

Patton Boggs TechComm Industry Update – Smart Grid Focus, November 25, 2009
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Welcome to a special “Smart Grid” edition of the Patton Boggs TechComm Industry Update. This edition focuses on the multiple ongoing Federal initiatives to support an “intelligent” electric delivery network.

Smart Grid is a catchy phrase intended to describe improvements to the grid that will make it more reliable; aid the transmission of energy generated from solar, wind and other renewable energy sources; and make consumers more knowledgeable about cutting their energy costs with “smart” electric meters and other advanced technology systems.¹ These improvements will be achieved through introducing digital and information technologies for enhanced operational intelligence and connectivity to the grid. A communications capability that permits the rapid and interactive flow of data also is a fundamental enabling component, as is technology to implement cybersecurity.

Patton Boggs’ TechComm and Energy Groups are monitoring and advising clients regarding Smart Grid developments, opportunities and policy issues in the key Federal agencies – the Department of Energy (DOE), the Federal Energy Regulatory Commission (FERC), the Federal Communications Commission (FCC) and the National Institute of Standards and Technology (NIST) – as well as related state initiatives. These efforts include assessing grant opportunities and requirements to support Smart Grid projects, submitting comments in proceedings to shape those opportunities, advising on compliance requirements for grant recipients and cost recovery in ratemaking proceedings and identifying potential collaborations among interested parties.

DOE Developments – Grants for Smart Grid Demonstration and Investment Projects

\$620 Million in Grants for Demonstration Projects Announced - On November 24, 2009, Energy Secretary Steven Chu announced \$620 million in grants for 32 projects to demonstrate advanced Smart Grid technologies that will build a more efficient and resilient electrical grid. The DOE demonstration projects, which include large-scale energy storage, smart meters, distribution and transmission system monitoring devices, and other smart technologies, will be models for deploying integrated Smart Grid systems on a broader scale across the country. The funding from the American Recovery and Reinvestment Act (ARRA) will be leveraged with \$1 billion in funds from the private sector to support more than \$1.6 billion in total Smart Grid demonstration projects nationally.

The grant awards are divided into two categories. In the first group, 16 awards totaling \$435 million will support fully integrated, regional Smart Grid demonstrations in 21 states. In the second group, an additional 16 awards totaling \$185 million will help fund utility-scale energy storage projects that will enhance reliability and efficiency of the grid, and reduce the need for new electricity plants.

¹ See [http://www.oe.energy.gov/DocumentsandMedia/DOE_SG_Book_Single_Pages\(1\).pdf](http://www.oe.energy.gov/DocumentsandMedia/DOE_SG_Book_Single_Pages(1).pdf) and <http://www.oe.energy.gov/DocumentsandMedia/TechnologyProviders.pdf>

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This industry update can be accessed at:

http://www.pattonboggs.com/newsletters/techcomm/2009_11_24_TechCommUpdates_SmartGridFocus.htm

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Among the grantees is Columbus Southern Power Company, which received \$75 million to demonstrate a secure, interoperable and integrated smart grid infrastructure for 110,000 consumers in Ohio. The project will maximize distribution system efficiency and reliability to enable consumers to reduce their energy use and save money. The Battelle Memorial Institute in Richland, Washington, received \$88.8 million to demonstrate and validate new smart grid technologies; provide two-way communication between distributed generation, storage, and demand assets; and advance interoperability standards and cyber security approaches, among other goals.

\$3.4 Billion In Grants For Investment Announced – In an earlier round of grants announced by President Obama on October 27, 2009, DOE awarded \$3.4 billion in grants for 100 Smart Grid investment projects in 49 states.² Again, these funds were made available under ARRA to fund 50 percent of the cost of each selected project.

The big winners included \$200 million for Constellation Energy Group Inc. (Baltimore Gas and Electric Co.) which will provide smart meters and an advanced customer control system for 1.1 million customers in the Baltimore area. This, plus \$28.1 million to Sempra Energy (San Diego Gas and Electric Co.) for a similar program in San Diego, supports an apparent DOE emphasis at this stage on investments involving “smart” technology at the edge of the grid (e.g., meters and beyond) as opposed to at its core (distribution and transmission).

Impact On Jobs And Economy - President Obama’s energy advisor, Carol M. Browner, former Administrator of the Environmental Protection Agency (EPA) during the Clinton presidency, said that the investment grants “will give us a transformational impact on how electricity is generated, delivered, and consumed.” Another White House official, Vice President Joe Biden’s economic advisor, said that the \$3.4 billion will “save or create tens of thousands of jobs.” The Smart Grid grants represent a huge step in upgrading, in Ms. Browner’s words, an “outdated and dilapidated” grid.

Timing and Scope - Smart Grid grants arrived weeks after President Obama issued his Executive Order³ on Environmental Leadership, Energy and Economic Performance, requiring the Federal government (1.8 million employees, 500,000 buildings and 600,000 vehicles) to decrease pollution and increase the use of renewable energy. John Chambers, Chairman and CEO of Cisco, stated that the smart grid opportunity “may be bigger than the whole Internet.” DOE policy is in line with this thinking. When the grants are coupled with contributions by the grantees, the total expected direct investment in Smart Grid demonstration and investment projects is expected to be some \$9.7 billion.

Grant Compliance Requirements – All grant recipients will be required to satisfy the administrative and national policy requirements generally applicable to DOE grants. In addition, however, grantees must adhere to special provisions relating to work funded under the ARRA, including special reporting requirements. Patton Boggs has been and will continue to advise clients on what needs to be done to stay in compliance with all grant requirements.

If you have any questions about the foregoing, or if you require additional information about Smart Grid developments at DOE, please contact:

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² http://www.energy.gov/recovery/smartgrid_maps/SGIGSelections_Category.pdf

³ http://www.whitehouse.gov/the_press_office/President-Obama-signs-an-Executive-Order-Focused-on-Federal-Leadership-in-Environmental-Energy-and-Economic-Performance/

FERC Developments - Recovery of Smart Grid Costs and Demand Response Issues

Utility Recovery Of Smart Grid Costs – When FERC issued its Smart Grid Policy Statement last summer, the Commission advised that it would allow utilities to make “single issue” rate filings to recover Smart Grid investment costs, without the burden of submitting a full-blown rate case covering other revenues and costs. FERC also established criteria that a rate applicant must meet for its costs to be eligible for recovery, including a demonstration that: (1) the Smart Grid facilities will advance the goals of Section 1301 of the Energy Independence and Security Act of 2007 (EISA); (2) the reliability and security of the bulk-power system will not be adversely affected by the deployment of the Smart Grid facilities; and (3) the rate applicant has minimized the possibility of stranded investment in Smart Grid equipment (particularly in view of the fact that final interoperability standards have not yet been adopted). In addition, FERC included a requirement that the applicant share information on its Smart Grid project with the DOE’s Smart Grid Clearinghouse.

Utilities are now beginning to take FERC up on its offer to allow recovery of Smart Grid costs in interstate transmission rates through “single issue” filings. In conjunction with their grant applications to DOE, utilities are asking FERC to declare that they can recover from transmission ratepayers 50 percent of the total Smart Grid project costs that must be matched by an applicant when a Smart Grid investment grant is awarded by DOE.

For example, in September of 2009, Pacific Gas and Electric Company (PG&E) submitted a petition asking FERC to declare that PG&E can recover, in interstate transmission rates, \$25 million in investment costs for a Smart Grid synchrophasor project. These costs relate to the installation or upgrading of approximately 25 synchrophasor measurement devices, together with communication infrastructure. The synchrophasor technology uses time-synchronized measurement of critical system operating parameters to inform operators of potential wide-area reliability concerns, in real-time, and identify actions that can be taken to mitigate the impacts.

It is relatively common for utilities to submit filings with state regulatory commissions to recover the costs of “advanced” or “smart” meters in rates charged to retail customers. PG&E’s filing, however, is the first filing at FERC seeking regulatory assurance that it can recover Smart Grid costs in interstate transmission rates charged to wholesale customers. Strategically, there can be advantages to filing for cost recovery at FERC, rather than in the states. We expect this new trend to continue.

Proposed New FERC Regulations Incorporating Business Practice Standards for Demand Response Services and Products - It is common in the electric and natural gas industries for an organization, known as the North American Energy Standards Board (NAESB), to develop business practice standards related to common transactional formats and communication protocols. These standards typically are developed through a consensus-building process that takes into account the views of multiple companies in these industries.

Following the issuance of a Notice of Proposed Rulemaking (NOPR) and the receipt of industry comments, FERC is now poised to adopt new regulations incorporating business practice standards developed by the Wholesale Electric Quadrant of NAESB for demand response services and products. The standards are designed to categorize demand response products and services and support the measurement and verification of these products and services in wholesale electric markets.

FERC Seeks Comments On National Demand Response Plan - Pursuant to Section 529 of the EISA, FERC is developing a National Action Plan on Demand Response (National Plan). It recently released a “Discussion Draft” on possible elements of this plan, including proposed strategies and activities designed to:

- a) provide technical assistance to the states – such as conducting educational programs and training, building a panel of demand response experts, sponsoring technical papers and establishing demand response assistance and grant programs;
- b) develop and implement a national communications program – such as conducting market research, developing consumer-friendly terminology for demand response, developing consistent messaging that resonates with consumers and distributing materials to utilities and other demand response service providers to use in their own communication campaigns; and

- c) provide tools and materials – such as estimation tools, standards and protocols for demand response, as well as information on how to design a pilot demand response program and guidelines for dynamic pricing.

For purposes of developing this National Plan, FERC is interpreting the term “demand response” broadly to encompass a variety of consumer actions and technologies affecting load profiles. It would include customer responses to reliability or price signals sent electronically by electric system operators in near or real-time, including, for example, the use of “smart” appliances in offices or homes that enable customers to reduce their demands for electric energy. It also would encompass the deployment of devices that can manage demand, as needed, to integrate variable generation sources (such as wind farms and rooftop solar systems) and provide grid services (such as frequency regulation and operating reserves). FERC envisions that demand response can be used to, among other things, shift energy consumption from peak to off-peak hours and encourage nighttime charging of home energy storage systems, including electric vehicles. Not only may customers reduce their own consumption of electric energy, but electric energy may be drawn from storage devices, such as plug-in electric vehicle batteries, to provide grid services.

One of the cornerstones of FERC’s proposal is the establishment of a coalition of diverse stakeholders which would implement the National Plan. This coalition may include, for example, state and local government officials, utilities, regional and independent transmission system operators (known as RTOs and ISOs), demand response service providers, hardware and software service providers, residential, commercial and industrial customers, consumer groups and other types of non-profit organizations.

FERC held a technical conference on the proposed elements of this National Plan on November 19-20, 2009. For those interested in becoming more involved in this National Plan, written comments may be filed at FERC by December 4, 2009.

If you are interested in filing comments, or would like additional information about Smart Grid developments at FERC, please contact:

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FCC Developments - Need for Smart Grid Support in National Broadband Plan

The FCC has asserted a role in the development of Smart Grid policies for at least two reasons. First, a communications network (private or public, wired or wireless) is essential to a working Smart Grid, permitting the interactive flow of data about energy supply and demand. Second, in directing the FCC to formulate a National Broadband Plan, Congress required the FCC to include a “plan for the use of broadband infrastructure and services in advancing...energy independence and efficiency”, a goal of Smart Grid technologies.

Visible Leadership Position - To initiate the FCC’s focus on Smart Grid, Chairman Genachowski appointed an Energy and Environment Director for the Commission’s National Broadband Plan Task Force. The Director is Nick Sinai, who came most recently from advising clean technology companies.

Smart Grid Workshop - The formal start of the FCC’s consideration of Smart Grid issues was a workshop held at the FCC on August 25, 2009. The workshop, at which Mr. Sinai presided, considered the following issues relating to Smart Grid:

- a) What types of communications networks can and should be used for various Smart Grid applications?
- b) What are the pros and cons of the various types of networks?
- c) How much bandwidth is needed to support Smart Grid communications? Do current networks meet these needs?

- d) What are the biggest obstacles to deploying Smart Grid equipment and to generating benefits from these deployments?
- e) What are the panelists' recommendations for achieving maximum adoption and utilization of Smart Grid equipment throughout the energy ecosystem, from generation to consumption?
- f) What are the specific communications and information technologies that can be leveraged to reduce greenhouse gas emissions?
- g) How can these technologies be implemented across America?
- h) What are the challenges in the adoption of these technologies and how can these obstacles be overcome?
- i) What are the panelists' recommendations for achieving maximum adoption and utilization of these communications and information technologies?

Representatives of DOE, NIST, Smart Grid technology and equipment developers and consultants and electric utilities presented their positions.

FCC Request For Comments - On September 4, 2009, the FCC issued a Public Notice soliciting comments on a series of issues relating to Smart Grid and broadband. The major issues on which the FCC solicited comment were as follows:

- a) Suitability of Communications Technologies – e.g., which communications networks are suitable for various Smart Grid applications?
- b) Availability of Communications Networks – e.g., what is the availability of existing communications networks, and how may this availability impact Smart Grid deployments?
- c) Spectrum – e.g., how is wireless spectrum being used or could be used for Smart Grid applications (is additional wireless spectrum needed?)?
- d) Real Time Data – e.g., what about access to real-time energy consumption data (e.g., who has access and how is the data used?)?
- e) Home Area Networks – e.g., what are the ways in which utilities, technology providers and consumers will connect on the Smart Grid?

More than 40 parties submitted comments in response to the Public Notice by October 2, 2009. The FCC will factor those comments into the formulation of the National Broadband Plan, which is due to be completed by mid-February of next year.⁴

As a follow on to the workshop and request for comments, on November 30, 2009, the FCC will hold a field hearing at the Massachusetts Institute of Technology in Cambridge, Massachusetts on how broadband can help the nation achieve its energy and environmental goals.

Dedicated/Additional Wireless Spectrum - On the specific matter of dedicated or additional spectrum for Smart Grid, the Utilities Telecom Council (UTC), among others, has urged the FCC to designate additional spectrum expressly for Smart Grid use. UTC advocated, as part of its most recent comments, use of 30 MHz of spectrum from 1800 MHz to 1830 MHz to support the electrical grid, as has been done in Canada. UTC and others also

⁴ A copy of the Public Notice (DA 09-2017) can be obtained at www.fcc.gov. Copies of the various comments also can be obtained at <http://www.fcc.gov> through the Commission's electronic comment filing system in GN Docket Nos. 09-47, 09-51, 09-137.

support a previously-filed rulemaking (RM-11429) to authorize secondary terrestrial use of 14.0 to 14.5 GHz band for "critical infrastructure communications" (i.e., including Smart Grid).

Continuing Opportunity To Participate – The opportunity to participate in all these proceedings at the FCC continues through permitted ex parte filings and meetings with the FCC Commissioners and/or responsible staff.

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NIST Developments - Roadmap for Smart Grid Interoperability Standards

NIST is tasked with coordinating the framework of standards for the information management systems necessary to achieve interoperability of Smart Grid devices and systems. On September 24, 2009, NIST issued a report entitled, "Framework and Roadmap for Smart Grid Interoperability Standards."⁵ NIST's report identified certain standardization priorities, and areas for which standards will be developed on an accelerated basis. The standardization priorities are:

- a. Demand Response and Consumer Energy Efficiency
- b. Wide Area Situational Awareness
- c. Electric Storage
- d. Electric Transportation
- e. Advanced Metering Infrastructure
- f. Distribution Grid Management
- g. Cyber Security

Although standards exist for some of the priorities list above, NIST determined that many of these standards require revision or enhancement to adequately address Smart Grid requirements. To that end, NIST identified 14 areas that need immediate resolution and developed an aggressive action plan, tasking specific organizations to meet milestones in 2009 or early 2010 for completion. The Priority Action Plans and targets are:

- a. Smart meter upgradeability standard (completed)
- b. Common specification for price and product definition (early 2010)
- c. Common scheduling mechanism for energy transactions (year-end 2009)
- d. Common information model for distribution grid management (year-end 2010)
- e. Standard demand response signals (January 2010)
- f. Standard for energy use information (January 2010)
- g. IEC 61850 Objects / DNP3 Mapping (2010)
- h. Time synchronization (mid-2010)
- i. Transmission and distribution power systems models mapping (year-end 2010)
- j. Guidelines for use of IP protocol suite in the Smart Grid (mid-year 2010)
- k. Guidelines for use of wireless communications in the Smart Grid (mid-year 2010)
- l. Electric storage interconnection guidelines (mid-2010)
- m. Interoperability standards to support plug-in electric vehicles (December 2010)
- n. Standard meter data profiles (year-end 2010)

⁵ A copy of the NIST report is accessible at http://www.nist.gov/public_affairs/releases/smartgrid_interoperability.pdf

The deadline for comments on NIST's report was November 9, 2009. NIST formed a Smart Grid Interoperability Panel ("SGIP"), launched on November 16, 2009, to move forward with further development of standards and interoperability planning.⁶

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State Developments - Key Smart Grid Initiatives

A number of states, including California, New York, Maryland and Illinois have undertaken their own initiatives to promote the development and deployment of Smart Grid. The ability of a utility to recover its costs of Smart Grid deployment has been an issue in a number of state proceedings, and is likely to remain so.

California - California passed the first statewide Smart Grid law in the country in October amid a spate of renewable energy and efficiency legislation Governor Arnold Schwarzenegger also signed. Senate Bill 17 requires California's Public Utilities Commission (PUC) to develop an overarching plan for Smart Grid deployment, including installation of smart meters, data networks and other infrastructure by July 1, 2010. The law also mandates that utilities with more than 100,000 customers establish their own timelines by July 1, 2011.

Under the measure, strategies for Smart Grid deployment adopted by California utilities must meet the terms articulated in the broader PUC plan in order to ensure compatibility. The PUC also will be required to report on a yearly basis, starting on January 1, 2011, to the governor and legislature on improvements to the electrical grid.

Three of the nation's top five utilities most active in Smart Grid deployment are located in California: San Diego Gas & Electric (SDG&E), Pacific Gas & Electric and Southern California Edison. PG&E alone has installed 3.7 million smart meters throughout its Northern California service area. SDG&E received a DOE grant of \$28.1 million, the second-largest in California. Governmental entities in California also received Smart Grid grant money. For example, the Sacramento Municipal Utility District received \$128 million for part of a \$308 million Smart Grid project.

SDG&E plans to use its federal grant, along with \$1 million in state grant funds and \$31 million from customers, to build a new communications system. To date, the company uses one system to communicate with workers in the field, a different one to get information from sensors scattered around the county and a third to link to the 2.4 million smart meters it is installing. SDG&E chose to use smart meters with an open-standards approach to provide a two-way communication between the utility and the resident's home.

Meanwhile, Sacramento intends to install a comprehensive regional Smart Grid system for customers that includes 600,000 smart meters, dynamic pricing, 100 electric vehicle charging stations and 50,000 demand response controls, such as smart thermostats.

New York - The State of New York is in the early stages of developing its Smart Grid policy. On June 11, 2009, the New York Public Service Commission held a technical conference to explore development and deployment of smart grid technologies in New York, including utilization of federal funding from the Recovery Act. The State is looking for smart grid technologies to improve electric grid operation and reduce power system losses, increase opportunities for demand response, increase the use of distributed generation and improve outage management systems.

⁶ More information on the SGIP, including membership information, can be found at <http://collaborate.nist.gov/twiki-ssgrid/bin/view/SmartGrid/SGIP>

Maryland - Maryland utilities have been experimenting with Smart Grid technologies for more than a year, due in part to the General Assembly's 2008 passage of the EmPOWER Maryland Energy Efficiency Act. The law requires cost-effective utility programs to achieve target reductions in usage, subject to the Public Service Commission's approval. Specifically, the law establishes a State goal of achieving a 15 percent reduction in per capita electricity consumption and peak demand by the end of 2015. To reach that goal, the Public Service Commission must determine the cost-effectiveness of Smart Grid technology. The law also permits the Public Service Commission to mandate Smart Grid implementation. Since the law's passage, the Public Service Commission has approved efficiency and demand response programs for four utilities and one electric cooperative. The Commission also approved pilot programs that include the Smart Energy Pricing ("SEP") Pilot implemented by Baltimore Gas & Electric Company in the summer of 2008. The SEP Pilot features 1,375 residential customers who are placed on a pricing rider or tariff in combination with two technologies, an in-home display known as the Energy Orb and a switch for cycling central air conditioners.

In 2008, the Maryland Energy Administration (MEA) received a \$461,793 competitive grant from DOE to develop the Maryland Utility-Scale Clean Energy Capacity Project. The grant was intended to help MEA determine the benefits of a Smart Grid system for Maryland. In June 2009, MEA reported on the results of its evaluation. The analysis concluded that implementing Smart Grid technologies and strategies could reduce consumer's electricity bills, improve system reliability, lower utilities' operational costs and create new jobs.

Illinois - Illinois Smart Grid initiatives were prompted by the 2007 passage of the Illinois Power Agency Act, SB 1592, which directs utilities to reduce peak demand beginning in July 2008 by 0.1 percent from the prior year, for 10 years, through cost-effective demand response, including Smart Grid measures. Illinois' two largest utilities, serving 90 percent of the state's electricity users, are collaborating with Illinois consumer groups on an Advanced Metering Infrastructure (AMI) pilot and on discussions that evaluate how Illinois' current electric infrastructure can become a Smart Grid. In addition, Commonwealth Edison is expected to deploy up to 200,000 smart meters by the end of 2009, the first phase of a multi-year effort. Ameren Illinois and Commonwealth Edison also initiated discussions with interested stakeholders on the development of a Smart Grid. This collaboration is expected to yield a plan for upgrading the electric grid and result in savings to the utilities and customers as well as fuel technology investment. Finally, Illinois is a member of the [Mid-Atlantic Distributed Resources Initiative](#), which is starting a Smart Grid initiative at the request of member states' public utility commissioners. Other members are Delaware, New Jersey, Ohio, Pennsylvania, Maryland and the District of Columbia.

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Cybersecurity Developments – Federal Efforts

Cybersecurity, securing the Smart Grid and securing data collected on the grid are major concerns for the Obama Administration, the Department of Homeland Security (DHS) and Congress. Similar to all critical infrastructure in our country, the Smart Grid must be secured against hackers that might seek to disrupt grid operations or gain access to and misuse data that is gathered on the grid. The accelerating deployment of tens of millions of advanced electric meters in homes and businesses, and other smart grid devices, will increase energy efficiency, but it also will make the nation's power network potentially more vulnerable as penetration grows. Cybersecurity threats also have raised potential privacy concerns for consumers.

Several bills have been introduced in Congress to give FERC greater authority to impose cybersecurity rules on the electric grid, including local distribution networks and power line networks in large cities. It is Congress' goal to expedite the establishment of cybersecurity protections in the electric industry.

Concerns about cybersecurity and the electric grid have initiated action in various Federal agencies, including DHS and the Office of Management and Budget.

Department of Homeland Security - October was dubbed "National Cybersecurity Awareness Month," culminating in DHS unveiling its long-awaited new Cyber Center. The \$9 million operations center, based in Northern Virginia, will help to better coordinate the government's response to cyber-attacks. The center merges the U.S. Computer Emergency Readiness Team (CERT) and the National Coordinating Center for Telecommunications in order to monitor government networks to work better together. U.S. officials have said that government computer systems are probed or scanned millions of times a day, and face an increasing threat from hackers, cyber criminals looking to steal money or information and nation-states aimed at espionage or the destruction of networks that run vital services. The goal is to have a more coordinated effort by the federal government to monitor and protect U.S. systems, including the Smart Grid, and work with the private sector to insure that transportation systems, energy plants and other sensitive networks are equally protected. Over time, the center will also include the National Cybersecurity Center, which coordinates operations among the six largest federal cyber centers; the DHS Office of Intelligence and Analysis and representatives from the private sector.

Office of Management and Budget (OMB) - OMB and the White House plan to introduce new tools and metrics for measuring and managing the federal government's cybersecurity efforts. There has been criticism that the government's implementation of the Federal Information Security Management Act (FISMA) focuses too much on paperwork and on having certain tools and processes in place, and not enough on performance. Early in 2010, performance metrics will be established to ensure more focused measurement on progress and government-wide achievements. Earlier in the year, OMB released "CyberScope" which allows federal agencies to report FISMA compliance via an authenticated Web-based reporting tool rather than sending spreadsheets via e-mail. Agencies are required to report detailed spending information on cyber-security this fiscal year. Next spring, that information will make its way to a federal cybersecurity "dashboard" similar to the IT Dashboard launched earlier this year, a public Web site that tracks federal IT spending and project performance.

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