pertaining to retail trade, the Executive Secretary should follow precedent established by existing CBP decisions, with the principles contained in binding rulings remaining authoritative unless modified or revoked pursuant to 19 CFR 177.12 (*e.g.,* subject to notice requirements). The commenter also recommended that the Executive Secretary's decisions on retail trade be made available to the public. That commenter also stated that order fulfillment should not be considered retail trade.

Board position: The specific concerns raised by commenters about order fulfillment are significant. Therefore, the Board intends to propose a revised section specifically addressing order fulfillment in a subsequent rule. In the interim, we have adopted this section with changes and additions to language based on public comments. In particular, we have included language regarding the ongoing effect of decisions made by CBP and the type of procedures to be followed for any determination that might affect the impact of prior decisions. We have also provided that determinations made pursuant to this section will be available on the Board's Web site.

Section 400.49—Monitoring and Reviews of Zone Operations and Activity

Comments: Numerous commenters proposed moving this section to subpart E of the regulations, which pertains to zone operations. Those commenters proposed the following additional changes: Adding a significant public detriment standard for reviews; notifying the grantee and affected zone participants and allowing them to submit evidence in response when threshold factors result in a negative recommendation; requiring parties requesting reviews to provide evidence that is probative and substantial; requiring decisions be based on evidence on the record if the decision would be inconsistent with the original examiner's report for the operation in question; requiring negative determinations be supported by evidence on the record of direct negative impact on a U.S. manufacturer; allowing an affected zone participant to meet with the Board upon request prior to issuance of a negative Board decision; removing the ability to impose a restriction after a preliminary review; and removing the Assistant Secretary for Import Administration's authority to impose restrictions.

One commenter stated that a party's request for a review should be disclosed to the affected zone participant prior to initiation of the review. The commenter also stated that reviews should be subject to the notice and hearing requirements of § 400.52. That commenter further proposed eliminating allowing restrictions to be imposed after a preliminary review or, in the alternative, making restrictions contingent on a showing that: (1) the requesting party had a substantial likelihood of obtaining a restriction following full review; (2) the requesting party would suffer irreparable injury without the preliminary restriction; (3) the preliminary restriction would not substantially harm the zone participant or other parties, and (4) the preliminary restriction would further the public interest, with the burden of proof on the party requesting the review. Finally, that commenter stated that a zone participant should be entitled to a refund of duties or fees paid as a result of the restriction imposed based on a preliminary review if the restriction is not maintained after full review by the Board.

Board position: In response to these comments, we have moved this section to Subpart E, as § 400.49. In addition, we have modified subsection (b) to indicate that a party requesting a review should provide information that is ''probative and substantial in addressing the matter in issue.'' This standard mirrors the standard applied both to comments submitted on applications and to responses to those comments. We also have added a sentence to subsection (c) indicating specific procedures to be followed (*i.e.,* notification to the zone grantee and a time period for response) prior to any final action to impose a prohibition or restriction under this section. These changes are responsive to specific comments submitted, although the actual approach or language adopted may differ from those proposed by commenters.

We have not adopted other changes proposed by commenters. The added provision described above provides a basic procedural right to the grantee of an affected zone to provide a response to the Board regarding proposed final action to impose a prohibition or restriction. The additional changes proposed by commenters would either dilute the effectiveness and utility of the provision or add significant complexity. Additional complexity is contrary to the Board's and multiple commenters' desire to simplify these regulations. Further, reviews under the corresponding provision in the prior regulations (§ 400.31(d)) have been very rare, and there is no evidence indicating that such reviews are likely to become more common in the future. Therefore, there does not appear to be a need to include significant additional procedural requirements.

Section 400.51—Accounts, Records and Reports

Comments: Numerous commenters proposed deleting the reference to generally accepted accounting principles for zone accounts. For the annual report provision, those commenters proposed the following revisions: Changing the proposed 90-day filing period to the 120-day period that has been the Board's recent practice; allowing the Executive Secretary to extend the filing period; directing grantees to submit timely reports (with such reports noting whether any zone participants have not timely provided their data for inclusion in the reports); and stating that data submitted by zone participants will be treated as ''business proprietary.'' Those

commenters stated that the Board's annual report to Congress should not provide company-specific data. One commenter proposed a 90-day timeframe for a zone user to submit its data to the zone grantee, with the grantee allowed an additional 30 days for submission of its report to the Board. Alternatively, the commenter proposed allowing a user or a grantee to obtain a 30-day extension.

One commenter stated that the format for zones' annual reports should be revised to take domestic material, labor, overhead and profit into account for export figures. One commenter stated that the Board should require annual reports to include information about admission of merchandise subject to AD/CVD orders for production activity, any production activity involving a foreign article subject to an AD/CVD order and approval of such activity by the Board, or a certification that no production activity occurred involving a foreign article subject to an AD/CVD order. The commenter stated that the Board should obtain data from CBP annually on admission of merchandise subject to AD/CVD orders into zones or subzones with production authority. That commenter also stated that the Board should publish a report each year summarizing data obtained from grantees and from CBP to enable parties to identify discrepancies that should be examined by the Board.

Board position: In response to these comments, we have made a number of revisions to this section. We have deleted the reference to generally accepted accounting principles in favor of simply stating that zone records must comply with the requirements of governmental agencies with appropriate jurisdiction. Regarding the annual report provisions, we have retained our proposed 90-day timeframe for grantees' reports to the Board, but have specifically allowed requests for time extensions, indicating factors for the Executive Secretary to consider in evaluating such requests. In addition, we have allowed a grantee to submit a timely report to the Board without information from an operator that has failed to timely provide information to the grantee. With regard to the specific format and contents of reports to the Board or of reports produced by the Board, as well as the treatment of specific information provided in reports to the Board, these are administrative matters that appropriately should continue to be handled as part of the ordinary functioning of the Board and its staff.

Section 400.52—Notices and Hearings

Comments: Numerous commenters proposed the following revisions to this section: Limiting invitation for public comment to specific identified situations; eliminating the requirement for local public notice to be published in a manner that allows at least 30 days for submission of public comments; limiting a determination on the need for a hearing initiated by the Board to a period ending 60 days after the end of the initial public comment period in a proceeding; establishing a ''materially impacted'' standard for any party requesting a hearing; requiring the Board to allow any party to present at a hearing, provided the party has given seven days advance notice; requiring the Executive Secretary to notify the grantee and affected zone participants of all parties that will be presenting at a hearing; and requiring that the applicant and its witnesses be allowed to present first and rebut last at any hearing.

Board position: Based on public comments, we are requiring that local public notice allow at least 15 days for public comment on an application submitted to the Board (rather than the 30 days in the proposed rule). We also have narrowed the standard for parties that may request public hearings by stating that only parties that may be materially affected may make such a request. We have not adopted other suggested revisions to this section. It is not appropriate to limit the types of situations in which the Board may invite public comment or the timeframe during which a determination may be made to hold a hearing. Given that certain Board proceedings may result in the development of an extensive record over a significant period of time, the Board must maintain the ability to invite comment or hold a hearing whenever the need to do so presents itself. The remaining changes suggested for this section have not been adopted because they would not improve the effectiveness of processes in question and, in the case of the order of presentations at a hearing, would create the appearance of an unbalanced process.

Section 400.53—Official Records; Public Access

Comments: Numerous commenters proposed adding the word ''confidential'' immediately before the word ''proprietary'' in the final sentence of this section.

Board position: We have not made the change proposed by commenters because the term ''confidential'' has a specific significance as an official classification action by government agencies. The information subject to this provision would not have been classified by a government agency, but rather would be considered by an outside entity to be ''business proprietary'' in nature. Therefore, the continued application of the terminology from the proposed regulations, which has been in use in the prior regulations since 1991, is appropriate.

Section 400.54—Information

Comments: Numerous commenters proposed allowing submission of business proprietary information in applications and stated that data submitted in annual reports shall generally be considered ''business proprietary.''

Board position: We have not made these changes. The FTZ Board's application process is inherently a public process, and includes publishing notices of applications in the **Federal Register** and inviting comments. Therefore, it is appropriate for the FTZ Board to focus the application process on submission of information that will be available for public review. With regard to data submitted in annual reports, some of those data may well be considered ''business proprietary'' by the zone operators/users that submit the data through their zones' grantees. However, the FTZ Board cannot assume that all data submitted are indeed business proprietary. Rather, the Board has been implementing a new system for submission of annual report data that specifically allows an individual operator/user to indicate whether it considers its data business proprietary, in which case only a ranged version of the data would be reported publicly.

Section 400.61—Revocation of Authority

Comments: Numerous commenters proposed adding the phrase ''in whole or in part'' to § 400.61(b)(4) and requiring notice to zone or subzone operators. One commenter stated that § 400.61(b)(3) should specify the adjudicative standard that will govern the hearing and that the grantee or operator will be able to call and cross examine witnesses.

Board position: We have added language pertaining to notification of any known operators to § 400.61(b)(1), and added the phrase ''in whole or in part'' to § 400.61(b)(4) to enhance clarity. We have not included additional procedural provisions or details (such as the adjudicative standard that would apply to hearings) because the need for such additional details—with their

attendant increase in complexity—is unclear given that actual use of the revocation provision has been very rare. If additional procedural details become necessary, they could be implemented through a future rulemaking action.

Section 400.62—Fines, Penalties and Instructions To Suspend Activated Status

Comments: Numerous commenters stated that this section would likely have a chilling effect on the FTZ program, particularly at a time of dwindling resources of both grantees and operators. Those commenters proposed the following specific revisions: deleting the inflation-adjustment provision and related references because it is not provided for in the FTZ Act and does not act as a deterrent to violations; adding references to ''administrators'' and changing references of ''operators'' to ''zone participants;'' stating that the $1,000 per day maximum for fines would include any CBP fines, penalties or liquidated damages for the same violations; stating that filing and obtaining approval of a ''voluntary disclosure'' would eliminate or reduce any penalty; modifying the production-related language to bring it in line with changes proposed by those commenters for other sections of the regulations; stating that a grantee would not be subject to a fine under the annual report-related provision so long as the grantee had filed a timely report identifying any operators that have not submitted complete or timely information to the grantee; stating that requests for extensions of the periods to provide responses or mitigating evidence will not be unreasonably withheld; changing the delegation of certain fine-imposition authority to the Assistant Secretary for Import Administration (from the Executive Secretary); inserting references to affected parties for actions pertaining to suspension of activated status; and stating that the Board will give due consideration for allowing transfers of affected merchandise from a site for which a determination has been made to suspend activated status.

Two commenters proposed that the Board clarify that operational activities within zones are within the sole purview of CBP, limit penalties under this section to specifically defined violations, and state normal ranges for penalties for each type of defined violation. Two commenters requested that the regulations explicitly preclude both the Board and the CBP from imposing fines on the same party resulting from the same offense. One commenter proposed that the Board: confine suspensions of activated status and processing of requests solely to the specific non-compliant operations; clarify who the responsible parties are for certain violations, to eliminate the potential for double fines for a single violation; eliminate ambiguity regarding the timeframe for operators to submit their annual reports to grantees; clarify the meaning of ''conflict of interest;'' for responses to notifications of violations, allow parties 30 days and two extensions of 30 days each if requested in writing; and treat ''inaccurate written advice provided by a Board staff member'' as binding on the government rather than as a mitigating factor.

One commenter opposed adopting the proposed section, proposing instead that the Board retain the existing penalties provision and insert a brief provision addressing fine amounts for violations involving production, annual reports and conflicts of interest. The commenter also stated that penalties should only be assessed pursuant to a transparent process. Two commenters stated that the Board should notify a zone's grantee of any penalty action initiated against an operator within the zone. One commenter stated that the regulations should clearly define circumstances that could lead to penalties. Another commenter supported this proposed section as rectifying an omission in the Board's oversight and monitoring of zone activity. That commenter proposed that the Board expand this section to include details of the judicial review process, provide more comprehensive explanation of decisions, and consider a formal, adjudicative process for dispute resolution.

One commenter expressed concern that the detailed section pertaining to fines changes the Board's focus from gatekeeper of zone access to policing agent over day-to-day zone management. Another commenter stated that this section as proposed obscures the limitations on liability expressed in § 400.46. One commenter asked that the Board clarify whether a confidentiality clause in a grantee's contract with a zone participant can be relied on by that participant to prevent a grantee from disclosing to the Board a potential violation pertaining to that participant, such as the untimeliness of an operator's annual report to the grantee. One commenter stated that the Board should not accept other commenters' proposed changes that would reduce the impact of the penalty provisions.

One commenter stated that this section should be reviewed carefully to ensure conformity with 19 U.S.C. 81s. That commenter also stated that the regulations should clarify the approach to be taken when multiple parties may be subject to penalty for the same violation; specify the adjudicative standard that will govern any hearing and that the grantee or operator will be able to call and cross examine witnesses; and state a clear limitations period on enforcement of any fine, penalty or sanction.

One commenter stated that fines should not be imposed on any party for an offense that is not the result of the party's negligence (for example, clerical error or a grantee's inability to collect information from an operator for the grantee's annual report).

Board position: It is appropriate for these regulations to contain detailed procedures for imposing penalties authorized by the FTZ Act. Delineating such procedures provides important clarity and predictability for all potentially affected parties. The provisions of this section target key areas for which the potential imposition of penalties is an important compliance tool.

In response to the public's comments, we have narrowed the focus of fining actions pursuant to this section to two specific types of violations: untimely submissions of annual reports and failure to afford uniform treatment under like conditions to parties using (or seeking to use) a zone. We have specifically excluded violations for production activity because such violations are already subject to fines by CBP and we want to avoid subjecting a zone participant to fines from two different agencies for a single action.

Further, the proposal to include fines pertaining to production activity created a need for the proposed separate section allowing ''prior disclosure'' of violations in order to encourage disclosure and rectification of any non-compliant activity. However, the effect of implementing the proposed sections would have been to require zone operators to disclose violations to two separate agencies under two distinct sets of procedures. Doubling the disclosure burden on zone operators would have tended to discourage zone use (with resulting negative impacts on U.S. competitiveness) without contributing to improved compliance.

Based on the narrowed focus on § 400.62, we have eliminated the proposed prior disclosure provision from the regulations. As a consequence, we have not addressed detailed comments pertaining to the proposed section allowing for prior disclosure (§ 400.63). Although a number of commenters supported the inclusion of this type of provision, the provision was

relevant to violations involving production activity, which are no longer targeted in § 400.62. The remaining types of violations targeted in § 400.62 are not of a nature for which prior disclosure would be relevant or appropriate.

Because the Board is not adopting the prior disclosure provision, we do not need to address comments pertaining to the interaction of the provisions of § 400.62 with the prior disclosure provision. Similarly, given that production activity is no longer targeted by § 400.62, we do not need to consider changes to the language of this section that would flow from changes related to production in other sections of the regulations. Based on the narrower focus of this revised section, we have also eliminated ''inaccurate written advice provided by a Board staff member'' as a mitigating factor, because it is irrelevant to the types of violations that are now targeted by this section.

The revisions to this section should help to ensure that a fine is only imposed on the party(ies) with direct responsibility for the violation that results in the fine. Based on the comments, we have added language to this section indicating that a grantee will not be subject to a fine for an untimely annual report if the grantee has filed a timely report identifying any operator that has not submitted complete or timely information to the grantee. The range of changes we have made to this section should also provide clarity and be in harmony with the limitations on grantee liability explained in § 400.46.

We have not deleted the inflation-adjustment provision and related references because Congress mandated the adjustment of these types of penalties in the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134). Based on public comments, we have added language to notify the zone's grantee, in addition to the parties responsible for a violation.

We have added certain references to an ''administrator'' as an example of a ''person undertaking one or more functions on behalf of the grantee'' in concert with changes made to § 400.43. We have also indicated that parties at a hearing may call and cross examine witnesses, and that requests for extensions of the periods to provide responses or mitigating evidence will not be unreasonably withheld. We have not changed certain references from ''zone operators'' to ''zone participants'' because, apart from grantees and persons undertaking functions on behalf of grantees (such as administrators), zone operators are the only other category of party relevant to the specific types of violations now targeted by this section. We also have not changed the delegation of certain fine-imposition authority from the Executive Secretary to the Assistant Secretary for Import Administration because the authority in question is for relatively minor offenses.

In light of the narrowed focus of the fining provision, we have broadened the potential reach of suspension of activated status to encompass any ''repeated and willful failure to comply with a requirement of the FTZ Act or the Board's regulations.'' Given the ''repeated and willful'' standard, we do not anticipate frequent use of this provision, but it will be available as an enforcement mechanism, if needed. We have not added the proposed additional references to ''affected parties'' for actions pertaining to suspension of activated status. We have instead added references to the grantee of a zone. A zone's grantee would be in a position to notify affected parties. The FTZ Board would not necessarily have information regarding the range of parties that might be affected by suspension of activated status.

We have added that the Board will give due consideration to and make allowance for the transfer of merchandise prior to the suspension of activated status, because such consideration is appropriate. We have not included additional procedural provisions or details (such as the adjudicative standard that would apply to hearings) because the proposed provisions already provide a significant increase in the level of procedural detail pertaining to penalty actions. The Board should develop a practice under the procedural details provided in these regulations before deciding whether to adopt additional provisions or details.

We have added language clarifying that suspensions of activated status and processing of requests will be targeted to the specific non-compliant operations. We have also clarified who will be the responsible parties for specific violations, so that there should be no potential for a violator's being subject to double fines for a single violation.

In response to comments, we have modified § 400.51 to specify a timeframe for operators' submission of annual reports to grantees. That change should clarify various parties' potential liabilities for untimely reports. We have also modified this section and § 400.51 in response to comments to require that grantees disclose to the FTZ Board whether each of the grantee's operators has submitted the information required for the Board's report to Congress. Such required disclosure could not be avoided by an agreement between an operator and a grantee.

In light of modifications made to § 400.43, we have made harmonizing changes to § 400.62(c). Those changes, in combination with elimination of use of the term ''agent,'' should help to clarify the specific types of parties that would be subject to § 400.62(c).

The provisions of this section would apply equally to any party with responsibility for a violation. Therefore, it is possible that multiple parties could be penalized for the same violation. However, given that the provisions of this section are now focused narrowly on failures to submit annual reports on time and on violations of the uniform treatment requirements, the number of parties potentially affected by this section is dramatically reduced relative to the proposed rule. Further, an untimely annual report is likely to be the fault of a single party. Therefore, the sole category of violation for which multiple parties are potentially likely to share responsibility is the uniform treatment requirements. Given the importance of enforcing compliance with the statutory uniform treatment requirement, it would be appropriate to fine any parties that share responsibility for such a violation. Finally, we have not adopted a limitations period for fines or penalties. Given that this section is new, and the potential variation in circumstances for which fines or penalties prove to be appropriate, it is not feasible at this time to provide a single limitations period for enforcement. However, the Board's focus in applying this section will be to encourage compliance rather than to penalize past actions for which corrective action has already been taken.

Section 400.63—Appeals to the Board of Decisions of the Assistant Secretary for Import Administration and the Executive Secretary

Comments: Numerous commenters proposed providing an opportunity for input by the affected grantee and zone participant, issuing a report regarding the Board's decision, and identifying the court to which judicial appeal could be made.

Board position: The suggested procedural changes in this section fail to take into account the nature of the section. Additional opportunity for input by an affected grantee or zone participant is unnecessary because this provision is limited to appeals to the Board by such parties, who will be able to include all desired input in the appeal documents they present for the

Board's consideration. For similar reasons, no additional procedures are needed stemming from the Board's decision regarding the appeal. The regulations already contain substantial procedural requirements pertaining to potential actions by, or on behalf of, the Board. Finally, we have not included language identifying the court to which judicial appeal could be made because the Board does not have the authority to confer, limit, or otherwise delineate the jurisdiction of Federal courts.

Other Comments

Comments: Numerous commenters suggested edits to individual sections that were minor or essentially non-substantive.

Board position: We have adopted suggested edits where they would improve the clarity or effectiveness of the provisions in question. Given their minor or essentially non-substantive nature, we have not addressed such edits individually in this summary.

Comments: Multiple commenters expressed concern about complexity or additional burden that they perceived the proposed regulations would create.

Board position: Concerns about complexity and additional burden have been considered in the development of these regulations and have resulted in our making changes, including significantly simplifying the process and requirements for notifications to request production authority. Other changes that reduce complexity or burden include eliminating potential FTZ Board penalties pertaining to production activity, and eliminating certain provisions and substantially modifying others pertaining to uniform treatment (§ 400.43). Although these regulations contain additional detail on certain topics, that detail provides guidance and clarity for grantees and zone participants in a manner that should ultimately facilitate those parties' participation in the FTZ program.

Comments: Numerous commenters stated that the two sentences from the Preamble to the prior regulations regarding the public policy objective of the FTZ program should be included in the Preamble of any future Board regulations. One commenter proposed that one of those sentences be included within § 400.1 of the regulations.

Board position: The Preamble of the proposed regulations already contained the primary sentence that is the focus of the comments in question. We have retained that sentence in the Preamble for these regulations. We have not included in the Preamble the second sentence that certain commenters proposed because it could be misread as implying we would apply different evaluative or procedural standards than the ones contained in these regulations.

Comment: Numerous commenters proposed adding a new section with language designating certain offices of the U.S. Commercial Service as representatives of the Board for export promotion activities and stating that the Board and its representatives will act in a manner that prioritizes government export promotion objectives.

Board position: We have not adopted this proposal. The proposed section deals with matters beyond the statutory authority of the Board.

Comment: Numerous commenters proposed adding a new section stating that the Board will mandate the development of updated, written procedures by agencies that require reporting pertaining to zone activity.

Board position: We have not added the proposed new section. The proposed section could affect the policies and procedures of a range of government agencies that fall outside the scope of the FTZ Act, and the Board cannot require other agencies or bureaus to act.

Comment: One commenter proposed redefining what constitutes a foreign-trade zone, as well as zone, general-purpose zone and subzone, to focus on conferring a status rather than designating a geographic location.

Board position: We have not adopted the type of revisions proposed by this commenter because the FTZ Act is focused on the designation of geographic locations as foreign-trade zone sites, and because the commenter's submission does not indicate a clear advantage to an approach based on status. However, as noted in our response to comments on § 400.11, we intend to address through a subsequent rule simplifying the parallel site-designation frameworks that currently exist. The intended effect of this change is to enhance the ability of the FTZ program to improve the competitiveness of U.S. facilities.

Comments: One commenter stated that grantees may be unwilling to jeopardize the ''permanent'' status of current sites through a transition to the ASF, which has standard ''sunset'' periods that can be too short. The commenter proposed grandfathering existing permanent sites into the ASF. That commenter also proposed changing the process for designating usage-driven sites to an automatic designation once CBP had approved activation for a location, with the Board simply notified of that designation.

Board position: As noted in responses to certain other comments, the Board intends to address through a subsequent rule simplifying the parallel site-designation frameworks that currently exist. In that process, the Board will be able to evaluate provisions affecting existing zone sites. We have not established an automatic mechanism for designating usage-driven sites based on CBP approval for activation. That change would effectively shift authority to designate sites from the Board and its staff to CBP officials at various ports nationwide, with a range of potential policy implications for both the Board and CBP. Given the quick, simple process already available for designating usage-driven sites, it is not clear that a need exists for the shift in authority proposed by the commenter.

Comment: One commenter expressed concern that the proposed regulations concentrate more power in the hands of the Executive Secretary and Board staff to intrude on zone operations and policy decisions made by grantees and users.

Board position: These regulations reflect the same fundamental assignment of responsibilities as the prior regulations. They include sections providing new specificity regarding compliance with the FTZ Act's requirements that a zone operate as a public utility and afford uniform treatment to zone participants. Inherent in the functioning of some of the specific provisions is a greater role for the Board's Executive Secretary and the Board's staff. In practice, the adopted provisions do not constitute ''intrusion'' on grantees or users but, rather, reflect balanced measures designed to ensure that zones comply with the requirements established by Congress through the FTZ Act.

Comment: One commenter requested a process by which the Board would obtain feedback before publication of further notice pertaining to this rulemaking.

Board position: The Administrative Procedure Act (APA), 5 U.S.C. 553, provides the procedural basis for this action. Accordingly, we provided interested persons with notice of the proposed rule and almost 150 days to participate in the rulemaking by commenting on it during the comment period. Further, the public comment period exceeded the requirements of the APA. In addition, during the public comment period, the Board staff held detailed public seminars at eight regional hubs across the United States, as well as in Washington, DC, at which numerous parties received extensive explanations of the intent of proposed provisions and answers to their questions. The Board staff also made

such information available interactively via the Internet. In addition to the lengthy comment period on the proposed regulations, the Board allowed parties a subsequent 32-day period to submit comments responding to other parties' comments that had been submitted during the initial comment period. More than 100 parties submitted comments on the proposed regulations.

These regulations include key changes that provide dramatically simplified and expedited procedures designed to boost the competiveness of U.S. manufacturers and exporters. It is important for those changes to be implemented as soon as possible. Given the extensive comment process to date, it is unclear that an additional notice and comment/consultative process would yield benefits that would offset losses due to delayed implementation of the key changes made through these regulations. Therefore, we are not seeking additional comment/consultation prior to publishing these regulations.

Comment: One commenter stated that the application and approval process is susceptible to undue influence that can result in unfair advantages to certain parties, and that the Board must limit the influence of certain parties to ensure that zone status results in positive economic effects.

Board position: These regulations contain extensive provisions aimed at establishing neutral, balanced procedures for evaluating applications received by the FTZ Board. The commenter presented no evidence of unfair advantages for any parties resulting from the Board's processes. In the absence of such evidence, we have found that the provisions of these regulations are sufficient to ensure that the Board's processes are fair and equitable.

Comments: One commenter stated that Board decisions should be fair and reasonable, that a need exists for uniform treatment from the FTZ Board given what the commenter characterized as frequent changes in the ASF structure and different application of territorial standards in different regions, and that the primary intended constituency of the proposed regulations appears to be grantees rather than the companies that use the FTZ program.

Board position: Decisions of the Board and its staff consistently reflect high standards of fairness and reasonableness. The commenter has provided no examples to support its claims but, as a general matter, a party's disagreement with a Board decision does not imply that the decision was unfair or unreasonable. Similarly, a party may perceive a Board decision on an ASF-related matter—such as pertaining to the service area for a zone—as inconsistent with other Board decisions. However, a party to a particular Board case generally is unfamiliar with the details of other cases decided by the Board. In that context, what may appear to one party as inconsistent or non-uniform treatment is more likely to be consistent application of policy to circumstances that are superficially similar but that actually differ substantively. Given that the Board has only adopted a single set of modifications (November 2010) since its adoption of the ASF in 2008, a claim of frequent changes in the ASF structure would also appear to reflect a lack of adequate familiarity with the Board's ASF practice. Finally, the statement that the primary intended constituency of the proposed regulations seems to be grantees would appear not to reflect a substantive assessment. The proposed regulations contain certain provisions that focus on grantees and on enhancing their abilities to perform their functions because 1) the FTZ Act provides for the Board to grant authority to zone grantees, not to other zone participants, and 2) the grantee, as a local agency or organization engaged in promoting trade and economic development, is in the best position to enable firms in the region it serves to reap the competitiveness benefits available through the FTZ program.

Comment: One commenter proposed allowing companies engaged in FTZ production to temporarily remove merchandise under the FTZ operator's bond for special processing in the United States that cannot be accommodated in the FTZ.

Board position: The type of procedure proposed by the commenter is properly in the realm of CBP. CBP's regulations govern FTZ operations and contain detailed provisions concerning the movement of merchandise into and out of FTZs.

Changes From Proposed Rule

In addition to the substantive changes mentioned above that we have made in response to comments, we have made various grammatical and similar changes to the rule from its proposed form, to increase clarity and accuracy and reduce potential public confusion.

Executive Orders 12866 and 13563

This rule has been determined to be significant for purposes of Executive Order 12866. Consistent with Executive Order 13563, we held public seminars across the country to help maximize public participation in the rulemaking process (as cited above in response to a comment), and we adopted approaches designed to impose the least burden on society while attaining the regulatory objectives (see *e.g.,* the responses to comments on §§ 400.14, 400.26, 400.42, 400.43 and 400.62).

This rule is also consistent with section 5 of EO 12866, which instructs agencies to ''periodically review their significant regulations to determine whether any such regulations should be modified or eliminated * * * to make the agency's regulatory program more effective,'' and section 6 of EO 13563, which instructs agencies to ''consider how best to promote retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' This final rule replaces FTZ regulations that have not changed since 1991, and reflects the FTZ Board's view, following a review of those regulations, that modifying the 1991 rules will help to ensure that FTZs remain competitive, efficient, and flexible in the modern, 21st Century global economy.

Regulatory Flexibility Act

At the proposed rule stage of this rulemaking, the Acting Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. (5 U.S.C. 605(b)). The factual basis for the certification was published in the proposed regulations and is not repeated here. We did not receive any public comments on the certification. As a result, a regulatory flexibility analysis was not required, and none was prepared.

Executive Order 13132

This final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

Paperwork Reduction Act

This rule contains information collection activities subject to the Paperwork Reduction Act. The overall burden on the public is reduced significantly as a result of the provisions adopted in this rule.

There is no impact on the collection that falls under the Office of Management and Budget (OMB) Control No. 0625–0109 (Annual Report to Foreign-Trade Zones Board). This rule amends the collection under OMB

Control No. 0625–0139 (Application to Foreign-Trade Zones Board). Under this rule, the application requirements associated with the latter collection for zone applicants, grantees, operators, and users are significantly simplified, and there is a large overall reduction of the burden on those parties. The Board will be seeking OMB approval of these changes, and will notify the public when these amendments have been approved. After publication of the proposed rule, the FTZ Board renewed its OMB information-collection authority and reduced the overall burden estimate for applications from 6,651 to 4,969 hours based on recent simplifications to the Board's practice. The changes in this rule will further reduce burden by shifting future production (manufacturing) applications to a simple notification as an initial stage. A more detailed application will only need to be submitted if review of the notification results in a determination that the additional application step is necessary. We estimate that the average annual number of notifications will be 33 (an increase from 25 manufacturing applications under the prior regulations), with 5 of those notifications requiring the additional application stage. Shifting applications for production authority to the notification process (with few applications needed as a subsequent step) is expected to reduce the total annual burden associated with requesting production authority from 850 to 351.5 hours (a reduction of 498.5 hours). As a result of this significantly reduced burden, the FTZ program should be much more accessible to all companies involved in production activity.

In addition to changes pertaining directly to production activity, the rule also specifically adopts the alternative site framework (ASF) authorized by the FTZ Board in December 2008. The ASF procedures reduce the time and complexity involved in designating FTZ sites for many companies. With increased use of the ASF by zones, there is expected to be a decline in the number of expansion applications in favor of a significant number of much simpler minor boundary modifications. The annual number of expansion applications over time should decline by half (from 20 to 10) which, combined with some simplified requirements in this rule, will reduce the burden from 1,980 to 990 hours. We project an annual average of 120 minor boundary modifications (simple ''administrative'' cases that can be approved by the Board's staff), with an annual burden of 420 hours.

This rule includes also radically simplifies application requirements for subzone designation so that the average annual burden for the estimated 15 subzone applications should fall from 1,695 to 67.5 hours. We note that, unlike the prior rule, this rule entirely separates the procedures for production authority and subzone designation. As a result, some applicants which only needed to meet the subzone application requirements under the prior rule will need to meet both the subzone and production application requirements under this rule. Nonetheless, the combined application burden for subzone and production (manufacturing) notifications/applications should fall from 2,545 hours under the prior rule to 419 hours.

This rule also allows parties to apply pursuant to § 400.43(f) for a waiver from the effect of § 400.43(d)), which bars parties that provide products/services to zone users from performing key functions associated with the zone-grantee role. We estimate that the average annual number of applications for waivers will be 25, with an average burden of one hour per application, for a total of 25 burden hours annually associated with the waiver provision.

Finally, the burden-hours estimate for applications for new zones is unaffected by this rule, with three applications projected to result in 444 burden hours annually. The total burden of the various applications subject to this rule is 2,298 hours (the sum of 444 for new zones, 990 for expansions, 67.5 for subzones, 351.5 for production notifications and applications, 420 for minor boundary modifications, and 25 for waivers pursuant to § 400.43(f)). In sum, there is a net reduction of 2,671 application-related burden hours annually (from 4,969 to 2,298 hours) through the provisions adopted in this rule.

List of Subjects in 15 CFR Part 400

Administrative practice and procedure, Confidential business information, Customs duties and inspection, Foreign-trade zones, Harbors, Imports, Reporting and recordkeeping requirements.

By order of the Board, Washington, DC, this 16th day of February 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

For the reasons set forth in the preamble, 15 CFR part 400 is revised to read as follows:

PART 400—REGULATIONS OF THE FOREIGN-TRADE ZONES BOARD

Subpart A—Scope, Definitions and Authority

400.1 Scope.
400.2 Definitions.
400.3 Authority of the Board.
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Subpart B—Ability To Establish Zone; Limitations and Restrictions on Authority Granted

400.11 Number and location of zones and subzones.
400.12 Eligible applicants.
400.13 General conditions, prohibitions and restrictions applicable to authorized zones.
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400.15 Production equipment.
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Subpart C—Applications To Establish and Modify Authority

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400.22 Notification for production authority.
400.23 Application for production authority.
400.24 Application for expansion or other modification to zone.
400.25 Application for subzone designation.
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400.28 Burden of proof.
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Subpart D—Procedures for Application Evaluation and Reviews

400.31 General application provisions and pre-docketing review.
400.32 Procedures for docketing applications and commencement of case review.
400.33 Examiner's review—application to establish or modify a zone.
400.34 Examiner's review—application for production authority.
400.35 Examiner's review—application for subzone designation.
400.36 Completion of case review.
400.37 Procedure for notification of proposed production activity.
400.38 Procedure for application for minor modification of zone.

Subpart E—Operation of Zones and Administrative Requirements

400.41 General operation of zones; requirements for commencement of operations.
400.42 Operation as public utility.

400.43 Uniform treatment.
400.44 Zone schedule.
400.45 Complaints related to public utility and uniform treatment.
400.46 Grantee liability.
400.47 Retail trade.
400.48 Zone-restricted merchandise.
400.49 Monitoring and reviews of zone operations and activity.

Subpart F—Records, Reports, Notice, Hearings and Information

400.51 Accounts, records and reports.
400.52 Notices and hearings.
400.53 Official records; public access.
400.54 Information.

Subpart G—Penalties and Appeals to the Board

400.61 Revocation of authority.
400.62 Fines, penalties and instructions to suspend activated status.
400.63 Appeals to the Board of decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

Authority: Foreign-Trade Zones Act of June 18, 1934, as amended (Pub. L. 73–397, 48 Stat. 998–1003 (19 U.S.C. 81a–81u)).

Subpart A—Scope, Definitions and Authority

§ 400.1 Scope.

(a) This part sets forth the regulations, including the rules of practice and procedure, of the Foreign-Trade Zones Board with regard to foreign-trade zones (FTZs or zones) in the United States pursuant to the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u). It includes the substantive and procedural rules for the authorization of zones and for the Board's regulation of zone activity. The purpose of zones as stated in the Act is to ''expedite and encourage foreign commerce, and other purposes.'' The regulations provide the legal framework for accomplishing this purpose in the context of evolving U.S. economic and trade policy, and economic factors relating to international competition.

(b) Part 146 of the customs regulations (19 CFR part 146) governs zone operations, including the admission of merchandise into zones, zone activity involving such merchandise, and the transfer of merchandise from zones.

(c) To the extent zones are ''activated'' under U.S. Customs and Border Protection (CBP) procedures in 19 CFR part 146, and only for the purposes specified in the Act (19 U.S.C. 81c), zones are treated for purposes of the tariff laws and customs entry procedures as being outside the customs territory of the United States. Under zone procedures, foreign and domestic merchandise may be admitted into zones for operations such as storage, exhibition, assembly, manufacture and processing, without being subject to formal customs entry procedures and payment of duties, unless and until the foreign merchandise enters customs territory for domestic consumption. At that time, the importer ordinarily has a choice of paying duties either at the rate applicable to the foreign material in its condition as admitted into a zone, or if used in production activity, to the emerging product. Quota restrictions do not normally apply to foreign goods in zones. The Board can deny or limit the use of zone procedures in specific cases on public interest grounds. Merchandise moved into zones for export (zone-restricted status) may be considered exported for purposes such as federal excise tax rebates and customs drawback. Foreign merchandise (tangible personal property) admitted to a zone and domestic merchandise held in a zone for exportation are exempt from certain state and local *ad valorem* taxes (19 U.S.C. 81o(e)). Articles admitted into zones for purposes not specified in the Act shall be subject to the tariff laws and regular entry procedures, including the payment of applicable duties, taxes, and fees.

§ 400.2 Definitions.

(a) *Act* means the Foreign-Trade Zones Act of 1934, as amended (19 U.S.C. 81a–81u).

(b) *Activation limit* is the size of the physical area of a particular zone or subzone authorized by the Board to be simultaneously in activated status with CBP pursuant to 19 CFR 146.6. The activation limit for a particular zone/subzone is a figure explicitly specified by the Board in authorizing the zone (commonly 2,000 acres) or subzone or, in the absence of a specified figure, the total of the sizes of the approved sites of the zone/subzone.

(c) *Alternative site framework* (ASF) is an optional approach to designation and management of zone sites allowing greater flexibility and responsiveness to serve single-operator/user locations. The ASF was adopted by the Board as a matter of practice in December 2008 (74 FR 1170, January 12, 2009; correction 74 FR 3987, January 22, 2009) and modified by the Board in November 2010 (75 FR 71069, November 22, 2010).

(d) *Board* means the Foreign-Trade Zones Board, which consists of the Secretary of the Department of Commerce (chairman) and the Secretary of the Treasury, or their designated alternates.

(e) *Board Order* is a type of document that indicates a final decision of the Board. Board Orders are generally published in the **Federal Register** after issuance.

(f) *CBP* means U.S. Customs and Border Protection.

(g) *Executive Secretary* is the Executive Secretary of the Foreign-Trade Zones Board.

(h) *Foreign-trade zone* (FTZ or zone) includes one or more restricted-access sites, including subzones, in or adjacent (as defined by § 400.11(b)(2)) to a CBP port of entry, operated as a public utility (within the meaning of § 400.42) under the sponsorship of a zone grantee authorized by the Board, with zone operations under the supervision of CBP.

(i) *Grant of authority* is a document issued by the Board that authorizes a zone grantee to establish, operate and maintain a zone, subject to limitations and conditions specified in this part and in 19 CFR part 146. The authority to establish a zone includes the responsibility to manage it.

(j) *Magnet site* means a site intended to serve or attract multiple operators or users under the ASF.

(k) *Modification:* A major modification is a proposed change to a zone that requires action by the FTZ Board; a minor modification is a proposed change to a zone that may be authorized by the Executive Secretary.

(l) *Person* includes any individual, corporation, or entity.

(m) *Port of entry* means a port of entry in the United States, as defined by part 101 of the customs regulations (19 CFR part 101), or a user fee airport authorized under 19 U.S.C. 58b and listed in part 122 of the customs regulations (19 CFR part 122).

(n) *Private corporation* means any corporation, other than a public corporation, which is organized for the purpose of establishing, operating and maintaining a zone and which is chartered for this purpose under a law of the state in which the zone is located.

(o) *Production,* as used in this part, means activity involving the substantial transformation of a foreign article resulting in a new and different article having a different name, character, and use, or activity involving a change in the condition of the article which results in a change in the customs classification of the article or in its eligibility for entry for consumption.

(p) *Public corporation* means a state, a political subdivision (including a municipality) or public agency thereof, or a corporate municipal instrumentality of one or more states.

(q) *Service area* means the jurisdiction(s) within which a grantee proposes to be able to designate sites via

minor boundary modifications under the ASF.

(r) *State* includes any state of the United States, the District of Columbia, and Puerto Rico.

(s) *Subzone* means a site (or group of sites) established for a specific use.

(t) *Usage-driven site* means a site tied to a single operator or user under the ASF.

(u) *Zone* means a foreign-trade zone established under the provisions of the Act and these regulations. Where used in this part, the term also includes subzones, unless the context indicates otherwise.

(v) *Zone grantee* is the corporate recipient of a grant of authority for a zone. Where used in this part, the term ''grantee'' means ''zone grantee'' unless otherwise indicated.

(w) *Zone operator* is a person that operates within a zone or subzone under the terms of an agreement with the zone grantee (or third party on behalf of the grantee), with the concurrence of CBP.

(x) *Zone participant* is a current or prospective zone operator, zone user, or property owner.

(y) *Zone plan* includes all the zone sites that a single grantee is authorized to establish.

(z) *Zone site* (site) means a physical location of a zone or subzone. A site is composed of one or more generally contiguous parcels of land organized and functioning as an integrated unit, such as all or part of an industrial park or airport facility.

(aa) *Zone user* is a party using a zone under agreement with a zone operator.

§ 400.3 Authority of the Board.

(a) *In general.* In accordance with the Act and procedures of this part, the Board has authority to:

(1) Prescribe rules and regulations concerning zones;

(2) Issue grants of authority for zones, and approve subzones and modifications to the original zone;

(3) Authorize production activity in zones and subzones as described in this part;

(4) Make determinations on matters requiring Board decisions under this part;

(5) Decide appeals in regard to certain decisions of the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary;

(6) Inspect the premises, operations and accounts of zone grantees, operators and users (and persons undertaking zone-related functions on behalf of grantees, where applicable);

(7) Require zone grantees and operators to report on zone operations;

(8) Report annually to the Congress on zone operations;

(9) Restrict or prohibit zone operations;

(10) Terminate reviews of applications under certain circumstances pursuant to § 400.36(g);

(11) Authorize under certain circumstances the entry of ''zone-restricted merchandise'' (19 CFR 146.44) into the customs territory pursuant to § 400.48;

(12) Impose fines for violations of the Act and this part;

(13) Instruct CBP to suspend activated status pursuant to § 400.62(h);

(14) Revoke grants of authority for cause;

(15) Determine, as appropriate, whether zone activity is or would be in the public interest or detrimental to the public interest, health or safety; and

(16) Issue and discontinue waivers pursuant to § 400.43(f).

(b) *Authority of the Chairman of the Board.* The Chairman of the Board (Secretary of the Department of Commerce) has the authority to:

(1) Appoint the Executive Secretary of the Board;

(2) Call meetings of the Board, with reasonable notice given to each member; and

(3) Submit to the Congress the Board's annual report as prepared by the Executive Secretary.

(c) *Alternates.* Each member of the Board shall designate an alternate with authority to act in an official capacity for that member.

(d) *Authority of the Assistant Secretary for Import Administration (Alternate Chairman).* The Commerce Department's Assistant Secretary for Import Administration has the authority to:

(1) Terminate reviews of applications under certain circumstances pursuant to § 400.36(g);

(2) Mitigate and assess fines pursuant to §§ 400.62(e) and (f) and instruct CBP to suspend activated status pursuant to § 400.62(h); and

(3) Restrict the use of zone procedures under certain circumstances pursuant to § 400.49(c).

(e) *Determinations of the Board.* Determinations of the Board shall be by the unanimous vote of the members (or alternate members) of the Board, which shall be recorded.

§ 400.4 Authority and responsibilities of the Executive Secretary.

The Executive Secretary has the following responsibilities and authority:

(a) Represent the Board in administrative, regulatory, operational, and public affairs matters;

(b) Serve as director of the Commerce Department's Foreign-Trade Zones staff;

(c) Execute and implement orders of the Board;

(d) Arrange meetings and direct circulation of action documents for the Board;

(e) Arrange with other sections of the Department of Commerce and other governmental agencies for studies and comments on zone issues and proposals;

(f) Maintain custody of the seal, records, files and correspondence of the Board, with disposition subject to the regulations of the Department of Commerce;

(g) Issue notices on zone matters for publication in the **Federal Register**;

(h) Direct processing of applications and reviews, including designation of examiners and scheduling of hearings, under various sections of this part;

(i) Make determinations on questions pertaining to grantees' applications for subzones as provided in § 400.12(d);

(j) Make recommendations in cases involving questions as to whether zone activity should be prohibited or restricted for public interest reasons, including proceedings and reviews under § 400.5;

(k) Determine questions of scope under § 400.14(d);

(l) Determine whether additional information is needed for evaluation of applications and other requests for decisions under this part, as provided for in various sections of this part, including §§ 400.21–400.25;

(m) Issue instructions, guidelines, forms and related documents specifying time, place, manner and formats for applications and notifications in various sections of this part, including §§ 400.21(b) and 400.43(f);

(n) Determine whether proposed modifications are major modifications or minor modifications under § 400.24(a)(2);

(o) Determine whether applications meet pre-docketing requirements under § 400.31(b);

(p) Terminate reviews of applications under certain circumstances pursuant to § 400.36(g);

(q) Authorize minor modifications to zones under § 400.38, commencement of production activity under § 400.37(d) and subzone designation under § 400.36(f);

(r) Review notifications for production authority under § 400.37;

(s) Direct monitoring and reviews of zone operations and activity under § 400.49;

(t) Review rate schedules and determine their sufficiency under § 400.44(c);

(u) Assess potential issues and make recommendations pertaining to uniform

treatment under § 400.43 and review and decide complaint cases under § 400.45;

(v) Make certain determinations and authorizations pertaining to retail trade under § 400.47;

(w) Authorize under certain circumstances the entry of ''zone-restricted merchandise'' into the customs territory under § 400.48;

(x) Determine the format and deadlines for the annual reports of zone grantees to the Board and direct preparation of an annual report from the Board to Congress under § 400.51(c);

(y) Make recommendations and certain determinations regarding violations and fines, and undertake certain procedures related to the suspension of activated status, as provided in § 400.62; and

(z) Designate an acting Executive Secretary.

§ 400.5 Authority to restrict or prohibit certain zone operations.

The Board may conduct a proceeding, or the Executive Secretary a review, to consider a restriction or prohibition on zone activity. Such proceeding or review may be either self-initiated or in response to a complaint made to the Board by a person directly affected by the activity in question and showing good cause. After a proceeding or review, the Board may restrict or prohibit any admission of merchandise or process of treatment in an activated FTZ site when it determines that such activity is detrimental to the public interest, health or safety.

§ 400.6 Board headquarters.

The headquarters of the Board are located within the U.S. Department of Commerce (Herbert C. Hoover Building), 1401 Constitution Avenue NW., Washington, DC 20230, within the office of the Foreign-Trade Zones staff.

§ 400.7 CBP officials as Board representatives.

CBP officials with oversight responsibilities for a port of entry represent the Board with regard to the zones adjacent to the port of entry in question and are responsible for enforcement, including physical security and access requirements, as provided in 19 CFR part 146.

Subpart B—Ability To Establish Zone; Limitations and Restrictions on Authority Granted

§ 400.11 Number and location of zones and subzones.

(a) *Number of zones—port of entry entitlement.*

(1) Provided that the other requirements of this part are met:

(i) Each port of entry is entitled to at least one zone;

(ii) If a port of entry is located in more than one state, each of the states in which the port of entry is located is entitled to a zone; and

(iii) If a port of entry is defined to include more than one city separated by a navigable waterway, each of the cities is entitled to a zone.

(2) Applications pertaining to zones in addition to those approved under the entitlement provision of paragraph (a)(1) of this section may be approved by the Board if it determines that the existing zone(s) will not adequately serve the convenience of commerce.

(b) *Location of zones and subzones—port of entry adjacency requirements.*

(1) The Board may approve ''zones in or adjacent to ports of entry'' (19 U.S.C. 81b).

(2) The ''adjacency'' requirement is satisfied if:

(i) A general-purpose zone site is located within 60 statute miles or 90 minutes' driving time (as determined or concurred upon by CBP) from the outer limits of a port of entry boundary as defined in 19 CFR 101.3.

(ii) A subzone meets the following requirements relating to CBP supervision:

(A) Proper CBP oversight can be accomplished with physical and electronic means;

(B) All electronically produced records are maintained in a format compatible with the requirements of CBP for the duration of the record period; and

(C) The operator agrees to present merchandise for examination at a CBP site selected by CBP when requested, and further agrees to present all necessary documents directly to the relevant CBP oversight office.

§ 400.12 Eligible applicants.

(a) *In general.* Subject to the other provisions of this section, public or private corporations may apply for grants of authority to establish zones. The Board shall give preference to public corporations.

(b) *Public corporations and private non-profit corporations.* The eligibility of public corporations and private non-profit corporations to apply for a grant of authority shall be supported by enabling legislation of the legislature of the state in which the zone is to be located, indicating that the corporation, individually or as part of a class, is authorized to so apply. Any application must not be inconsistent with the charter or organizational papers of the applying entity.

(c) *Private for-profit corporations.* The eligibility of private for-profit corporations to apply for a grant of authority shall be supported by a special act of the state legislature naming the applicant corporation and by evidence indicating that the corporation is chartered for the purpose of establishing a zone.

(d) *Applicants for subzones (except pursuant to § 400.24(c))*—(1) *Eligibility.* The following entities are eligible to apply to establish a subzone:

(i) The grantee of the closest zone in the same state;

(ii) The grantee of another zone in the same state, which is a public corporation (or a non-public corporation if no such other public corporation exists), if the Board, or the Executive Secretary, finds that such sponsorship better serves the public interest; or

(iii) A state agency specifically authorized to submit such an application by an act of the state legislature.

(2) *Notification of closest grantee.* If an application is submitted under paragraph (d)(1)(ii) or (iii) of this section, the Executive Secretary shall:

(i) Notify, in writing, the grantee specified in paragraph (d)(1)(i) of this section, which may, within 30 days, object to such sponsorship, in writing, with supporting information as to why the public interest would be better served by its acting as sponsor;

(ii) Review such objections prior to docketing the application to determine whether the proposed sponsorship is in the public interest, taking into account:

(A) The objecting zone's structure and operation;

(B) The views of state and local public agencies; and

(C) The views of the proposed subzone operator;

(iii) Notify the applicant and objecting zone in writing of the Executive Secretary's determination;

(iv) If the Executive Secretary determines that the proposed sponsorship is in the public interest, docket the application (see § 400.63 regarding appeals of decisions of the Executive Secretary).

§ 400.13 General conditions, prohibitions and restrictions applicable to authorized zones.

(a) *In general.* Grants of authority issued by the Board for the establishment of zones and any authority subsequently approved for such zones, including those already issued, are subject to the Act and this part and the following general conditions or limitations:

(1) Prior to activation of a zone, the zone grantee or operator shall obtain all

necessary permits from federal, state and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.

(2) A grant of authority approved under this part includes authority for the grantee to permit the erection of buildings necessary to carry out the approved zone (subject to concurrence of CBP for an activated area of a zone).

(3) Approvals from the grantee (or other party acting on behalf of the grantee, where applicable) and CBP, pursuant to 19 CFR part 146, are required prior to the activation of any portion of an approved zone.

(4) Authority for a zone or a subzone shall lapse unless the zone (in case of subzones, the subzone facility) is activated, pursuant to 19 CFR part 146, and in operation not later than five years from the authorization of the zone or subzone, subject to the provisions of Board Order 849 (61 FR 53305, October 11, 1996).

(5) Zone grantees, operators, and users (and persons undertaking zone-related functions on behalf of grantees, where applicable) shall permit federal government officials acting in an official capacity to have access to the zone and records during normal business hours and under other reasonable circumstances.

(6) Activity involving production is subject to the specific provisions in § 400.14.

(7) A grant of authority may not be sold, conveyed, transferred, set over, or assigned (FTZ Act, section 17; 19 U.S.C. 81q).

(8) Private ownership of zone land and facilities is permitted, provided the zone grantee retains the control necessary to implement the approved zone. Such permission shall not constitute a vested right to zone designation, nor interfere with the Board's regulation of the grantee or the permittee, nor interfere with or complicate the revocation of the grant by the Board. Should title to land or facilities be transferred after a grant of authority is issued, the zone grantee must retain, by agreement with the new owner, a level of control which allows the grantee to carry out its responsibilities as grantee. The sale of zone-designated land/facility for more than its fair market value without zone designation could, depending on the circumstances, be subject to the prohibitions set forth in section 17 of the Act (19 U.S.C. 81q).

(b) *Board authority to restrict or prohibit activity.* Pursuant to section 15(c) of the Act (19 U.S.C. 81o(c)), the Board has authority to ''order the exclusion from [a] zone of any goods or process of treatment that in its judgment is detrimental to the public interest, health, or safety.'' In approvals of proposed production authority pursuant to § 400.14(a), the Board may adopt restrictions to protect the public interest, health, or safety. When evaluating production activity, either as proposed in an application or as part of a review of an operation, the Board shall determine whether the activity is in the public interest by reviewing it in relation to the evaluation criteria contained in § 400.27.

(c) *Additional conditions, prohibitions and restrictions.* Other conditions/requirements, prohibitions and restrictions under Federal, State or local law may apply to authorized zones and subzones.

§ 400.14 Production—requirement for prior authorization; restrictions.

(a) *In general.* Production activity in zones shall not be conducted without prior authorization from the Board. To obtain authorization, the notification process provided for in §§ 400.22 and 400.37 shall be used. If Board review of a notification under § 400.37 results in a determination that further review is warranted for all or part of the notified activity, the application process pursuant to §§ 400.23, 400.31–400.32, 400.34 and 400.36 shall apply to the activity.

(b) *Scope of authority.* Production activity that may be conducted in a particular zone operation is limited to the specific foreign-status materials and components and specific finished products described in notifications and applications that have been authorized pursuant to paragraph (a) of this section, including any applicable prohibitions or restrictions. A determination may be requested pursuant to paragraph (d) of this section as to whether particular activity falls within the scope of authorized activity. Unauthorized activity could be subject to penalties pursuant to the customs regulations on foreign-trade zones (19 CFR part 146).

(c) *Information about authorized production activity.* The Board shall make available via its Web site information regarding the materials, components, and finished products associated with individual production operations authorized under these and previous regulations, as derived from applications and notifications submitted to the Board.

(d) *Scope determinations.* Determinations may be made by the Executive Secretary as to whether changes in activity are within the scope of the production activity already authorized under this part. When warranted, the procedures of §§ 400.32 and 400.34 shall be followed.

(e) *Restrictions on items subject to antidumping and countervailing duty actions.*

(1) *Board policy.* Zone procedures shall not be used to circumvent antidumping duty (AD) and countervailing duty (CVD) actions under 19 CFR part 351.

(2) *Admission of items subject to AD/CVD actions.* Items subject to AD/CVD orders, or items which would be otherwise subject to suspension of liquidation under AD/CVD procedures if they entered U.S. customs territory, shall be placed in privileged foreign status (19 CFR 146.41) upon admission to a zone or subzone. Upon entry for consumption, such items shall be subject to duties under AD/CVD orders or to suspension of liquidation, as appropriate, under 19 CFR part 351.

§ 400.15 Production equipment.

(a) *In general.* Pursuant to section 81c(e) of the FTZ Act, merchandise that is admitted into a foreign-trade zone for use within such zone as production equipment or as parts for such equipment, shall not be subject to duty until such merchandise is completely assembled, installed, tested, and used in the production for which it was admitted. Payment of duty may be deferred until such equipment goes into use as production equipment as part of zone production activity, at which time the equipment shall be entered for consumption as completed equipment.

(b) *Definition of production equipment.* Eligibility for this section is limited to equipment and parts of equipment destined for use in zone production activity as defined in § 400.2(o) of this part. Ineligible for treatment as production equipment under this section are general materials (that are used in the installation of production equipment or in the assembly of equipment) and materials used in the construction or modification of the plant that houses the production equipment.

(c) *Equipment not destined for zone activity.* Production equipment or parts that are not destined for use in zone production activity shall be treated as normal merchandise eligible for standard zone-related benefits (*i.e.,* benefits not subject to the requirements of § 400.14(a)), provided the equipment is entered for consumption or exported prior to its use.

§ 400.16 Exemption from state and local ad valorem taxation of tangible personal property.

Tangible personal property imported from outside the United States and held in a zone for the purpose of storage, sale, exhibition, repackaging, assembly, distribution, sorting, grading, cleaning, mixing, display, manufacturing, or processing, and tangible personal property produced in the United States and held in a zone for exportation, either in its original form or as altered by any of the above processes, shall be exempt from state and local *ad valorem* taxation.

Subpart C—Applications To Establish and Modify Authority

§ 400.21 Application to establish a zone.

(a) *In general.* An application for a grant of authority to establish a zone (including pursuant to the ASF procedures adopted by the Board; see 74 FR 1170, Jan. 12, 2009, 74 FR 3987, Jan. 22, 2009, and 75 FR 71069, Nov. 22, 2010) shall consist of an application letter and detailed contents to meet the requirements of this part.

(b) *Application format.* Applications pursuant to this part shall comply with any instructions, guidelines, and forms or related documents, published in the **Federal Register** and made available on the Board's Web site, as established by the Executive Secretary specific to the type of application in question. An application submitted that uses a superseded format shall be processed unless the format has not been current for a period in excess of one year.

(c) *Application letter.* The application letter shall be dated within six months prior to the submission of the application and signed by an officer of the corporation authorized in the resolution for the application (see § 400.21(d)(1)(iii)). The application letter shall also describe:

(1) The relationship of the proposal to the state enabling legislation and the grantee's charter;

(2) The specific authority requested from the Board;

(3) The proposed zone site(s) and facility(ies) and any larger project of which the zone is a part;

(4) The project background;

(5) The relationship of the project to the community's and state's international trade-related goals and objectives;

(6) Any production authority requested; and

(7) Any additional pertinent information needed for a complete summary description of the proposal.

(d) *Detailed contents.*

(1) Legal authority for the application shall be documented with:

(i) A current copy of the state enabling legislation described in §§ 400.12(b) and (c);

(ii) A copy of the relevant sections of the applicant's charter or organization papers; and

(iii) A certified copy of a resolution of the applicant's governing body specific to the application authorizing the official signing the application letter. The resolution must be dated no more than six months prior to the submission of the application.

(2) Site descriptions (including a table with site designations when more than one site is involved) shall be documented with:

(i) A detailed description of the zone site, including size, location, and address (and legal description or its equivalent in instances where the Executive Secretary determines it is needed to supplement the maps in the application), as well as dimensions and types of existing and proposed structures, master planning, and timelines for construction of roads, utilities and planned buildings;

(ii) Where applicable, a summary description of the larger project of which the site is a part, including type, size, location and address;

(iii) A statement as to whether the site is within or adjacent to a CBP port of entry (including distance from the limits of the port of entry and, if the distance exceeds 60 miles, driving time from the limits of the port of entry);

(iv) A description of existing or proposed site qualifications, including appropriate land-use zoning (with environmentally sensitive areas avoided) and physical security;

(v) A description of current and planned activities associated with the site;

(vi) A summary description of transportation systems, facilities, and services, including connections from local and regional transportation hubs to the zone;

(vii) A statement regarding the environmental aspects of the proposal;

(viii) The estimated time schedules for construction and activation; and

(ix) A statement as to the possibilities and plans for future expansion of the site.

(3) Operation and financing shall be documented with:

(i) A statement as to site ownership (if not owned by the applicant or proposed operator, evidence as to their legal right to use the site);

(ii) A discussion of plans for operations at the site;

(iii) A commitment to satisfy the requirements for CBP automated systems; and

(iv) A summary of the plans for financing the project.

(4) Economic justification shall be documented with:

(i) A statement of the community's overall economic and trade-related goals and strategies in relation to those of the region and state, including a reference to the plan or plans on which the goals are based and how they relate to the zone project;

(ii) An economic profile of the community including discussion of:

(A) Dominant sectors in terms of employment or income;

(B) Area strengths and weaknesses;

(C) Unemployment rates; and

(D) Area foreign trade statistics;

(iii) A statement as to the role and objective of the zone project and a discussion of the anticipated economic impact, direct and indirect, of the zone project, including references to public costs and benefits, employment, and U.S. international trade;

(iv) A separate justification for each proposed site, including a specific explanation addressing the degree to which the site may duplicate types of facilities at other proposed or existing sites in the zone;

(v) A statement as to the need for zone services in the community, with specific expressions of interest from proposed zone users and letters of intent from those firms that are considered prime prospects for each specific proposed site; and

(vi) For any production activity to be conducted at a proposed site, the separate requirements of § 400.14(a) must also be met.

(5) Maps and site plans shall include the following documents:

(i) State and county maps showing the general location of the proposed site(s) in terms of the area's transportation network;

(ii) For any proposed site, a legible, detailed site plan of the zone area showing zone boundaries in red, with street name(s), and showing existing and proposed structures; and

(iii) For proposals involving a change in existing zones, one or more maps showing the relationship between existing zone sites and the proposed changes.

(e) *ASF applications.* In addition to the general application requirements of this section, applications under the ASF shall include the following, where applicable:

(1) Service area.

(2) Appropriate information regarding magnet sites.

(3) Appropriate information regarding usage-driven sites.

(f) *Additional information.* The Board or the Executive Secretary may require additional information needed to evaluate proposals adequately.

(g) *Amendment of application.* The Board or the Executive Secretary may allow amendment of an application. Amendments which substantively expand the scope of an application shall be subject to comment period requirements such as those of § 400.32(c)(2) with a minimum comment period of 30 days.

(h) *Drafts.* Applicants are encouraged to submit a draft application to the Executive Secretary for review. A draft application must be complete with the possible exception of the application letter and/or resolution from the grantee.

(i) *Format and number of copies.* Unless the Executive Secretary alters the requirements of this paragraph, the applicant shall submit an original (including original documents to meet the requirements of paragraphs (c) and (d)(1)(iii) of this section) and one copy of the application, both on 8½″ x 11″ (216 x 279 mm) paper, and an electronic copy.

(j) *Where to submit an application:* Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230. Options for submission of electronic copies are described on the FTZ Board's Web site.

§ 400.22 Notification for production authority.

Notifications requesting production authority pursuant to § 400.14(a) shall comply with any instructions, guidelines, and forms or related documents, published in the **Federal Register** and made available on the Board's Web site, as established by the Executive Secretary. Notifications shall contain the following information:

(a) Identity of the user and its location;

(b) Materials, components and finished products associated with the proposed activity, including the tariff schedule categories (6-digit HTSUS) and tariff rates; and

(c) Information as to whether any material or component is subject to a trade-related measure or proceeding (*e.g.,* AD/CVD order or proceeding, suspension of liquidation under AD/CVD procedures).

§ 400.23 Application for production authority.

In addition to any applicable requirements set forth in § 400.21, an application requesting production authority pursuant to § 400.37(c) shall include:

(a) A summary as to the reasons for the application and an explanation of its anticipated economic effects;

(b) Identity of the user and its corporate affiliation;

(c) A description of the proposed activity, including:

(1) Finished products;

(2) Imported (foreign-status) materials and components;

(3) For each finished product and imported material or component, the tariff schedule category (6-digit HTSUS), tariff rate, and whether the material or component is subject to a trade-related measure or proceeding (*e.g.,* AD/CVD order or proceeding, suspension of liquidation under AD/CVD procedures);

(4) Domestic inputs, foreign inputs, and plant value added as percentages of finished product value;

(5) Projected shipments to domestic market and export market (percentages);

(6) Estimated total or range of annual value of benefits to proposed user (broken down by category), including as a percent of finished product value;

(7) Annual production capacity (current and planned) for the proposed FTZ activity, in units;

(8) Information to assist the Board in making a determination under §§ 400.27(a)(3) and 400.27(b);

(9) Information as to whether alternative procedures have been considered as a means of obtaining the benefits sought;

(10) Information on the industry involved and extent of international competition; and

(11) Economic impact of the operation on the area; and

(d) Any additional information requested by the Board or the Executive Secretary in order to conduct the review.

§ 400.24 Application for expansion or other modification to zone.

(a) *In general.* (1) A grantee may apply to the Board for authority to expand or otherwise modify its zone (including pursuant to the ASF procedures adopted by the Board; see 74 FR 1170, Jan. 12, 2009, 74 FR 3987, Jan. 22, 2009, and 75 FR 71069, Nov. 22, 2010).

(2) The Executive Secretary, in consultation with CBP as appropriate, shall determine whether the proposed modification involves a major change in the zone plan and is thus subject to paragraph (b) of this section, or is minor and subject to paragraph (c) of this section. In making this determination the Executive Secretary shall consider the extent to which the proposed modification would:

(i) Substantially modify the plan originally approved by the Board; or

(ii) Expand the physical dimensions of the approved zone area as they relate to the scope of operations envisioned in the original plan.

(b) *Major modification to zone.* An application for a major modification of an approved zone shall be submitted in accordance with the requirements of § 400.21, except that the content submitted pursuant to § 400.21(d)(4) (economic justification) shall relate specifically to the proposed change.

(c) *Minor modification to zone.* Other applications or requests under this subpart shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary, who shall determine whether the proposed change is a minor one subject to this paragraph (c) instead of paragraph (b) of this section (see § 400.38). Such applications or requests include those for minor revisions of general-purpose zone or subzone boundaries based on immediate need, as well as for designation as a subzone of all or part of an existing zone site(s) (or site(s) that qualifies for usage-driven status), where warranted by the circumstances and so long as the subzone activity remains subject to the activation limit (see § 400.2(b)) for the zone in question.

(d) *Applications for other revisions to authority.* Applications or requests for other revisions to authority, such as for Board action to establish or modify an activation limit for a zone, modification of a restriction or reissuance of a grant of authority, shall be submitted in letter form with information and documentation necessary for analysis, as determined by the Executive Secretary. If the change involves the removal or significant modification of a restriction included by the Board in its approval of authority or the reissuance of a grant of authority, the review procedures of §§ 400.31–400.34 and 400.36 shall be followed, where relevant. If not, the procedure set forth in § 400.38 shall generally apply (although the Executive Secretary may elect to follow the procedures of §§ 400.31–400.34 and 400.36 when warranted).

§ 400.25 Application for subzone designation.

In addition to the requirements of §§ 400.21(d)(1)(i) and (ii) pertaining to legal authority, § 400.21(d)(2)(vii) pertaining to environmental aspects of the proposal, and §§ 400.21(d)(3)(i) and (iii) pertaining to operation, a grantee's application for subzone designation shall contain the following information:

(a) The name of the operator/user for which subzone designation is sought;

(b) The nature of the activity at the proposed subzone;

(c) The address(es) and physical size (acreage or square feet) of the proposed subzone location(s); and

(d) One or more maps conforming to the requirements of section § 400.21(d)(5)(ii). For any production activity to be conducted at a proposed subzone, the separate requirements of § 400.14(a) must be met.

§ 400.26 Criteria for evaluation of applications for expansions, subzones or other modifications of zones.

The Board shall consider the following factors in determining whether to approve an application pertaining to a zone:

(a) The need for zone services in the port of entry area, taking into account existing as well as projected international trade-related activities and employment impact;

(b) The suitability of each proposed site and its facilities based on the plans presented for the site, including existing and planned buildings, zone-related activities, and the timeframe for development of the site;

(c) The specific need and justification for each proposed site, taking into account existing sites and/or other proposed sites;

(d) The extent of state and local government support, as indicated by the compatibility of the zone project with the community's master plan or stated goals for economic development and the views of state and local public officials involved in economic development. Such officials shall avoid commitments that anticipate the outcome of Board decisions;

(e) The views of persons likely to be materially affected by proposed zone activity; and

(f) If the application involves production activity, the criteria in § 400.27.

§ 400.27 Criteria applicable to evaluation of applications for production authority.

The Board shall apply the criteria set forth in this section in determining whether to approve an application for authority to conduct production activity pursuant to § 400.23. The Board's evaluation shall take into account such factors as market conditions, price sensitivity, degree and nature of foreign competition, intra-industry and intra-firm trade, effect on exports and imports, ability to conduct the proposed activity outside the United States with the same U.S. tariff impact, analyses conducted in connection with prior Board actions, and net effect on U.S. employment and the U.S. economy:

(a) *Threshold factors.* It is the policy of the Board to authorize zone activity only when it is consistent with public policy and, in regard to activity involving foreign merchandise subject to quotas or inverted tariffs, when zone procedures are not the sole determining cause of imports. Thus, without undertaking a review of the economic factors enumerated in § 400.27(b), the Board shall deny or restrict authority for proposed or ongoing activity if it determines that:

(1) The activity is inconsistent with U.S. trade and tariff law, or policy which has been formally adopted by the Executive branch;

(2) Board approval of the activity under review would seriously prejudice U.S. tariff and trade negotiations or other initiatives; or

(3) The activity involves items subject to quantitative import controls or inverted tariffs, and the use of zone procedures would be the direct and sole cause of imports that, but for such procedures, would not likely otherwise have occurred, taking into account imports both as individual items and as components of imported products.

(b) *Economic factors.* After its review of threshold factors, if there is a basis for further consideration of the application, the Board shall consider the following factors in determining the net economic effect of the proposed activity:

(1) Overall employment impact;

(2) Exports and re-exports;

(3) Retention or creation of value-added activity;

(4) Extent of value-added activity;

(5) Overall effect on import levels of relevant products;

(6) Extent and nature of foreign competition in relevant products;

(7) Impact on related domestic industry, taking into account market conditions; and

(8) Other relevant information relating to the public interest and net economic impact considerations, including technology transfers and investment effects.

(c) The significant public benefit(s) that would result from the production activity, taking into account the factors in paragraphs (a) and (b) of this section.

(d) *Contributory effect.* In assessing the significance of the economic effect of the proposed zone activity as part of the consideration of economic factors, and considering whether it would result in a significant public benefit(s), the Board may consider the contributory effect zone savings have as an incremental part of cost-effectiveness programs adopted by companies to improve their international competitiveness.

§ 400.28 Burden of proof.

(a) *In general.* An applicant must demonstrate to the Board that its application meets the criteria set forth in these regulations. Applications for production-related authority shall contain evidence regarding the positive economic effect(s) and significant public benefit(s) that would result from the proposed activity and may submit evidence and comments concerning policy considerations.

(b) *Comments on applications.* Comments submitted regarding applications should provide information that is probative and substantial in addressing the matter at issue relative to the nature of the proceeding, including any evidence of the projected direct impact of the proposed authority.

(c) *Requests for extensions of comment periods.* Requests for extensions of comment periods shall include a description of the potential impact of the proposed authority and the specific actions or steps for which additional time is necessary.

(d) *Responses to comments on applications.* Submissions in response to comments received during the public comment period or pursuant to § 400.33(e)(1) or § 400.34(a)(5)(iv)(A) should contain evidence that is probative and substantial in addressing the matter at issue.

§ 400.29 Application fees.

(a) *In general.* This section sets forth a uniform system of charges in the form of fees to recover some costs incurred by the Foreign-Trade Zones staff of the Department of Commerce in processing the applications listed in paragraph (b) of this section. The legal authority for the fees is 31 U.S.C. 9701, which provides for the collection of user fees by agencies of the Federal Government.

(b) *Uniform system of user fee charges.* The following fee schedule establishes fees for certain types of applications and requests for authority on the basis of their estimated average processing time. Applications combining requests for more than one type of approval are subject to the fee for each category.

(1) Additional general-purpose zones (§ 400.21; § 400.11(a)(2))—$3,200

(2) Special-purpose subzones (§ 400.25):

(i) Not involving production activity or involving production activity with fewer than three products—$4,000

(ii) Production activity with three or more products—$6,500

(3) Expansions (§ 400.24(b))—$1,600

(c) Applications submitted to the Board shall include a currently dated check drawn on a national or state bank or trust company of the United States or Puerto Rico in the amount called for in paragraph (b) of this section. Uncertified checks must be acceptable for deposit by the Board in a Federal Reserve bank or branch.

(d) Applicants shall make their checks payable to the U.S. Department of Commerce ITA. The checks will be deposited by ITA into the Treasury receipts account. If applications are found deficient under § 400.31(b), or are withdrawn by applicants prior to formal docketing, refunds will be made.

Subpart D—Procedures for Application Evaluation and Reviews

§ 400.31 General application provisions and pre-docketing review.

(a) *In general.* Sections 400.31–400.36 and 400.38 outline the procedures to be followed in docketing and processing applications submitted under §§ 400.21, 400.23, 400.24(b), and 400.25. In addition, these sections set forth the time schedules which will ordinarily apply in processing applications. The schedules will guide applicants with respect to the time frames for each of the procedural steps involved in the Board's review. Under these schedules, applications for subzone designation will generally be processed within 5 months (3 months for applications subject to § 400.36(f)) and applications to establish or expand zones will generally be processed within 10 months. The general timeframe to process applications for production authority is 12 months, but additional time is most likely to be required for applications requesting production authority when a complex or controversial issue is involved or when the applicant or other party has obtained a time extension for a particular procedural step. The timeframes specified apply from the time of docketing. Each applicant is responsible for submitting an application that meets the docketing requirements in a timeframe consistent with the applicant's need for action on its request.

(b) *Pre-docketing review.* The grantee shall submit a single complete copy of an application for pre-docketing review. (For requests relating to production in already approved zone or subzone space, the request may be submitted by the operator, provided the operator at the same time furnishes a copy of the request to the grantee.) The Executive Secretary shall determine whether the application satisfies the requirements of §§ 400.12, 400.21, 400.23–400.25, and other applicable provisions of this part such that the application is sufficient for docketing. If the pre-docketing copy of the application is deficient, the Executive Secretary shall notify the applicant within 30 days of receipt of the pre-docketing copy, specifying the deficiencies. An affected zone participant may also be contacted regarding relevant application elements requiring additional information or clarification. If the applicant does not correct the deficiencies and submit a corrected pre-docketing application copy within 30 days of notification, the pre-docketing application (single copy) shall be discarded.

§ 400.32 Procedures for docketing applications and commencement of case review.

(a) Once the pre-docketing copy of the application is determined to be sufficient, the Executive Secretary shall notify the applicant within 15 days so that the applicant may then submit the original and requisite number of copies (which shall be dated upon receipt at the headquarters of the Board) for docketing by the Board. For applications subject to § 400.29, the original shall be accompanied with a check in accordance with that section.

(b) After the procedures described in paragraph (a) of this section are completed, the Executive Secretary shall within 15 days of receipt of the original and required number of copies of the application:

(1) Formally docket the application, thereby initiating the proceeding or review;

(2) Assign a case-docket number; and

(3) Notify the applicant of the formal docketing action.

(c) After initiating a proceeding based on an application under §§ 400.21 and 400.23–400.25, the Executive Secretary shall:

(1) Designate an examiner to conduct a review and prepare a report or memorandum with recommendations for the Board;

(2) Publish in the **Federal Register** a notice of the formal docketing of the application and initiation of the review. The notice shall include the name of the applicant, a description of the proposal, and an invitation for public comment. If the application requests authority for production activity and indicates that a component to be used in the activity is subject to a trade-related measure or proceeding (*e.g.,* AD/CVD order or proceeding, suspension of liquidation under AD/CVD procedures), the notice shall include that information. For applications to establish or expand a zone or for production authority, the comment period shall normally close 60 days after the date the notice appears. For applications for subzone designation, the comment period shall normally close 40 days after the date the notice appears. However, if a hearing is held (see § 400.52), the comment period shall not close prior to 15 days after the date of the hearing. The closing date for general comments shall ordinarily be followed by an additional 15-day period for rebuttal comments. Requests for extensions of a comment period will be considered, subject to the standards of § 400.28(c). Submissions must meet the requirements of § 400.28(b). With the exception of submissions by the applicant, any new evidence or new factual information and any written arguments submitted after the deadlines for comments shall not be considered by the examiner or the Board. Submission by the applicant of new evidence or new factual information may result in the (re)opening of a comment period. A comment period may otherwise be opened or reopened for cause;

(3) Transmit or otherwise make available copies of the docketing notice and the application to CBP;

(4) Arrange for hearings, as appropriate;

(5) Transmit the report and recommendations of the examiner and any comments by CBP to the Board for appropriate action; and

(6) Notify the applicant in writing (via electronic means, where appropriate) and publish notice in the **Federal Register** of the Board's determination.

(d) *CBP review.* Any comments by CBP pertaining to the application shall be submitted to the Executive Secretary by the conclusion of the public comment period described in paragraph (c)(2) of this section.

§ 400.33 Examiner's review—application to establish or modify a zone.

An examiner assigned to review an application to establish, reorganize or expand a zone shall conduct a review taking into account the factors enumerated in § 400.26 and other appropriate sections of this part, which shall include:

(a) Conducting or participating in hearings scheduled by the Executive Secretary;

(b) Reviewing case records, including public comments;

(c) Requesting information and evidence from parties of record;

(d) Developing information and evidence necessary for evaluation and analysis of the application in accordance with the criteria of the Act and this part; and

(e) Developing recommendations to the Board and submitting a report to the Executive Secretary, generally within 150 days of the close of the period for public comment (75 days for reorganizations under the ASF) (see § 400.32):

(1) If the recommendations are unfavorable to the applicant, they shall be considered preliminary and the applicant shall be notified in writing (via electronic means, where appropriate) of the preliminary recommendations and the factors considered in their development. The applicant shall be given 30 days from the date of notification, subject to extensions upon request by the applicant, which shall not be unreasonably withheld, in which to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

(2) If the response contains new evidence on which there has been no opportunity for public comment, the Executive Secretary shall publish a notice in the **Federal Register** after completion of the review of the response. The new material shall be made available for public inspection and the **Federal Register** notice shall invite further public comment for a period of not less than 30 days, with an additional 15-day period for rebuttal comments.

(3) If the bases for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ 400.33(e)(1) and (2) shall be followed.

(4) When necessary, a request may be made to CBP to provide further comments, which shall be submitted within 45 days after the request.

§ 400.34 Examiner's review—application for production authority.

(a) The examiner shall conduct a review taking into account the factors enumerated in this section, § 400.27, and other appropriate sections of this part, which shall include:

(1) Conducting or participating in hearings scheduled by the Executive Secretary;

(2) Reviewing case records, including public comments;

(3) Requesting information and evidence from parties of record and others, as warranted;

(4) Developing information and evidence necessary for analysis of the threshold factors and the economic factors enumerated in § 400.27; and

(5) Conducting an analysis to include:

(i) An evaluation of policy considerations pursuant to §§ 400.27(a)(1) and (2);

(ii) An evaluation of the economic factors enumerated in §§ 400.27(a)(3) and 400.27(b), which shall include an evaluation of the economic impact on domestic industry, considering both producers of like products and producers of components/materials used in the production activity;

(iii) Conducting appropriate industry research and surveys, as necessary; and

(iv) Developing recommendations to the Board and submitting a report to the Executive Secretary, generally within 150 days of the close of the period for public comment (although additional time may be required in circumstances such as when the applicant or other party has obtained a time extension for a particular procedural step):

(A) If the recommendations are unfavorable to the applicant, they shall be considered preliminary and the applicant shall be notified in writing (via electronic transmission where appropriate) of the preliminary recommendations and the factors considered in their development. The applicant shall be given 45 days from the date of notification in which to respond to the recommendations and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

(B) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary shall publish notice in the **Federal Register** after completion of the review of the response. The new material shall be made available for public inspection and the **Federal Register** notice shall invite further public comment for a period of not less than 30 days, with an additional 15-day period for rebuttal comments.

(C) If the bases for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ 400.34(a)(5)(iv)(A) and (B) shall be followed.

(b) *Methodology and evidence.* The evaluation of an application for production authority shall include the following steps:

(1) The first phase (§ 400.27(a)) involves consideration of threshold factors. If an examiner or reviewer makes a negative finding on any of the factors in § 400.27(a) in the course of a review, the applicant shall be informed pursuant to § 400.34(a)(5)(iv)(A). When threshold factors are the basis for a negative recommendation in a review of ongoing activity, the zone grantee and directly affected party shall be notified and given an opportunity to submit evidence pursuant to § 400.34(a)(5)(iv)(A). If the Board determines in the negative regarding any of the factors in § 400.27(a), it shall deny or restrict authority for the proposed or ongoing activity.

(2) The second phase (§ 400.27(b)) involves consideration of the enumerated economic factors, taking into account their relative weight and significance under the circumstances. Previous evaluations in similar cases shall be considered.

§ 400.35 Examiner's review—application for subzone designation.

The examiner shall develop a memorandum with a recommendation on whether to approve the application, taking into account the criteria enumerated in § 400.26. To develop that memorandum, the examiner shall review the case records including public comments, and may request information and evidence from parties of record, as necessary. The examiner's memorandum shall generally be submitted to the Board within 30 days of the close of the period for public comment. However, additional time may be taken as necessary for analysis of any public comment in opposition to the application or if other complicating factors arise.

(a) If the examiner's recommendation is unfavorable to the applicant, it shall be considered preliminary and the applicant shall be notified in writing (via electronic means, where appropriate) of the preliminary recommendation and the factors considered in its development. The applicant shall be given 30 days from the date of notification, subject to extensions upon request by the applicant, which shall not be unreasonably withheld, in which to respond to the recommendation and submit additional evidence pertinent to the factors considered in the development of the preliminary recommendations. Public comment may be invited on preliminary recommendations when warranted.

(b) If the response contains new evidence on which there has not been an opportunity for public comment, the Executive Secretary shall publish notice in the **Federal Register** after completion of the review of the response. The new material shall be made available for public inspection and the **Federal Register** notice shall invite further public comment for a period of not less

than 30 days, with an additional 15-day period for rebuttal comments.

(c) If the bases for an examiner's recommendation(s) change as a result of new evidence, the applicable procedures of §§ 400.35(a) and (b) shall be followed.

(d) The CBP adviser shall be requested, when necessary, to provide further comments, which shall be submitted within 45 days after the request.

§ 400.36 Completion of case review.

(a) The Executive Secretary shall circulate the examiner's report (memorandum in the case of subzone applications) with recommendations to CBP headquarters staff and to the Treasury Board member for review and action.

(b) In its advisory role to the Board, CBP headquarters staff shall provide any comments within 15 days.

(c) The vote of the Treasury Board member shall be returned to the Executive Secretary within 30 days, unless a formal meeting is requested (see, § 400.3(b)).

(d) The Commerce Department shall complete the decision process within 15 days of receiving the vote of the Treasury Board member, and the Executive Secretary shall publish the Board decision.

(e) If the Board is unable to reach a unanimous decision, the grantee shall be notified and provided an opportunity to meet with the Board members or their delegates.

(f) *Delegation of authority to approve subzone designation.* The Board delegates to the Executive Secretary authority to approve applications requesting subzone designation, on the condition that such approved subzones will be subject to the activation limit for the zone in question.

(g) The Board or the Commerce Department's Assistant Secretary for Import Administration may opt to terminate review of an application with no further action if the applicant has failed to provide in a timely manner information needed for evaluation of the application. A request from an applicant for an extension of time to provide information needed for evaluation of an application shall not be unreasonably withheld. The Executive Secretary may terminate review of an application where the overall circumstances presented in the application no longer exist as a result of a material change, and shall notify the applicant in writing of the intent to terminate review and allow 30 days for a response prior to completion of any termination action. The Executive Secretary shall confirm the termination in writing (by electronic means, where appropriate) to the applicant.

§ 400.37 Procedure for notification of proposed production activity.

(a) *Submission of notification.* A notification for production authority pursuant to §§ 400.14(a) and 400.22 shall be submitted simultaneously to the Board's Executive Secretary and to CBP (as well as to the grantee of the zone, if the grantee is not the party making the submission).

(b) *Initial processing of notification.* Upon receipt of a complete notification conforming to the requirements of the notification format established by the Executive Secretary pursuant to § 400.22, the Executive Secretary shall commence processing the notification. Unless the Executive Secretary determines, based on the content of the notification, to recommend further review to the Board without inviting public comment on the notification, the Executive Secretary shall transmit to the **Federal Register** a notice inviting public comment on the notification (with such comment subject to the standards of § 400.28(b)). The notice shall be transmitted to the **Federal Register** within 15 days of the commencement of the processing of the notification, and the comment period shall normally close 40 days after the date the notice appears. If the notification indicates that a material or component to be used in the activity is subject to an AD/CVD order or proceeding, or suspension of liquidation under AD/CVD procedures, the notice shall include that information. Evidence, factual information and written arguments submitted in response to the notice must be submitted by the deadline for comments. Any comments by CBP pertaining to the notification shall be submitted to the Executive Secretary by the end of the comment period. Within 80 days of receipt of the notification, the Executive Secretary shall submit to the Board a recommendation on whether further review of all or part of the activity subject to the notification is warranted. The Executive Secretary's recommendation shall consider comments submitted during the comment period, any guidance from specialists within government, and other relevant factors based on the Board staff's assessment of the notification, in the context of the factors set forth in § 400.27.

(c) *Determinations regarding further review.* Within 30 days of receipt of the Executive Secretary's recommendation, the Board members shall provide to the Executive Secretary their determinations on whether further review is warranted concerning all or part of the activity that is the subject of the notification. If either Board member makes a determination that further review is warranted, the activity that is subject to further review (which may constitute all or part of the notified activity) shall not be conducted without authorization pursuant to the application requirements of § 400.23 and the procedural requirements of §§ 400.31–400.34 and 400.36 (or the provisions of paragraph (d) of this section, where applicable). Within 120 days of receipt of the notification, the Executive Secretary shall notify the party that submitted the notification (and the zone grantee, if it did not submit the notification) that:

(1) Further review is not needed for all or part of the activity that is the subject of the notification, and that the activity in question may be conducted; or

(2) Further review is needed for all or part of the activity that is the subject of the notification, with such activity precluded absent specific authorization.

(d) *Authorization for commencement of an activity on an interim basis.* For an activity notified pursuant to § 400.14(a), the Executive Secretary may authorize the commencement of some or all of the activity on an interim basis. Such authorization shall only be made based on a showing that commencement of the activity is time-sensitive, with such showing to include comments from CBP that specifically address the projected timeframe for commencement of the activity. Interim authorization shall not apply to materials or components subject to an AD/CVD order or proceeding or suspension of liquidation under AD/CVD procedures. As warranted, a determination that further review is needed for all or some of the notified activity pursuant to § 400.37(c) may also revoke the interim authorization until the Board makes a determination after conduct of that further review.

§ 400.38 Procedure for application for minor modification of zone.

(a) The Executive Secretary shall make a determination in cases under § 400.24(c) involving minor modifications of zones that do not require Board action, such as boundary modifications, including certain relocations, and shall notify the applicant in writing of the decision within 30 days of the determination that the application or request can be processed under § 400.24(c). The applicant shall submit a copy of its application/request to CBP no later than

the time of the applicant's submission of the application/request to the Executive Secretary.

(b) If not previously provided to the applicant for inclusion with the applicant's submission of the application/request to the Executive Secretary, any CBP comments on the application/request shall be provided to the Executive Secretary within 20 days of the applicant's submission of the application/request to the Executive Secretary.

Subpart E—Operation of Zones and Administrative Requirements

§ 400.41 General operation of zones; requirements for commencement of operations.

(a) *In general.* Zones shall be operated by or under the general management of zone grantees, subject to the requirements of the FTZ Act and this part, as well as those of other federal, state and local agencies having jurisdiction over the site(s) and operation(s). Zone grantees shall ensure that the reasonable zone needs of the business community are served by their zones. CBP officials with oversight responsibilities for a port of entry represent the Board with regard to the zones adjacent to the port of entry in question and are responsible for enforcement, including physical security and access requirements, as provided in 19 CFR part 146.

(b) *Requirements for commencement of operations in a zone.* The following actions are required before operations in a zone may commence:

(1) The grantee shall submit the zone schedule to the Executive Secretary, as provided in § 400.44.

(2) Approval or concurrence from the grantee and approval from CBP, pursuant to 19 CFR part 146, are required prior to the activation of any portion of an approved zone; and

(3) Prior to activation of a zone, the operator shall obtain all necessary permits from federal, state and local authorities, and except as otherwise specified in the Act or this part, shall comply with the requirements of those authorities.

§ 400.42 Operation as public utility.

(a) *In general.* Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), each zone shall be operated as a public utility, and all rates and charges for all services or privileges within the zone shall be fair and reasonable. A rate or charge (fee) may be imposed on zone participants to recover costs incurred by or on behalf of the grantee for the performance of the grantee function. Such a rate or charge must be directly related to the service provided by the grantee (for which the fee recovers some or all costs incurred) to the zone participants. Rates or charges may incorporate a reasonable return on investment. Rates or charges may not be tied to the level of benefits derived by zone participants. Other than the uniform rates and charges assessed by, or on behalf of, the grantee, zone participants shall not be required (either directly or indirectly) to utilize or pay for a particular provider's zone-related products or services.

(b) *Delayed compliance date.* The compliance date for the requirements of paragraph (a) of this section shall be February 28, 2014.

§ 400.43 Uniform treatment.

Pursuant to Section 14 of the FTZ Act (19 U.S.C. 81n), a grantee shall afford to all who may apply to make use of or participate in the zone uniform treatment under like conditions. Treatment of zone participants within a zone (including application of rates and charges) shall not vary depending on whether a zone participant has procured any zone-related product or service or engaged a particular supplier to provide any such product or service.

(a) *Agreements to be made in writing.* Any agreement or contract related to one or more grantee function(s) and involving a zone participant (*e.g.,* agreements with property owners and agreements with zone operators) must be in writing.

(b) *Evaluation of proposals.* A grantee (or person undertaking a zone-related function(s) on behalf of a grantee, where applicable) shall apply uniform treatment in the evaluation of proposals from zone participants. Uniform treatment does not require acceptance of all proposals by zone participants, but the bases for a grantee's decision on a particular proposal must be consistent with the uniform treatment requirement.

(c) *Justification for differing treatment.* Given the requirement for uniform treatment under like conditions, for any instance of different treatment of different zone participants, a grantee (or person undertaking a zone-related function(s) on behalf of a grantee, where applicable) must be able to provide upon request by the Executive Secretary a documented justification for any difference in treatment.

(d) *Avoidance of non-uniform treatment.* To avoid non-uniform treatment of zone participants, persons (as defined in § 400.2(l)) within key categories set out in paragraph (d)(2) of this section shall not undertake any of the key functions set out in paragraph (d)(1) of this section (except in specific circumstances where the Board has authorized a waiver pursuant to paragraph (f) of this section).

(1) Key functions are:

(i) Taking action on behalf of a grantee, or making recommendations to a grantee, regarding the disposition of proposals or requests by zone participants pertaining to FTZ authority or activity (including activation by CBP);

(ii) Approving, or being a party to, a zone participant's agreement with the grantee (or person acting on behalf of the grantee) pertaining to FTZ authority or activity (including activation by CBP); or

(iii) Overseeing zone participants' operations on behalf of a grantee.

(2) Key categories of persons are:

(i) A person that currently engages in, or which has during the preceding twelve months engaged in, offering/providing a zone-related product/service to or representing a zone participant in the grantee's zone;

(ii) Any person that stands to gain from a person's offer/provision of a zone-related product/service to or representation of a zone participant in the zone; or

(iii) Any person related, as defined in paragraph (e) of this section, to the person identified in paragraphs (d)(2)(i) and (ii) of this section.

(e) *Definition of related persons.* For purposes of this section, persons that are related include:

(1) Members of a family or members of a household. The term members of a family means spouses, parents, grandparents, children, grandchildren, siblings (including half-siblings and step-siblings), aunts, uncles, nieces, nephews, and first cousins, as well as the parents, children, and siblings of a spouse, and the spouse of a sibling, child or parent;

(2) Organizations that are wholly or majority-owned by members of the same family or members of the same household;

(3) An officer or director of an organization and that organization;

(4) Partners;

(5) Employers and their employees;

(6) An organization and any person directly or indirectly owning, controlling, or holding with power to vote, 20 percent or more of the outstanding voting stock or shares of that organization;

(7) Any person that controls any other person and that other person (the term control means the power, direct or indirect, whether or not exercised, through any means, to determine, direct,

or decide important matters affecting an entity); or

(8) Any two or more persons who directly control, are controlled by, or are under common control with, any person (see definition of control in paragraph (e)(7) of this section).

(f) *Waivers.* The grantee or other person subject to paragraph (d) of this section may submit an application requesting that the Board issue a waiver exempting from the prohibition of that paragraph a person's undertaking a specific key function(s) listed in paragraph (d)(1) of this section. Using the format developed by the Executive Secretary, an application for a waiver shall explain in detail how the person falls within a key category(ies) set out in paragraph (d)(2) of this section, and the specific key function(s) listed in paragraph (d)(1) of this section that would be undertaken by the person. After receipt of an application requesting a waiver, the Executive Secretary may solicit additional information or clarification, as necessary, including from the person submitting the application and from the grantee. Based on the information presented in the application, the Executive Secretary shall make a recommendation to the Board. A waiver shall be authorized only by an affirmative vote by the Board. If the Board votes not to authorize a waiver or to discontinue a waiver, the applicant shall be notified in writing and allowed 30 days to present evidence in response. In deciding whether to grant a waiver, the Board shall determine whether there is an unacceptable risk that the waiver would result in non-uniform treatment being afforded by the person undertaking a key function(s) listed in paragraph (d)(1) of this section. In its assessment, the Board shall consider the specific circumstances presented, including the nature and extent of the person's involvement in undertaking a key function(s) listed in paragraph (d)(1) of this section. In general, the more significant the requester's involvement or interest in the undertaking of a key function(s) listed in paragraph (d)(1) of this section or activity(ies) identified in paragraph (d)(2)(i) of this section, the greater the risk will be that non-uniform treatment will be afforded and, thus, the less likely it will be that a waiver will be granted. The Board may attach to individual waivers such conditions or limitations (including, for example, the length of time a waiver is to be effective) as it deems necessary.

(g) *Requests for determinations.* A grantee or other party may request a determination by the Executive Secretary regarding the consistency of an actual or potential arrangement with the requirements of this section.

(h) *Identification of person undertaking function(s) on behalf of grantee.* The Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary, may require a zone grantee to identify any person undertaking a zone-related function(s) on behalf of the grantee.

(i) *Delayed compliance date.* If, as of April 30, 2012, existing business arrangements do not comply with the requirements of paragraphs (a) and (d) of this section, such existing arrangements shall be terminated or brought into compliance no later than February 28, 2014.

§ 400.44 Zone schedule.

(a) *In general.* The zone grantee shall submit to the Executive Secretary (in both paper and electronic copies) a zone schedule which sets forth the elements required in this section. No element of a zone schedule (including any amendment to the zone schedule) may be considered to be in effect until such submission has occurred. If warranted, the Board may subsequently amend the requirements of this section by Board Order.

(b) Each zone schedule shall include:

(1) A title page, which shall include the name of the zone grantee and the date of the current schedule;

(2) A table of contents;

(3) Internal rules/regulations and policies for the zone;

(4) All rates or charges assessed by or on behalf of the grantee;

(5) Information regarding any operator which has an agreement with the grantee to offer services to the public, including the operator's rates or charges for all zone-specific services offered; and

(6) An appendix with definitions of any FTZ-related terms used in the zone schedule (as needed).

(c) The Executive Secretary may review the zone schedule (or any amendment to the zone schedule) to determine whether it contains sufficient information for zone participants concerning the operation of the zone and the grantee's rates and charges as provided in paragraphs (b)(3) and (b)(4) of this section. If the Executive Secretary determines that the zone schedule (or amendment) does not satisfy these requirements, the Executive Secretary shall notify the zone grantee. The Executive Secretary may also conduct a review under 400.45(b).

(d) Amendments to the zone schedule shall be prepared and submitted in the manner described in paragraph (a) of this section, and listed in the concluding section of the zone schedule, with dates. No rates/charges or other provisions required for the zone schedule may be applied by, or on behalf of, the grantee unless those specific rates/charges or provisions are included in the most recent zone schedule submitted to the Board and made available to the public in compliance with paragraph (e) of this section.

(e) *Availability of zone schedule.* A complete copy of the zone schedule shall be freely available for public inspection at the offices of the zone grantee and any operator offering FTZ services to the user community. The Board shall make copies of zone schedules available on its Web site.

(f) *Delayed compliance date.* The compliance date for the requirements of this section shall be February 28, 2014.

§ 400.45 Complaints related to public utility and uniform treatment.

(a) *In general.* A zone participant may submit to the Executive Secretary a complaint regarding conditions or treatment that the complaining party believes are inconsistent with the public utility and uniform treatment requirements of the FTZ Act and these regulations. Complaints may be made on a confidential basis, if necessary. Grantees (and persons undertaking zone-related functions on behalf of grantees, where applicable) shall not enter into or enforce provisions of agreements or contracts with zone participants that would require zone participants to disclose to other parties, including the grantee (or person undertaking a zone-related function(s) on behalf of a grantee, where applicable), any confidential communication with the Board under this section.

(b) *Objections to rates and charges.* A zone participant showing good cause may object to any rate or charge related to the zone on the basis that it is not fair and reasonable by submitting to the Executive Secretary a complaint in writing with supporting information. If necessary, such a complaint may be made on a confidential basis pursuant to § 400.45(a). The Executive Secretary shall review the complaint and issue a report and decision, which shall be final unless appealed to the Board within 30 days. The Board or the Executive Secretary may otherwise initiate a review for cause. The primary factor considered in reviewing fairness and reasonableness is the cost of the specific services rendered. Where those costs incorporate charges to the grantee by

one or more parties undertaking functions on behalf of the grantee, the Board may consider the costs incurred by those parties (using best estimates, as necessary). The Board will also give consideration to any extra costs incurred relative to non-zone operations, including return on investment and reasonable out-of-pocket expenses.

§ 400.46 Grantee liability.

(a) *Exemption from liability.* A grant of authority, *per se,* shall not be construed to make the zone grantee liable for violations by zone participants. The role of the zone grantee under the FTZ Act and the Board's regulations is to provide general management of the zone to ensure that the reasonable needs of the business community are served. It would not be in the public interest to discourage public entities from zone sponsorship because of concern about liability without fault.

(b) *Exception to exemption from liability.* A grantee could create liability for itself that otherwise would not exist if the grantee undertakes detailed operational oversight of or direction to zone participants. Examples of detailed operational oversight or direction include review of an operator's inventory-control or record-keeping systems, specifying requirements for such a system to be used by an operator, and review of CBP documentation related to an operator's zone receipts and shipments.

§ 400.47 Retail trade.

(a) *In general.* Retail trade is prohibited in activated areas of zones, except that 1) sales or other commercial activity involving domestic, duty-paid, and duty-free goods may be conducted within an activated area of a zone under a permit issued by the zone grantee and approved by the Board, and 2) no permits shall be necessary for sales involving domestic, duty-paid or duty-free food and non-alcoholic beverage products sold within the zone or subzone for consumption on premises by individuals working therein. The Executive Secretary shall determine whether an activity is retail trade, subject to review by the Board when the zone grantee requests such a review with a good cause. Determinations on whether an activity constitutes retail trade shall be based on precedent established through prior rulings by CBP, as appropriate. Such prior rulings shall remain effective unless a determination is issued to modify their effect (after a notice-and-comment process, as appropriate). Determinations made by the Executive Secretary pursuant to this section shall be made available to the public via the Board's Web site.

(b) *Procedure.* Requests for Board approval under this section shall be submitted in letter form, with supporting documentation, to the Executive Secretary, who is authorized to act for the Board in these cases, after consultation with CBP as necessary.

(c) *Criteria.* In evaluating requests under this section, the Executive Secretary and CBP shall consider factors that may include:

(1) Whether any public benefits would result from approval; and

(2) The economic effect such activity would have on the retail trade outside the zone in the port of entry area.

§ 400.48 Zone-restricted merchandise.

(a) *In general.* Merchandise in zone-restricted status (19 CFR 146.44) may be entered into the customs territory of the United States only when the Board determines that the entry would be in the public interest. Such entries are subject to the customs laws and the payment of applicable duties and excise taxes (19 U.S.C. 81c(a), 4th proviso).

(b) *Criteria.* In making the determination described in paragraph (a) of this section, the Board shall consider:

(1) The intent of the parties;

(2) Why the merchandise cannot be exported;

(3) The public benefit involved in allowing entry of the merchandise; and

(4) The recommendation of CBP.

(c) *Procedure.* (1) A request for authority to enter ''zone-restricted'' merchandise into U.S. customs territory shall be made to the Executive Secretary in letter form by the zone grantee or by the operator responsible for the merchandise (with copy to the grantee), with supporting information and documentation.

(2) The Executive Secretary shall investigate the request and prepare a report for the Board.

(3) The Executive Secretary may act for the Board under this section with respect to requests that involve merchandise valued at 500,000 dollars or less and that are accompanied by a letter of concurrence from CBP.

§ 400.49 Monitoring and reviews of zone operations and activity.

(a) *In general.* Ongoing zone operation(s) and activity may be reviewed by the Board or the Executive Secretary at any time to determine whether they are in the public interest and in compliance and conformity with the Act and regulations, as well as authority approved by the Board. Reviews involving production activity may also be conducted to determine whether there are changed circumstances that raise questions as to whether the activity is detrimental to the public interest, taking into account the factors enumerated in § 400.27. The Board may prescribe special monitoring requirements in its decisions when appropriate.

(b) *Conduct of reviews.* Reviews may be initiated by the Board, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary; or, they may be undertaken in response to requests from parties directly affected by the activity in question showing good cause based on the provision of information that is probative and substantial in addressing the matter in issue. After initiation of a review, any affected party shall provide in a timely manner any information requested as part of the conduct of the review. If a party fails to timely provide information requested as part of such a review, a presumption unfavorable to that party may be made.

(c) *Prohibition or restriction.* Upon review, if a finding is made that zone activity is no longer in the public interest (taking into account the factors enumerated in § 400.27 where production activity is involved), the Board or the Commerce Department's Assistant Secretary for Import Administration may prohibit or restrict the activity in question. Such prohibitions or restrictions may be put in place after a preliminary review (*e.g.,* prior to potential steps such as a public comment period) if circumstances warrant such action until further review can be completed. The procedures of § 400.34(a)(5)(iv)(A) shall be followed to notify the grantee of the affected zone and allow for a response prior to the final imposition of a prohibition or restriction. The appropriateness of a delayed effective date shall be considered.

Subpart F—Records, Reports, Notice, Hearings and Information

§ 400.51 Records and reports.

(a) *Records and forms.* Zone records and forms shall be prepared and maintained in accordance with the requirements of CBP and the Board, consistent with documents issued by the Board specific to the zone in question, and the zone grantee shall retain copies of applications/requests it submits to the Board in electronic or paper format.

(b) *Maps and drawings.* Zone grantees or operators, and CBP, shall keep

current layout drawings of approved sites as described in § 400.21(d)(5), showing activated portions, and a file showing required activation approvals. The zone grantee shall furnish necessary maps to CBP.

(c) *Annual reports.* (1) Each zone grantee shall submit a complete and accurate annual report to the Board within 90 days after the end of the reporting period. Each zone operator shall submit a complete and accurate annual report to the zone grantee in a timeframe that will enable the grantee's timely submission of a complete and accurate annual report to the Board. A zone grantee may request an extension of the deadline for its report, as warranted. The Executive Secretary may authorize such extensions, with decisions on such authorizations taking into account both the circumstances presented and the importance of the Board submitting its annual report to Congress in a timely manner. Annual reports must be submitted in accordance with any instructions, guidelines, forms and related documents specifying place, manner and format(s) prescribed by the Executive Secretary. In the event that a grantee has not received all necessary annual report information from an operator in a timely manner, the grantee may submit its annual report on time and note the absence of the missing information.

(2) The Board shall submit an annual report to Congress.

§ 400.52 Notices and hearings.

(a) *In general.* The Executive Secretary shall publish notice in the **Federal Register** inviting public comment on applications and notifications for Board action (see, §§ 400.32 and 400.37(b)), and with regard to other reviews or matters considered under this part when public comment is necessary. An applicant under §§ 400.21, 400.24(b) and 400.25 shall give appropriate notice of its proposal in a local, general-circulation newspaper at least 15 days prior to the close of the public comment period for the proposal in question. The Board, the Secretary of Commerce, the Commerce Department's Assistant Secretary for Import Administration, or the Executive Secretary, as appropriate, may schedule and/or hold hearings during any proceedings or reviews conducted under this part whenever necessary or appropriate.

(b) *Requests for hearings.* (1) A party who may be materially affected by the zone activity in question and who shows good cause may request a hearing during a proceeding or review.

(2) The request must be made within 30 days of the beginning of the period for public comment (see § 400.32) and must be accompanied by information establishing the need for the hearing and the basis for the requesting party's interest in the matter.

(3) A determination as to the need for the hearing shall be made by the Commerce Department's Assistant Secretary for Import Administration within 15 days after the receipt of such a request.

(c) *Procedure for public hearings.* The Board shall publish notice in the **Federal Register** of the date, time and location of a public hearing. All participants shall have the opportunity to make a presentation. Applicants and their witnesses shall ordinarily appear first. The presiding officer may adopt time limits for individual presentations.

§ 400.53 Official records; public access.

(a) *Content.* The Executive Secretary shall maintain at the location stated in § 400.54(e) an official record of each proceeding within the Board's jurisdiction. The Executive Secretary shall include in the official record all timely evidence, factual information, and written argument, and other material developed by, presented to, or obtained by the Board in connection with the proceeding. While there is no requirement that a *verbatim* record shall be kept of public hearings, the proceedings of such hearings shall ordinarily be recorded and transcribed when significant opposition to a proposal is involved.

(b) *Opening and closing of official record.* The official record opens on the date the Executive Secretary dockets an application or receives a request or notification that satisfies the applicable requirements of this part and closes on the date of the final determination in the proceeding or review, as applicable.

(c) *Protection of the official record.* Unless otherwise ordered in a particular case by the Executive Secretary, the official record shall not be removed from the Department of Commerce. A certified copy of the record shall be made available to any court before which any aspect of a proceeding is under review, with appropriate safeguards to prevent disclosure of business proprietary or privileged information.

§ 400.54 Information.

(a) *Request for information.* The Executive Secretary, on behalf of the Board, may request submission of any information, including business proprietary information, and written argument necessary or appropriate to the proceeding.

(b) *Public information.* Except as provided in paragraph (c) of this section, the Board shall consider all information submitted in a proceeding to be public information, and if the person submitting the information does not agree to its public disclosure, the Board shall return the information and not consider it in the proceeding. Information to meet the basic requirements of §§ 400.21–400.25 is inherently public information to allow meaningful public evaluation pursuant to those sections and § 400.32.

(c) *Business proprietary information.* Persons submitting business proprietary information and requesting that it be protected from public disclosure shall mark the cover page, as well as the top of each page on which such information appears, ''business proprietary.'' Any business proprietary document submitted for a proceeding other than pursuant to § 400.45 shall contain brackets at the beginning and end of each specific piece of business proprietary information contained in the submission. Any such business proprietary submission shall also be accompanied by a public version that contains all of the document's contents except the information bracketed in the business proprietary version, with the cover page and the top of each additional page marked ''public version.'' Any information for which business proprietary treatment is claimed must be ranged (*i.e.,* presented as a number or upper and lower limits that approximate the specific business proprietary figure) or summarized in the public version. If a submitting party maintains that certain information is not susceptible to summarization or ranging, the public version must provide a full explanation specific to each such piece of information regarding why summarization or ranging is not feasible.

(d) *Disclosure of information.* Disclosure of public information shall be governed by 15 CFR part 4.

(e) *Availability of information.* Public information in the official record shall be available at the Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce Building, 1401 Constitution Avenue NW., Washington, DC 20230 and may also be available electronically over the Internet via *http://www.trade.gov/ftz* (or a successor Internet address).

Subpart G—Penalties and Appeals to the Board

§ 400.61 Revocation of authority.

(a) *In general.* As provided in this section, the Board can revoke in whole or in part authority for a zone or subzone whenever it determines that the zone grantee has violated, repeatedly and willfully, the provisions of the Act.

(b) *Procedure.* When the Board has reason to believe that the conditions for revocation, as described in paragraph (a) of this section, are met, the Board shall:

(1) Notify the grantee of the zone in question in writing stating the nature of the alleged violations, provide the grantee an opportunity to request a hearing on the proposed revocation, and notify any known operators in the zone;

(2) Conduct a hearing, if requested or otherwise if appropriate;

(3) Make a determination on the record of the proceeding not earlier than four months after providing notice to the zone grantee under paragraph (b)(1) of this section; and

(4) If the Board's determination is affirmative, publish a notice of revocation of authority, in whole or in part, in the **Federal Register**.

(c) As provided in section 18 of the Act (19 U.S.C. 81r(c)), the grantee of the zone or subzone in question may appeal an order of the Board revoking authority.

§ 400.62 Fines, penalties and instructions to suspend activated status.

(a) *In general.* Fines are authorized solely for specific violations of the FTZ Act or the Board's regulations as detailed in §§ 400.62(b) and (c). Each specific violation is subject to a fine of not more than 1,000 dollars (as adjusted for inflation pursuant to § 400.62(j)), with each day during which a violation continues constituting a separate offense subject to imposition of such a fine (FTZ Act, section 19; 19 U.S.C. 81s). This section also establishes the party subject to the fine which, depending on the type of violation, would be the zone operator, grantee, or a person undertaking one or more zone-related functions on behalf of the grantee, where applicable. In certain circumstances, the Board or the Assistant Secretary for Import Administration could instruct CBP to suspend the activated status of all or part of a zone or subzone. Violations of the FTZ Act or the Board's regulations (including the sections pertaining to uniform treatment and submission of annual reports), failure to pay fines, or failure to comply with an order prohibiting or restricting activity may also result in the Executive Secretary's suspending the processing of any requests to the Board and staff relating to the zone or subzone in question. In circumstances where non-compliance pertains to only a subset of the operations in a zone, suspensions of activated status and suspensions of the processing of requests shall be targeted to the specific non-compliant operation(s).

(b) *Violations involving requirement to submit annual report.* A grantee's failure to submit a complete and accurate annual report pursuant to section 16 of the FTZ Act (19 U.S.C. 81p(b)) and § 400.51(c)(1) of these regulations constitutes a violation subject to a fine, with each day of continued failure to submit the report constituting a separate offense subject to a fine of not more than 1,000 dollars (as adjusted for inflation pursuant to § 400.62(j)). Further, each day during which a zone operator fails to submit to the zone's grantee the information required for the grantee's timely submission of a complete and accurate annual report to the Board shall constitute a separate offense subject to a fine of not more than 1,000 dollars (as adjusted for inflation pursuant to § 400.62(j)). Consistent with § 400.46, if the grantee submits a timely report to the Board identifying any operator that has not provided complete and timely information in response to a timely request(s) by the grantee, the grantee shall not be subject to a fine-assessment action stemming from the operator's failure to timely provide its report.

(c) *Violations involving uniform treatment.* Failure by a grantee or a person undertaking one or more zone-related functions on behalf of the grantee to comply with the uniform treatment requirement of section 14 of the FTZ Act (19 U.S.C. 81n) or the provisions of § 400.43 of these regulations constitutes a violation, with each day of continued violation constituting a separate offense subject to a fine of not more than 1,000 dollars (as adjusted for inflation pursuant to § 400.62(j)).

(d) *Procedures for determination of violations and imposition of fines.* When the Board or the Executive Secretary has reason to believe that a violation pursuant to §§ 400.62(b) and (c) has occurred and that the violation warrants the imposition of a fine (such as a situation where a party has previously been notified of action required for compliance and has failed to take such action within a reasonable period of time), the following steps shall be taken:

(1) The Executive Secretary shall notify the party or parties responsible for the violation and the zone grantee in writing stating the nature of the alleged violation, and provide the party(ies) a specified period (no less than 30 days, with consideration given to any requests for an extension, which shall not be unreasonably withheld) to respond in writing;

(2) The Executive Secretary shall conduct a hearing, if requested or otherwise if appropriate. Parties may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding shall be presented. A transcript of the hearing shall be produced and a copy shall be made available to the parties;

(3) The Executive Secretary shall make a recommendation on the record of the proceeding not earlier than the later of 15 days after the deadline for the party(ies)'s response under paragraph (d)(1) of this section or 15 days after the date of a hearing held under paragraph (d)(2) of this section. If the recommendation is for an affirmative determination of a violation, the Executive Secretary shall also recommend the amount of the fine to be imposed; and

(4) The Board shall make a determination regarding the finding of a violation and imposition of a fine based on the Executive Secretary's recommendation under paragraph (d)(3) of this section. For related actions where the total sum of recommended fines is no more than 10,000 dollars (50,000 dollars in the case of violations pursuant to paragraph (b) of this section), the Board delegates to the Executive Secretary the authority to make a determination.

(e) *Mitigation*—(1) *In general.* The Commerce Department's Assistant Secretary for Import Administration may approve the mitigation (reduction or elimination) of an imposed fine based on specific evidence presented by the affected party. Authority is delegated to the Executive Secretary to mitigate a fine where the total sum of fines imposed on a party for related actions does not exceed 10,000 dollars (50,000 dollars in the case of violations pursuant to paragraph (b) of this section). Mitigating evidence and argument pertaining to mitigating factors must be submitted within 30 days of the determination described in paragraph (d)(4) of this section, subject to requests for extension for cause, the granting of which shall not be unreasonably withheld.

(2) *Mitigating factors.* Factors to be taken into account in evaluating potential mitigation include:

(i) A good record of a violator over the preceding five years with regard to the type of violation(s) at issue;

(ii) The violation was due to the action of another party despite violator's adherence to the requirements of the FTZ Act and the Board's regulations;

(iii) Immediate remedial action by the violator to avoid future violations;

(iv) A violator's cooperation with the Board (beyond the degree of cooperation expected from a person under investigation for a violation) in ascertaining the facts establishing the violation;

(v) A violation's resulting from a clerical error or similar unintentional negligence; and

(vi) Such other factors as the Board, or the Executive Secretary, deems appropriate to consider in the specific circumstances presented.

(f) *Assessment of fines.* After evaluating submitted mitigating evidence and argument, where applicable, the Commerce Department's Assistant Secretary for Import Administration may assess an imposed fine (in whole or in part). Authority is delegated to the Executive Secretary to assess a fine where the total sum of the imposed fines for related actions does not exceed 10,000 dollars (50,000 dollars in the case of violations pursuant to paragraph (b) of this section).

(g) *Time for payment.* Full payment of an assessed fine must be made within 30 days of the date of the assessment or within such longer period of time as may be specified. Payment shall be made in the manner specified by the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary.

(h) *Procedures for instruction to suspend activated status.* If a fine assessed pursuant to §§ 400.62(d) through (g) has not been paid within 90 days of the specified deadline for payment, if there is a repeated and willful failure to comply with a requirement of the FTZ Act or the Board's regulations, or if there is a repeated and willful failure to comply with a prohibition or restriction on activity imposed by an order of the Board or an order of the Commerce Department's Assistant Secretary for Import Administration pursuant to § 400.49(c), the Board or the Commerce Department's Assistant Secretary for Import Administration may instruct CBP to suspend the activated status of the zone operation(s) in question (or, if appropriate, the suspension may be limited to a particular activity of a zone operator, such as suspension of the privilege to admit merchandise), and the suspension shall remain in place until the failure to pay a fine, failure to comply with a requirement of the FTZ Act or the Board's regulations, or failure to comply with an order's prohibition or restriction on activity has been remedied. In determining whether to instruct CBP to suspend the activated status of a zone operation in the circumstances noted, the following steps shall be taken:

(1) *Notification of party(ies).* The Executive Secretary shall notify the responsible party(ies) in writing stating the nature of the failure to timely pay a fine, to comply with a requirement of the FTZ Act or the Board's regulations or to comply with a prohibition or restriction on activity imposed by an order of the Board or an order of the Commerce Department's Assistant Secretary for Import Administration. If the grantee is not one of the responsible parties notified, the Executive Secretary shall also provide a copy of the notification to the grantee. The responsible party(ies) shall be provided a specified period (of not less than 15 days) to respond in writing to the notification;

(2) *Hearing.* If the notified responsible party(ies) or the zone's grantee requests a hearing (or if a hearing is determined to be warranted by the Board, the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary), it shall be held before the Executive Secretary (or a member of the Board staff designated by the Executive Secretary) within 30 days following the request for a hearing (or the determination by the Board, the Commerce Department's Assistant Secretary for Import Administration or the Executive Secretary). Parties may be represented by counsel at the hearing, and any evidence and testimony of witnesses in the proceeding shall be presented. A transcript of the hearing shall be produced and a copy shall be made available to the parties;

(3) The Executive Secretary shall make a recommendation on the record of the proceeding not earlier than 15 days after the later of:

(i) The deadline for the party(ies)'s response under paragraph (h)(1) of this section; or

(ii) The date of a hearing held under paragraph (h)(2) of this section; and

(4) The Board or the Commerce Department's Assistant Secretary for Import Administration shall determine whether to instruct CBP to suspend the activated status of the zone operation(s) in question. If the determination is affirmative, the Executive Secretary shall convey the instruction to CBP, with due consideration to allow for the transfer of any affected merchandise from the applicable zone site(s).

(i) *Enforcement of assessment.* Upon any failure to pay an assessed fine, the Board may request the U.S. Department of Justice to recover the amount assessed in any appropriate district court of the United States or may commence any other lawful action.

(j) *Adjustment for inflation.* The maximum dollar value of a fine for a violation of the FTZ Act or the Board's regulations is subject to adjustment for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

§ 400.63 Appeals to the Board of decisions of the Assistant Secretary for Import Administration and the Executive Secretary.

(a) *In general.* Decisions of the Commerce Department's Assistant Secretary for Import Administration and the Executive Secretary made pursuant to this part may be appealed to the Board by adversely affected parties showing good cause.

(b) *Procedures.* Parties appealing a decision under paragraph (a) of this section shall submit a request for review to the Board in writing, stating the basis for the request, and attaching a copy of the decision in question, as well as supporting information and documentation. After a review, the Board shall notify the appealing party of its decision in writing.

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To redesignate the Noxubee National Wildlife Refuge as the Sam D. Hamilton Noxubee National Wildlife Refuge. (Feb. 14, 2012; 126 Stat. 10)

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