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Presidential Documents

Title 3—

The President

Proclamation 8895 of November 1, 2012

Military Family Month, 2012

By the President of the United States of America

A Proclamation

Since our Nation's earliest days, courageous men and women of all backgrounds and beliefs have banded together to fight for the freedoms we cherish. Behind each of them stands a parent, a sibling, a child, a spouse—proud family members who share the weight of deployment and make profound sacrifices on behalf of our country. During Military Family Month, we honor our military families and recommit to showing them the fullest care and respect of a grateful Nation.

In our military families, we see the best our country has to offer. They demonstrate the virtues that have made America great for more than two centuries and the values that will preserve our greatness for centuries to come. With loved ones serving far from home, military spouses take on the work of two. Their children show courage and resilience as they move from base to base, school to school, home to home. And even through the strain of deployment, military families strengthen the fabric of each community they touch and enrich our national life as shining examples of patriotism.

We each have a solemn duty to serve our Armed Forces and their families as well as they serve us. Through First Lady Michelle Obama and Dr. Jill Biden's Joining Forces initiative, we have worked to fulfill this obligation by mobilizing all Americans to give service members and their families the opportunities and support they have earned. Last year, we challenged American businesses to hire or train 100,000 veterans and military spouses by the end of 2013. To date, they have already exceeded that challenge, hiring over 125,000 veterans and military spouses. From helping military children succeed in the classroom to increasing support for those who care for our wounded warriors, Joining Forces will keep fighting to ensure the well-being of our troops and their families.

When a young woman signs up to defend our Nation, her parents are enlisted as well. When a father deploys to a combat zone, his children are called to serve on the home front. And when the men and women of our military serve far from home, their families feel the strain of their absence. In that absence, let us stand together as one American family. Let us honor the brave patriots who keep our country safe, and let us forever hold close the memories of those who have perished in the line of duty. This month, we reaffirm that we will always lift up our military families—not just when their loved ones are away, but also long after the welcome home ceremonies are over.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2012 as Military Family Month. I call on all Americans to honor military families through private actions and public service for the tremendous contributions they make in support of our service members and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–27188
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Presidential Documents

Proclamation 8896 of November 1, 2012

National Adoption Month, 2012

By the President of the United States of America

A Proclamation

As a Nation that believes all children deserve the chance to reach their full potential, we have a fundamental responsibility to ensure each of them grows up knowing the love and protection of a permanent family. During National Adoption Month, we give voice to children who are still waiting for that opportunity, celebrate the bond that unites adoptive parents with their sons and daughters, and recommit to providing every child with the care and security that will nurture their development and well-being.

Later this month, many Americans will also mark National Adoption Day by completing a foster care adoption and embracing a new member of their family. Driven by reasons unique to their households but united by the spirit of compassion that moves all who choose to adopt, these parents will take up our country's most important task—the work of raising our sons and daughters. As we celebrate the contributions of adoptive parents across our Nation, let us also strive to eliminate discriminatory barriers that would separate foster children from a loving family. Adoptive families come in many forms, and it is essential that all qualified adults have the opportunity to care for a child in need.

My Administration remains committed to helping every child find a loving home. We have partnered with faith-based and community organizations across America to help connect children with adoptive parents, and we continue to work with State, local, and tribal governments to improve child outcomes; enhance safety, permanency, and well-being; and support adoptive families. I was proud to sign the Affordable Care Act and the International Adoption Simplification Act, which have made it easier for families to adopt, as well as the Child and Family Services Improvement and Innovation Act, which will help reduce the length of time young children are without families. We have built on those efforts as part of the National Adoption Campaign, which continues to bring adoption and foster care into our national conversation.

Thousands of children living in America hope for the comfort and safety of a loving family. This month, we pay tribute to the dedicated professionals who help make those children's dreams a reality, sharpen our resolve to find a permanent home for every child, and celebrate the stories of all whose lives have been touched by adoption.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2012 as National Adoption Month. I encourage all Americans to observe this month by answering the call to find a permanent and caring family for every child in need, and by supporting the families who care for them.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

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Presidential Documents

Proclamation 8897 of November 1, 2012

National Alzheimer's Disease Awareness Month, 2012

By the President of the United States of America

A Proclamation

Every day, families across our country confront the tragic realities of Alzheimer's disease—an irreversible, fatal illness that robs men and women of their cherished memories and leads to progressive mental and physical impairments. Millions of individuals suffer from this debilitating ailment, and millions more shoulder profound emotional and financial burdens by serving as caregivers for their loved ones. As the number of older Americans grows in the coming years, Alzheimer's disease will continue to pose serious risks to our well-being—which is why it is essential we join together to address it today. During National Alzheimer's Disease Awareness Month, we stand with all those who have known the pain of this devastating illness, extend our support to Americans living with Alzheimer's, and press on toward promising new treatments.

This May, my Administration released the first National Plan to Address Alzheimer's Disease. The Plan lays out a bold vision for Alzheimer's prevention and treatment, calling for a comprehensive, collaborative approach that engages partners throughout the public, private, and non-profit sectors. As part of this effort, we have made historic investments in research and clinical trials that bring us closer to unlocking tomorrow's therapies. Through www.Alzheimers.gov, we are working to empower people living with Alzheimer's, their caregivers, and all Americans with information and resources about the disease. We are also providing training to health care providers to help them recognize the signs and symptoms of Alzheimer's disease and care for those who suffer from it. And to help ensure Americans living with Alzheimer's can access the care they need, we have worked to strengthen Medicare and expand choices for health insurance.

In homes and care facilities across our country, Alzheimer's disease continues to take a heartbreaking toll on millions of lives. As we honor the memory of those we have lost and lend our strength to those who face this ailment today, let us strive toward a brighter future.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2012 as National Alzheimer's Disease Awareness Month. I call upon the people of the United States to learn more about Alzheimer's disease and to offer their support to the individuals living with this disease and to their caregivers.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–27196
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Presidential Documents

Proclamation 8898 of November 1, 2012

National Diabetes Month, 2012

By the President of the United States of America

A Proclamation

Diabetes is a chronic, life-threatening illness that touches Americans of every age, ethnicity, and background. Its complications can be far-reaching: diabetes is the leading cause of kidney failure and new cases of blindness, and people living with the disease are at higher risk of high blood pressure, heart disease, and stroke. Our efforts to promote greater awareness and pioneering research continue to drive our work toward lessening its impact on our country. This month, we rededicate ourselves to that vital task and commend the dedicated professionals who are leading the charge against diabetes.

Today, over 20 million Americans suffer from diabetes, and public health officials estimate that more than 1 million new cases will be diagnosed this year. Of those, some will be Type 1 diabetes, which often develops during childhood. While the risk factors for Type 1 diabetes are not fully understood, insulin injections, regular exercise, and a healthy diet can help manage the disease. In adults, the majority of new cases will be Type 2 diabetes—an illness associated with obesity, physical inactivity, family history of diabetes, and older age. Some racial and ethnic groups are at higher risk of developing Type 2 diabetes. This form of the disease has also become more prevalent among youth. While Type 2 diabetes can be treated through diet and medication, research shows that it can also be prevented or delayed with changes in lifestyle. I encourage all Americans to learn more about diabetes at www.NDEP.NIH.gov, and to talk to their health care provider about what they can do to reduce their risk of developing this serious disease.

As long as diabetes continues to burden our communities, we must press on toward tomorrow's promising breakthroughs in prevention, treatment, and care. My Administration is proud to help advance this cause through the National Diabetes Prevention Program, which was included in the Affordable Care Act. This program joins private and public partners together in encouraging lifestyle changes that can prevent or delay the onset of Type 2 diabetes among those who are at high risk. The Affordable Care Act also ensures that, in many health plans, Americans at higher risk for developing diabetes can receive diabetes screening with no out-of-pocket costs. We have worked to equip Americans with the facts about diabetes through the National Diabetes Education Program, which promotes early diagnosis and effective diabetes management. To address the rise in childhood obesity that puts our young people at greater risk of developing diabetes, heart disease, and cancer during adulthood, First Lady Michelle Obama's *Let's Move!* initiative has focused on giving children and parents the tools they need to make healthy choices and put their kids on the path to a bright future.

With dedication, persistence, and ingenuity, we can put an end to the diabetes epidemic. In memory of those we have lost, and in solidarity with all who have felt the impact of this disease, let us keep fighting

to secure better outcomes for Americans living with diabetes, fuller understanding of how we can prevent new cases, and greater wellness for every man, woman, and child.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2012 as National Diabetes Month. I call upon all Americans, school systems, government agencies, nonprofit organizations, health care providers, research institutions, and other interested groups to join in activities that raise diabetes awareness and help prevent, treat, and manage the disease.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–27199
Filed 11–5–12; 8:45 am]
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Presidential Documents

Proclamation 8899 of November 1, 2012

National Entrepreneurship Month, 2012

By the President of the United States of America

A Proclamation

America is known around the world as a country that empowers the inventor and the innovator. Ours is a Nation where men and women can take a chance on a dream—where they can take an idea that starts around a kitchen table or in a garage and turn it into a new business or a new industry. During National Entrepreneurship Month, we celebrate the hard work, ingenuity, and courage of our thinkers, doers, and makers.

Because the new businesses created by entrepreneurs are responsible for most of the new jobs in our country, helping them succeed is essential to helping our economy grow. That is why my Administration has fought tirelessly to invest in entrepreneurs and small businesses so they can do what they do best—take risks, develop new ideas, grow businesses, and create new jobs. To help them expand and hire, I have signed 18 tax cuts for small businesses into law. Last year, my Administration launched the Startup America initiative to help connect innovators to funding and mentorship, cut through red tape, speed up innovation, and get their ventures off the ground faster. Alongside it, leaders in the private sector launched the Startup America Partnership, which has made over $1 billion in business services available to a national network that will serve tens of thousands of startups over the next 3 years. I also directed Federal agencies to streamline processes for establishing public-private research partnerships, small business research and development grants, and university-startup collaborations. And we launched BusinessUSA, a virtual one-stop shop that helps businesses—large and small—access the full range of Federal resources they need at every stage of their development.

My Administration has continued to build on that progress in 2012. Earlier this year, I signed the Jumpstart Our Business Startups (JOBS) Act into law, which is making it easier for innovative companies to go public and expand their workforce. For the first time, the law will also allow ordinary Americans to go online and invest in the startups and small businesses they believe in through crowdfunding platforms. We have also updated regulations to make it easier for foundations to invest in businesses pursuing charitable purposes and stronger communities. In August, we launched the Presidential Innovation Fellows program to bring top innovators outside of Government together with top innovators inside Government; release Federal data that is being used to develop new products, services, and businesses; make it easier for startup entrepreneurs to compete for Government contracts; transform the way citizens access Government information and services; and save taxpayers money. In addition, thousands of American entrepreneurs and inventors are helping Federal agencies solve tough problems at www.Challenge.gov. And, as part of the Middle Class Tax Relief and Job Creation Act I signed in February, we have bolstered Self-Employment Assistance programs that allow States to empower unemployed workers to start their own businesses.

As long as America's daring entrepreneurs are taking risks and putting themselves behind new ideas and innovations, the Federal Government will serve as a partner to support their endeavors and catalyze their success.

This month, and during Global Entrepreneurship Week, let us renew the spirit of innovation that has fueled more than two centuries of American progress and promises to drive us in the years to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2012 as National Entrepreneurship Month. I call upon all Americans to commemorate this month with appropriate programs and activities, and to celebrate November 16, 2012, as National Entrepreneurs' Day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–27202
Filed 11–5–12; 8:45 am]
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Presidential Documents

Proclamation 8900 of November 1, 2012

National Family Caregivers Month, 2012

By the President of the United States of America

A Proclamation

Our Nation's health care professionals provide essential medical services to millions of Americans, yet they do not shoulder their responsibilities alone. Family members, friends, and neighbors devote countless hours to providing care to their relatives or loved ones. During National Family Caregivers Month, we recognize and thank the humble heroes who do so much to keep our families and communities strong.

Across America, daughters and sons balance the work of caring for aging parents with the demands of their careers and raising their own children. Spouses and partners become caregivers to the ones they love even as they navigate their own health challenges. Mothers and fathers resume care for children returning home as wounded warriors. Friends and relatives form networks to support loved ones with disabilities. All of them give selflessly to bring comfort, social engagement, and stability to those they love.

Family caregivers have an immeasurable impact on the lives of those they assist, but their hours are long and their work is hard. Many put their own lives on hold to lift up someone close to them. That is why my Administration continues to support these committed individuals through programs like the National Family Caregiver Support Program and the Lifespan Respite Care Program, and through new initiatives like the National Plan to Address Alzheimer's Disease. These efforts help caregivers access services, provide quality support, and reinforce their support through respite care options. Additionally, my Administration has pursued workplace flexibility initiatives that help caregivers balance their responsibilities to their employers with their responsibilities to their loved ones. I was also proud to sign the Caregivers and Veterans Omnibus Health Services Act, which has helped our most seriously injured post-9/11 veterans and their family caregivers through financial support; access to health insurance, mental health services, and counseling; and comprehensive caregiver training and respite care.

National Family Caregivers Month is a time to reflect on the compassion and dedication that family caregivers embody every day. As we offer our appreciation and admiration for their difficult work, let us also extend our own offers of support to them and their loved ones.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2012 as National Family Caregivers Month. I encourage all Americans to pay tribute to those who provide for the health and well-being of their family members, friends, and neighbors.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–27205
Filed 11–5–12; 8:45 am]
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Presidential Documents

Proclamation 8901 of November 1, 2012

National Native American Heritage Month, 2012

By the President of the United States of America

A Proclamation

As the first people to live on the land we all cherish, American Indians and Alaska Natives have profoundly shaped our country's character and our cultural heritage. Today, Native Americans are leaders in every aspect of our society—from the classroom, to the boardroom, to the battlefield. This month, we celebrate and honor the many ways American Indians and Alaska Natives have enriched our Nation, and we renew our commitment to respecting each tribe's identity while ensuring equal opportunity to pursue the American dream.

In paying tribute to Native American achievements, we must also acknowledge the parts of our shared history that have been marred by violence and tragic mistreatment. For centuries, Native Americans faced cruelty, injustice, and broken promises. As we work together to forge a brighter future, we cannot shy away from the difficult aspects of our past. That is why, in 2009, I signed a bipartisan resolution that finally recognized the sad and painful chapters in our shared history. My Administration remains dedicated to writing a new chapter in that history by strengthening our government-to-government relationship with tribal nations while enhancing tribal sovereignty and tribal self-determination.

Because we know that the best ideas for tribal nations come from within, my Administration has continued to engage tribal leaders in developing an agenda that respects their expertise on matters affecting American Indians and Alaska Natives. In collaboration with tribal nations, we are making critical investments to improve health and education services, create jobs, and strengthen tribal economies. In July, I was proud to sign the Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act into law, which will enhance tribal control over the leasing of Indian lands. Last December, I signed an Executive Order to expand educational opportunities for Native American students. It aims to preserve Native languages, cultures, and histories while offering a competitive education that prepares young people to succeed in college and careers. And under the Tribal Law and Order Act and the Safe Indian Communities initiative, we are continuing to work with tribes to build safer communities. My Administration also supports the United Nations Declaration on the Rights of Indigenous Peoples.

Many longstanding Native American legal claims against the United States have been resolved, which will help accelerate the restoration of trust in our relationships with tribal nations. The settlements that came out of these claims—including the historic *Cobell* and *Keepseagle* settlements, as well as more than 50 settlements in cases alleging Federal mismanagement of tribal trust funds and resources—will put an end to decades of litigation and help drive economic development in tribal communities in the years to come.

In partnership with tribal nations, my Administration has addressed injustices and built new avenues of opportunity for American Indians and Alaska Natives. As we celebrate National Native American Heritage Month, let us move forward in the spirit of mutual understanding and mutual trust,

confident that our challenges can be met and that our shared future is bright.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim November 2012 as National Native American Heritage Month. I call upon all Americans to commemorate this month with appropriate programs and activities, and to celebrate November 23, 2012, as Native American Heritage Day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of November, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–27207
Filed 11–5–12; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 77, No. 215
Tuesday, November 6, 2012

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 19 and 109

[Docket ID OCC–2012–0011]

RIN 1557–AD61

Rules of Practice and Procedure; Rules of Practice and Procedure in Adjudicatory Proceedings; Civil Money Penalty Inflation Adjustments

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is amending its rules of practice and procedure for national banks and its rules of practice and procedure in adjudicatory proceedings for Federal savings associations to publish the maximum amount, adjusted for inflation, of each civil money penalty (CMP) within its jurisdiction to administer. These actions, including the adjustment methodology, are required under the Federal Civil Penalties Inflation Adjustment Act of 1990 (Inflation Adjustment Act or Act), as amended by the Debt Collection Improvement Act of 1996 (Debt Collection Improvement Act).

DATES: *Effective:* December 6, 2012.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090, or P. Holley Roberts, Senior Attorney, Enforcement and Compliance Division, (202) 874–4800, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background

The Inflation Adjustment Act (Act), 28 U.S.C. 2461 note, requires the OCC, as well as other Federal agencies with CMP authority, periodically to evaluate and publish by regulation the inflation-adjusted maximum assessment for each CMP authorized by a law that the agency has jurisdiction to administer. The purpose of these adjustments is to maintain the deterrent effect of CMPs and to promote compliance with the law. The Act requires evaluations and inflation adjustments to be made at least once every four years following the initial adjustment.

The Act provides detailed instructions for calculating the inflation adjustment. It specifies that the adjustment shall reflect the percentage increase in the Consumer Price Index between June of the calendar year preceding the year in which the adjustment will be made and June of the calendar year in which the amount was last set or adjusted. The Act defines the Consumer Price Index as the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor.[1] *See* 28 U.S.C. 2461 note. In addition, the Act provides rules for rounding increases [2] and requires that any increase in a CMP maximum apply only to violations that occur after the date of the adjustment. Finally, section 2 of the Debt Collection Improvement Act amended the Inflation Adjustment Act by limiting the *initial* adjustment of a CMP maximum pursuant to the Inflation Adjustment Act to no more than 10 percent of the amount established by statute. *See* 28 U.S.C. 2461 note.

Pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), Congress transferred the powers, authorities, rights, and duties of the Office of Thrift Supervision (OTS) to the OCC on July 21, 2011, and the OCC assumed all functions of the OTS and the Director of the OTS relating to Federal savings associations. Therefore, the OCC now has responsibility for the ongoing supervision, examination, and regulation of Federal savings associations as of the transfer date. Accordingly, the OCC also is amending its rules of practice and procedure in adjudicatory proceedings for Federal savings associations, set forth at 12 CFR 109.103(c), to adjust the maximum amount of each CMP within its jurisdiction to administer to account for inflation.[3]

The OCC's last adjustments to the maximum assessments of CMPs applicable to national banks were published in the **Federal Register** on November 10, 2008, 73 FR 66493, and became effective on December 10, 2008. The last adjustments to the maximum assessments of CMPs applicable to Federal savings associations were published in the **Federal Register** on October 27, 2008, 73 FR 63625, and became effective on October 27, 2008.

Description of the Final Rule

This final rule sets forth the inflation-adjusted maximum assessment for each CMP that the OCC has jurisdiction to impose in accordance with the statutory requirements by revising the table contained in 12 CFR 19.240(a) with respect to national banks and the table contained in 12 CFR 109.103(c) with respect to Federal savings associations. Each table identifies the statutes that authorize the OCC to assess CMPs, describes the different tiers of penalties provided in each statute (as applicable), and sets out the inflation-adjusted maximum penalty that the OCC may impose pursuant to each statutory provision.

The Act requires that we compute the inflation factor by comparing the CPI–U for June of the calendar year preceding the adjustment with the CPI–U for June of the year in which the CMPs were last

[1] The Department of Labor computes the CPI–U using two different base time periods, 1967 and 1982–1984, and the Act does not specify which of these base periods should be used to calculate the inflation adjustment. The OCC, consistent with the other Federal banking agencies, has used the CPI–U with 1982–1984 as the base period. Data on the CPI–U is available at *http://bls.gov.*

[2] The Act's rounding rules require that an increase be rounded to the nearest multiple of: $10 in the case of penalties less than or equal to $100; $100 in the case of penalties greater than $100 but less than or equal to $1,000; $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000; $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000; $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and $25,000 in the case of penalties greater than $200,000. *See* 28 U.S.C. 2461 note.

[3] Although we are amending both 12 CFR part 19 and 12 CFR part 109 at this time, the OCC expects to consolidate these provisions in the future as part of its integration of the OCC and OTS rules.

set or increased.[4] *See* 28 U.S.C. 2461 note. The vast majority of CMPs applicable to national banks and Federal savings associations were last increased in 2008. For those CMPs, we compared the CPI–U for June 2011 (225.722) with the CPI–U for June 2008 (218.815), resulting in an inflation factor of 3.2 percent. A few penalties were last increased in 2000. For those penalties, we compared the CPI–U for June 2011 (225.7) with the CPI–U for June 2000 (172.4), resulting in an inflation factor of 30.9 percent. Finally, a few penalties were last increased in 1997. For those penalties, we compared the CPI–U for June 2011 (225.7) with the CPI–U for June 1997 (160.3), resulting in an inflation factor of 40.8 percent.

To obtain the inflation-adjusted CMP maximums, we multiplied the current amount of each CMP maximum by the appropriate percentage inflation factor (as calculated above) to determine the preliminary increase amount, rounded the preliminary increase amount up or down according to the rounding requirements of the Act, and then added the rounded increase amount to the current penalty maximum. In some cases, application of the rounding rules resulted in zero increase and no change to a CMP maximum.[5] In addition, we are providing in this preamble two worksheets showing the calculations for each national bank CMP and each Federal savings association CMP (see below). These worksheets explain step-by-step how we calculated the inflation adjustment for each penalty. Accordingly, this rule replaces the CMP charts at §§ 19.240(a) and 109.103(c) with revised charts reflecting the maximum CMP amounts that will be in effect as of the effective date of this final rule.

Pursuant to § 100208 of the Biggert-Waters Flood Insurance Reform Act of 2012,[6] we are amending the maximum CMP prescribed in 42 U.S.C. 4012a(f)(5).[7] In that statute, Congress increased the maximum CMP per violation from $385 to $2,000 and eliminated the $135,000 cap on the total amount of penalties assessed against a single regulated lender in any calendar year. As a result of that amendment, this CMP is not subject to adjustment at this time. Accordingly, in the worksheets below and the amended charts at §§ 19.240(a) and 109.103(c), the maximum assessment of the penalty for violating 42 U.S.C. 4012a(f)(5) is the new maximum of $2,000 per violation.

Finally, we are amending §§ 19.240(a) and 109.103(c), consistent with the statute, to state that the adjustments made in §§ 19.240(a) and 109.103(c) apply only to violations that occur after the effective date of this final rule.

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[4] As a general matter, if a preliminary calculated increase for a given CMP maximum fails to reach the level warranting an actual increase under the rounding rules prescribed by statute, then the maximum for that CMP does not change. In that case, the calculation in subsequent years would use an inflation adjustment factor reflecting changes in the Consumer Price Index since that CMP was last established or increased, whichever is more recent.

[5] For example, there is no inflation adjustment for the maximum penalty prescribed by 12 U.S.C. 164 for tier 2. The current amount of that penalty is $32,000. Because it was last adjusted in 2008, the appropriate percentage increase is 3.2 percent. The amount of the current penalty ($32,000) multiplied by 3.2 percent equals a preliminary increase of $1,024. The rounding rules specify that a penalty greater than $10,000 but less than or equal to $100,000 should be rounded to the nearest $5,000. In order to round up to $5,000, the preliminary increase would need to be at least $2,500, which it is not. Therefore, the maximum penalty is not being adjusted.

[6] Public Law 112–141, 126 Stat. 405 (July 6, 2012).

[7] 42 U.S.C. 4012a(f) requires the OCC to assess civil money penalties against a national bank or Federal savings association that is found to have a pattern or practice of committing certain violations of the Flood Disaster Protection Act.

2012 Worksheet - National Banks

U.S. Code Citation	Tier (if applicable)	Maximum Penalty (in Dollars)	Year Last Adjusted	Percentage Increase	Amount of Increase (in Dollars)	Amount of Increase after Rounding (in Dollars)	Adjusted Maximum Penalty (in Dollars)
12 U.S.C. 93(b)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 164	Tier 1	2,200	2000	30.9%	680	1,000	3,200
	Tier 2	32,000	2008	3.2%	1,024	0	32,000
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 504	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1817(j)(16)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1818(i)(2)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1820(k)(6)(A)(ii)		275,000	2008	3.2%	8,800	0	275,000
12 U.S.C. 1832(c)		1,100	1997	40.8%	449	0	1,100
12 U.S.C. 1884		110	1997	40.8%	45	0	110
12 U.S.C. 1972(2)(F)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,200	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 3110(a)		37,500	2008	3.2%	1,200	0	37,500
12 U.S.C. 3110(c)	Tier 1	2,200	2000	30.9%	680	1,000	3,200
	Tier 2	32,000	2008	3.2%	1,024	0	32,000
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 3909(d)(1)		1,100	1997	40.8%	449	0	1,100
15 U.S.C. 78u-2(b)	Tier 1 (natural person)	7,500	2008	3.2%	240	0	7,500
	Tier 1 (other person)	70,000	2008	3.2%	2,240	0	70,000
	Tier 2 (natural person)	70,000	2008	3.2%	2,240	0	70,000
	Tier 2 (other person)	350,000	2008	3.2%	11,200	0	350,000
	Tier 3 (natural person)	140,000	2008	3.2%	4,480	0	140,000
	Tier 3 (other person)	675,000	2008	3.2%	21,600	25,000	700,000
42 U.S.C. 4012a(f)(5)	Per violation	2,000	N.A.	N.A.	N.A.	N.A.	2,000

2012 Worksheet – Federal Savings Associations

U.S. Code Citation	Tier (if applicable)	Maximum Penalty (in Dollars)	Year Last Adjusted	Percentage Increase	Amount of Increase (in Dollars)	Amount of Increase after Rounding (in Dollars)	Adjusted Maximum Penalty (in Dollars)
12 U.S.C. 1464(v)	Tier 1	2,200	2000	30.9%	680	1,000	3,200
	Tier 2	32,500	2008	3.2%	1,040	0	32,500
	Tier 3	1,375,500	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1467(d)		7,500	2008	3.2%	240	0	7,500
12 U.S.C. 1467a(r)	Tier 1	2,200	2000	30.9%	680	1,000	3,200
	Tier 2	32,500	2008	3.2%	1,040	0	32,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1817(j)(16)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,040	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1818(i)(2)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,040	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
12 U.S.C. 1820(k)(6)(A)(ii)		275,000	2008	3.2%	8,800	0	275,000
12 U.S.C. 1884		110	2000	30.9%	34	0	110
12 U.S.C. 3349(b)	Tier 1	7,500	2008	3.2%	240	0	7,500
	Tier 2	37,500	2008	3.2%	1,040	0	37,500
	Tier 3	1,375,000	2008	3.2%	44,000	50,000	1,425,000
42 U.S.C. 4012a(f)(5)	Per violation	2,000	N.A.	N.A.	N.A.	N.A.	2,000

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Procedural Issues

Notice and Comment Procedure

Under the Administrative Procedure Act (APA), an agency may dispense with public notice and an opportunity for comment if the agency finds, for good cause, that these procedural requirements are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). The Act provides the OCC no discretion in calculating the amount of the civil penalty adjustment. The OCC, accordingly, cannot vary the methodology used to calculate the adjustment or the amount of the adjustment to reflect any views or suggestions provided by commenters. For this reason, the OCC has concluded that notice and comment procedures are unnecessary and that good cause exists for dispensing with them.

Delayed Effective Date

The Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA) requires that the effective date of new regulations and amendments to regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall be the first day of a calendar quarter that begins on or after the date the regulations are published in final form. *See* 12 U.S.C. 4802(b)(1). The RCDRIA does not apply to this final rule because the rule merely increases the amount of CMPs that already exist and does not impose any additional reporting, disclosures, or other new requirements.

The APA generally requires an agency to publish a rule 30 days prior to its effective date. *See* 4 U.S.C. 553(d). This rule satisfies that requirement.

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b). *See* 5 U.S.C. 601(2). Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this final rule.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more, as adjusted for inflation, in any one year. The Unfunded Mandates Reform Act only applies when an agency issues a general notice of proposed rulemaking. Because we are not publishing a notice of proposed rulemaking, this final rule is not subject to section 2020 of the Unfunded Mandates Reform Act.

List of Subjects

12 CFR Part 19

Administrative practice and procedure, Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 109

Administrative practice and procedure, Penalties.

Authority and Issuance

For the reasons set out in the preamble, parts 19 and 109 of chapter I of title 12 of the Code of Federal Regulations are amended as follows:

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 505, 1817, 1818, 1820, 1831m, 1831o, 1972, 3102, 3108(a), 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, and 78w; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

■ 2. Section 19.240 is revised to read as follows:

§ 19.240 Inflation adjustments.

(a) The maximum amount of each civil money penalty within the OCC's jurisdiction is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note) as follows:

U.S. Code Citation	Tier (if applicable)	Adjusted Maximum Penalty (in Dollars)
12 U.S.C. 93(b)	Tier 1 Tier 2 Tier 3	$7,500 37,500 1,425,000
12 U.S.C. 164	Tier 1 Tier 2 Tier 3	3,200 32,000 1,425,000
12 U.S.C. 504	Tier 1 Tier 2 Tier 3	7,500 37,500 1,425,000
12 U.S.C. 1817(j)(16)	Tier 1 Tier 2 Tier 3	7,500 37,500 1,425,000
12 U.S.C. 1818(i)(2)	Tier 1 Tier 2 Tier 3	7,500 37,500 1,425,000
12 U.S.C. 1820(k)(6)(A)(ii)		275,000
12 U.S.C. 1832(c)		1,100
12 U.S.C. 1884		110
12 U.S.C. 1972(2)(F)	Tier 1 Tier 2 Tier 3	7,500 37,500 1,425,000
12 U.S.C. 3110(a)		37,500
12 U.S.C. 3110(c)	Tier 1 Tier 2 Tier 3	3,200 32,000 1,425,000
12 U.S.C. 3909(d)(1)		1,100
15 U.S.C. 78u-2(b)	Tier 1 (natural person) Tier 1 (other person) Tier 2 (natural person) Tier 2 (other person) Tier 3 (natural person) Tier 3 (other person)	7,500 70,000 70,000 350,000 140,000 700,000
42 U.S.C. 4012a(f)(5)	Per violation	2,000

(b) The adjustments in paragraph (a) of this section apply to violations that occur after December 6, 2012.

PART 109—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

■ 3. The authority citation for part 109 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1464, 1467, 1467a, 1468, 1817(j), 1818, 1820(k), 1829(e), 3349, 4717, 5412(b)(2)(B); 15 U.S.C. 78(*l*), 78o–5, 78u–2; 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

■ 4. Section 109.103(c) is amended by revising the last sentence of the introductory text and the chart to read as follows:

§ 109.103 Civil money penalties.

* * * * *

(c) * * * The amounts in this chart apply to violations that occur after December 6, 2012:

U.S. Code citation	CMP description	New maximum amount
12 U.S.C. 1464(v)(4)	Reports of Condition – 1st Tier	$3,200
12 U.S.C. 1464 (v)(5)	Reports of Condition – 2nd Tier	32,500
12 U.S.C. 1464(v)(6)	Reports of Condition – 3rd Tier	1,425,000
12 U.S.C. 1467(d)	Refusal to Cooperate in Exam	7,500
12 U.S.C. 1467a(r)(1)	Late/Inaccurate Reports – 1st Tier	3,200
12 U.S.C. 1467a(r)(2)	Late/Inaccurate Reports – 2nd Tier	32,500
12 U.S.C. 1467a(r)(3)	Late/Inaccurate Reports – 3rd Tier	1,425,000
12 U.S.C. 1817(j)(16)(A)	Change in Control – 1st Tier	7,500
12 U.S.C. 1817(j)(16)(B)	Change in Control – 2nd Tier	37,500
12 U.S.C. 1817(j)(16)(C)	Change in Control – 3rd Tier	1,425,000
12 U.S.C. 1818(i)(2)(A)	Violation of Law or Unsafe or Unsound Practice – 1st Tier	7,500
12 U.S.C. 1818(i)(2)(B)	Violation of Law or Unsafe or Unsound Practice – 2nd Tier	37,500
12 U.S.C. 1818(i)(2)(C)	Violation of Law or Unsafe or Unsound Practice – 3rd Tier	1,375,000
12 U.S.C. 1820(k)(6)(A)(ii)	Violation of Post Employment Restrictions	275,000
12 U.S.C. 1884	Violation of Security Rules	110
12 U.S.C. 3349(b)	Appraisal Violations – 1st Tier	7,500
12 U.S.C. 3349(b)	Appraisal Violations – 2nd Tier	37,500
12 U.S.C. 3349(b)	Appraisal Violations – 3rd Tier	1,425,000
42 U.S.C. 4012a(f)(5)	Flood Insurance	2,000

Dated: October 26, 2012.

Thomas J. Curry,

Comptroller of the Currency.

[FR Doc. 2012–27074 Filed 11–5–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0603; Directorate Identifier 2012–NE–17–AD; Amendment 39–17160; AD 2012–16–13]

RIN 2120–AA64

Airworthiness Directives; BRP-Powertrain GmbH & Co KG Rotax Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that was published in the **Federal Register**. That AD applies to BRP-Powertrain GmbH & Co KG Rotax 912 F2; 912 F3; 912 F4; 912 S2; 912 S3; and 912 S4 reciprocating engines. The word ''not'' was improperly omitted from the Installation Prohibition section of the AD, thereby changing the prohibition in the AD. This correction reinserts ''not'' into the paragraph to correct the omission. In all other respects, the original document remains the same.

DATES: This final rule is effective November 6, 2012. The effective date for AD 2012–16–13 (77 FR 51462, August 24, 2012) remains September 10, 2012.

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

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

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2012–16–13, amendment 39–17160 (77 FR 51462, August 24, 2012), currently requires replacing the pressure side fuel hose on certain fuel pumps and inspecting the carburetors connected to those fuel pumps for contamination within 5 flight hours after the effective date of this AD

for BRP-Powertrain GmbH & Co KG Rotax 912 F2; 912 F3; 912 F4; 912 S2; 912 S3; and 912 S4 reciprocating engines.

As published, the text of paragraph (g)(3), Installation Prohibition, is incorrect.

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

The effective date of this AD remains September 10, 2012.

Correction of Regulatory Text

§ 39.13 [Corrected]

■ In the **Federal Register** of August 24, 2012, on page 51464, in the 1st column, paragraph (g)(3) of AD 2012–16–13 is corrected to read as follows:

* * * * *

(3) After the effective date of this AD, do not approve for return to service any product or article with a fuel hose removed from a P/N 893114 fuel pump with an S/N listed in Table 1 to paragraph (c) of this AD.

* * * * *

Issued in Burlington, Massachusetts, on October 24, 2012.

Colleen M. D'Alessandro,

Assistant Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–26772 Filed 11–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30866 ; Amdt. No. 3501]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective November 6, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 6, 2012.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before

adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR part 97 Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air)

Issued in Washington, DC on October 12, 2012.

Ray Towles,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

** * * Effective 15 November 2012*

Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 15, Amdt 2
Cold Bay, AK, Cold Bay, RNAV (GPS) RWY 33, Amdt 2
Fayetteville, AR, Drake Field, Takeoff Minimums and Obstacle DP, Amdt 6
Hayward, CA, Hayward Executive, LOC/DME RWY 28L, Amdt 3
Hayward, CA, Hayward Executive, RNAV (GPS) RWY 28L, Amdt 1
Hayward, CA, Hayward Executive, RNAV (GPS) Z RWY 28L, Orig, CANCELED
Hayward, CA, Hayward Executive, VOR/DME–A, Amdt 3
Placerville, CA, Placerville, RNAV (GPS) RWY 5, Amdt 2
Placerville, CA, Placerville, Takeoff Minimums and Obstacle DP, Amdt 3
Denver, CO, Centennial, ILS OR LOC RWY 35R, Amdt 9
Denver, CO, Denver Intl, ILS OR LOC RWY 34L, ILS RWY 34L (CAT II), ILS RWY 34L (CAT III), ILS RWY 34L (SA CAT I), Amdt 2
Denver, CO, Denver Intl, ILS OR LOC RWY 34R, ILS RWY 34R (CAT II), ILS RWY 34R (CAT III), ILS RWY 34 (SA CAT I), Amdt 3
Denver, CO, Denver Intl, RNAV (GPS) Y RWY 34L, Amdt 2
Denver, CO, Denver Intl, RNAV (GPS) Y RWY 34R, Amdt 2
Orlando, FL, Executive, ILS OR LOC RWY 7, Amdt 23
Orlando, FL, Executive, LOC RWY 25, Amdt 1
Orlando, FL, Executive, RNAV (GPS) RWY 7, Amdt 1
Orlando, FL, Executive, RNAV (GPS) RWY 25, Amdt 2
Orlando, FL, Executive, Takeoff Minimums and Obstacle DP, Amdt 4
Orlando, FL, Executive, VOR/DME RWY 7, Amdt 1B, CANCELED
Orlando, FL, Executive, VOR/DME RWY 25, Amdt 2C, CANCELED
Atlanta, GA, Dekalb-Peachtree, ILS OR LOC RWY 20L, Amdt 7F
Atlanta, GA, Dekalb-Peachtree, VOR/DME RWY 20L, Amdt 1H
Atlanta, GA, Dekalb-Peachtree, VOR/DME–D, Orig-A
Lafayette, LA, Lafayette Rgnl, RADAR–1, Amdt 10
Lafayette, LA, Lafayette Rgnl, RNAV (GPS) RWY 4R, Amdt 1
Lafayette, LA, Lafayette Rgnl, RNAV (GPS) RWY 22L, Orig-B
Lafayette, LA, Lafayette Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Patterson, LA, Harry P Williams Memorial, RNAV (GPS) RWY 6, Orig-A
Patterson, LA, Harry P Williams Memorial, RNAV (GPS) RWY 24, Amdt 1A
Brainerd, MN, Brainerd Lakes Rgnl, Takeoff Minimums and Obstacle DP, Amdt 6
St Louis, MO, Lambert-St Louis Intl, ILS OR LOC RWY 12R, Amdt 22
Columbus/W Point/Starkville, MS, Golden Triangle Rgnl, ILS OR LOC RWY 18, Amdt 8
Columbus/W Point/Starkville, MS, Golden Triangle Rgnl, ILS OR LOC RWY 36, Orig
Columbus/W Point/Starkville, MS, Golden Triangle Rgnl, LOC RWY 36, Orig-A CANCELED
Columbus/W Point/Starkville, MS, Golden Triangle Rgnl, RNAV (GPS) RWY 18, Amdt 1
Columbus/W Point/Starkville, MS, Golden Triangle Rgnl, RNAV (GPS) RWY 36, Amdt 1
Claremont, NH, Claremont Muni, GPS RWY 29, Amdt 1, CANCELED
Claremont, NH, Claremont Muni, RNAV (GPS) RWY 29, Orig
Albuquerque, NM, Albuquerque Intl Sunport, RNAV (RNP) Z RWY 3, Orig-A
Albuquerque, NM, Albuquerque Intl Sunport, RNAV (RNP) Z RWY 8, Orig-A
New York, NY, West 30th St. and Various Heliports, COPTER RNAV (GPS) 210, Orig
Chickasha, OK, Chickasha Muni, RNAV (GPS) RWY 17, Amdt 1
Chickasha, OK, Chickasha Muni, RNAV (GPS) RWY 35, Amdt 1
Portland, OR, Portland Intl, RNAV (RNP) Z RWY 10L, Orig-A
Portland, OR, Portland Intl, RNAV (RNP) Z RWY 10R, Orig-A
Washington, PA, Washington County, ILS OR LOC RWY 27, Amdt 1
Washington, PA, Washington County, RNAV (GPS) RWY 9, Amdt 1
Washington, PA, Washington County, RNAV (GPS) RWY 27, Amdt 1
San Antonio, TX, San Antonio Intl, ILS OR LOC RWY 4, Amdt 22
San Antonio, TX, San Antonio Intl, RNAV (GPS) Y RWY 4, Amdt 3
San Antonio, TX, San Antonio Intl, RNAV (GPS) Y RWY 22, Amdt 2
San Antonio, TX, San Antonio Intl, RNAV (RNP) Z RWY 4, Orig-A
San Antonio, TX, San Antonio Intl, RNAV (RNP) Z RWY 22, Amdt 1

** * * Effective 13 December 2012*

Monongahela, PA, Rostraver, RNAV (GPS) RWY 8, Amdt 1

[FR Doc. 2012–26838 Filed 11–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30867; Amdt. No. 3502]

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective November 6, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of November 6, 2012.

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

For Examination—

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

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

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

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

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

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

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

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

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on October 12, 2012.

Ray Towles,

Deputy Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

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

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

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
15-Nov-12	AK	St Paul Island	St Paul Island	2/0145	09/25/12	LOC/DME BC RWY 18, Amdt 4A

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
15-Nov-12	WI	Portage	Portage Muni	2/0300	09/25/12	VOR/DME RNAV OR GPS RWY 17, Amdt 4
15-Nov-12	AR	Fort Smith	Fort Smith Rgnl	2/0387	09/26/12	RADAR–1, Amdt 8B
15-Nov-12	MI	Saginaw	MBS Intl	2/0437	09/25/12	VOR RWY 14, Amdt 13B
15-Nov-12	AL	Muscle Shoals	Northwest Alabama Rgnl.	2/0580	09/25/12	VOR/DME RWY 11, Amdt 6
15-Nov-12	AL	Muscle Shoals	Northwest Alabama Rgnl.	2/0586	09/25/12	RNAV (GPS) RWY 18, Orig
15-Nov-12	AL	Muscle Shoals	Northwest Alabama Rgnl.	2/0587	09/25/12	RNAV (GPS) RWY 36, Orig-A
15-Nov-12	KS	Pittsburg	Atkinson Muni	2/0645	09/25/12	VOR/DME RWY 4, Amdt 3B
15-Nov-12	MI	Mackinac Island	Mackinac Island	2/1097	09/25/12	RNAV (GPS) RWY 26, Orig
15-Nov-12	MO	Branson	M. Graham Clark Downtown.	2/1101	09/26/12	RNAV (GPS) RWY 12, Orig
15-Nov-12	MO	Branson	M. Graham Clark Downtown.	2/1103	09/26/12	RNAV (GPS) RWY 30, Orig
15-Nov-12	VT	Burlington	Burlington Intl	2/1123	10/03/12	RNAV (GPS) Y RWY 15, Orig-A
15-Nov-12	NY	New York	John F Kennedy Intl	2/1321	09/25/12	VOR OR GPS RWY 13L/13R, Amdt 18B
15-Nov-12	CA	Fullerton	Fullerton Muni	2/1328	09/25/12	RNAV (GPS) RWY 24, Orig
15-Nov-12	MO	Fredericktown	A. Paul Vance Fredericktown Rgnl.	2/1909	09/25/12	RNAV (GPS) RWY 1, Orig-B
15-Nov-12	MO	Fredericktown	A. Paul Vance Fredericktown Rgnl.	2/1910	09/25/12	RNAV (GPS) RWY 19, Orig-B
15-Nov-12	IL	Morris	Morris Muni-James R. Washburn Field.	2/2119	09/25/12	VOR–A, Orig-B
15-Nov-12	OK	Muskogee	Davis Field	2/2507	09/25/12	RNAV (GPS) RWY 31, Amdt 1A
15-Nov-12	OK	Muskogee	Davis Field	2/2508	09/25/12	RNAV (GPS) RWY 4, Amdt 1
15-Nov-12	OK	Muskogee	Davis Field	2/2509	09/25/12	RNAV (GPS) RWY 13, Orig
15-Nov-12	OK	Muskogee	Davis Field	2/2510	09/25/12	RNAV (GPS) RWY 22, Orig
15-Nov-12	WI	Milwaukee	General Mitchell Intl	2/3463	09/25/12	RNAV (GPS) RWY 1L, Amdt 1
15-Nov-12	NY	Ticonderoga	Ticonderoga Muni	2/3747	09/25/12	RNAV (GPS) RWY 2, Amdt 1
15-Nov-12	NY	Ticonderoga	Ticonderoga Muni	2/3749	09/25/12	RNAV (GPS) RWY 20, Amdt 1
15-Nov-12	VT	Burlington	Burlington Intl	2/4029	10/03/12	VOR RWY 1, Amdt 11E
15-Nov-12	VT	Burlington	Burlington Intl	2/4031	10/03/12	ILS OR LOC/DME RWY 33, Amdt 1
15-Nov-12	VT	Burlington	Burlington Intl	2/4032	10/03/12	ILS OR LOC/DME RWY 15, Amdt 23C
15-Nov-12	VT	Burlington	Burlington Intl	2/4033	10/03/12	RNAV (GPS) RWY 1, Orig-A
15-Nov-12	VT	Burlington	Burlington Intl	2/4039	10/03/12	RNAV (GPS) Y RWY 33, Orig
15-Nov-12	VT	Burlington	Burlington Intl	2/4045	10/03/12	RNAV (GPS) Z RWY 15, Orig-C
15-Nov-12	VT	Burlington	Burlington Intl	2/4047	10/03/12	RNAV (GPS) Z RWY 33, Orig
15-Nov-12	NH	Manchester	Manchester	2/4212	09/25/12	VOR/DME RWY 17, Orig-D
15-Nov-12	AZ	Payson	Payson	2/5187	09/25/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Amdt 1
15-Nov-12	SC	Greenville	Greenville Downtown	2/5731	09/26/12	NDB RWY 1, Amdt 22
15-Nov-12	SC	Greenville	Greenville Downtown	2/5732	09/26/12	RNAV (GPS) RWY 10, Orig
15-Nov-12	SC	Greenville	Greenville Downtown	2/5733	09/26/12	RNAV (GPS) RWY 19, Orig
15-Nov-12	NJ	Newark	Newark Liberty Intl	2/5734	10/03/12	RNAV (RNP) Z RWY 4R, Orig-B
15-Nov-12	NJ	Newark	Newark Liberty Intl	2/5735	10/03/12	RNAV (GPS) RWY 4L, Amdt 2
15-Nov-12	SC	Greenville	Greenville Downtown	2/5736	09/26/12	ILS OR LOC RWY 1, Amdt 29
15-Nov-12	SC	Greenville	Greenville Downtown	2/5737	09/26/12	RNAV (GPS) RWY 1, Orig
15-Nov-12	NJ	Newark	Newark Liberty Intl	2/5738	10/03/12	RNAV (GPS) RWY 22R, Amdt 1B
15-Nov-12	NJ	Newark	Newark Liberty Intl	2/5740	10/03/12	RNAV (RNP) Y RWY 22L, Orig-F
15-Nov-12	NJ	Newark	Newark Liberty Intl	2/5742	10/03/12	RNAV (RNP) Y RWY 29, Amdt 1
15-Nov-12	NJ	Newark	Newark Liberty Intl	2/5745	10/03/12	RNAV (GPS) Z RWY 22L, Amdt 1D
15-Nov-12	NJ	Newark	Newark Liberty Intl	2/5747	10/03/12	RNAV (RNP) Z RWY 29, Orig-C
15-Nov-12	NJ	Newark	Newark Liberty Intl	2/5748	10/03/12	RNAV (GPS) RWY 11, Orig-C
15-Nov-12	TX	Tyler	Tyler Pounds Rgnl	2/6150	09/26/12	RNAV (GPS) RWY 22, Amdt 2
15-Nov-12	MO	St Louis	Lambert-St Louis Intl	2/6872	09/26/12	RNAV (GPS) RWY 6, Amdt 1
15-Nov-12	AR	Marianna	Marianna/Lee County-Steve Edwards Field.	2/7417	09/06/12	RNAV (GPS) RWY 36, Orig
15-Nov-12	AR	Marianna	Marianna/Lee County-Steve Edwards Field.	2/7419	09/06/12	RNAV (GPS) RWY 18, Orig
15-Nov-12	OH	Chillicothe	Ross County	2/7420	09/06/12	VOR RWY 23, Amdt 3C
15-Nov-12	NM	Hobbs	Lea County Rgnl	2/7421	09/06/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Orig
15-Nov-12	NE	Gordon	Gordon Muni	2/7422	09/25/12	RNAV (GPS) RWY 4, Amdt 1
15-Nov-12	FL	Sebastian	Sebastian Muni	2/7940	09/26/12	RNAV (GPS) RWY 22, Orig
15-Nov-12	WV	Martinsburg	Eastern WV Rgnl/Shepherd Fld.	2/8018	09/26/12	RNAV (GPS) RWY 26, Orig

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
15-Nov-12	WV	Martinsburg	Eastern WV Rgnl/ Shepherd Fld.	2/8019	09/26/12	ILS OR LOC RWY 26, Amdt 8
15-Nov-12	WV	Martinsburg	Eastern WV Rgnl/ Shepherd Fld.	2/8020	09/26/12	VOR–A, Amdt 9A
15-Nov-12	WV	Martinsburg	Eastern WV Rgnl/ Shepherd Fld.	2/8021	09/26/12	RNAV (GPS) RWY 8, Orig
15-Nov-12	IL	Moline	Quad City Intl	2/8601	09/25/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Amdt 1
15-Nov-12	IL	Morris	Morris Muni-James R. Washburn Field.	2/9013	09/25/12	RNAV (GPS) RWY 36, Amdt-1

[FR Doc. 2012–26825 Filed 11–5–12; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1401

RIN 3076–AA06

Freedom of Information Act Regulations

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Mediation and Conciliation Service (FMCS) rules relating to the Freedom of Information Act (FOIA). The final rule revisions include a new response time for FOIA requests, procedures for requesting expedited processing, the availability of certain public information on FMCS's web site, and express inclusion of electronic records and automated searches along with paper records and manual searches. In addition, FMCS's final rule updates its fee schedule. FMCS is also updating the names and addresses of the various offices within the agency responsible for FOIA related activities.

DATES: This final rule is effective December 6, 2012.

FOR FURTHER INFORMATION CONTACT: Jeannette Walters-Marquez, Attorney-Advisor, Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427. Telephone: (202) 606–5488.

SUPPLEMENTARY INFORMATION: FMCS amends its regulations at 29 CFR Part 1401, Subpart B under FOIA, 5 U.S.C. 552. The primary focus of these amendments is to effectuate for this Agency various provisions under the 1996 Electronic FOIA Amendments, Public Law No. 104–231. Significant new provisions implementing the amendments are found at § 1401.21(c) (electronic reading room), (d) (pamphlets distribution), (e) (records disposition), § 1401.22 (deletion marking), § 1401.34(a), (b), (c), (d) (timing of responses), § 1401.34 (d) (volume estimation), § 1401.36(a) (definitions), (b) (fee schedules, lack of fees, fee waivers).

Revisions to the FMCS fee schedule can be found at § 1401.36(b)(1)(i), (ii), (iv), and (b)(3)(v). The duplication charge remains the same at twenty cents per page, while document search and review charges will increase to $4.00 per each quarter hour or portion thereof for clerical time and $10.00 per each quarter hour or portion thereof for professional time. The amount at or below which the Service will not charge a fee will decrease from $50.00 to $14.00.

Sections 1401.24 and 1401.37 are being removed because they are neither required by law nor necessary to interpret the law.

Background

On August 3, 2007, FMCS published a Notice of Proposed Rulemaking (NPRM) proposing changes to its rule relating to FOIA procedures and updating its fee schedule. FMCS did not receive any comments relating to the NPRM.

FMCS is adopting the final rule with two significant changes from that which was proposed. The final rule withdraws its proposed revision to § 1401.35 which would have transferred some of the FOIA responsibilities from the FMCS Deputy Director to the Chief of Staff. It was determined that the current structure in which the FMCS Deputy Director is the FOIA Appeals Officer is appropriate for the Agency. The final rule also revises the language in § 1401.36(b)(4) of the proposed rule to reflect that waiver appeals should be filed with the FMCS Deputy Director instead of the Chief of Staff, as proposed by the NPRM.

List of Subjects in 29 CFR Part 1401

Administrative practice and procedure, Freedom of information.

For the reasons stated in the preamble, FMCS amends 29 CFR Part 1401 as follows:

PART 1401—PUBLIC INFORMATION

■ 1. The authority citation for Part 1401 continues to read as follows:

Authority: § 202, 61 Stat. 136, as amended; 5 U.S.C. 552.

■ 2. Revise § 1401.20 to read as follows:

§ 1401.20 Purpose and scope.

This subpart contains the regulations of the Federal Mediation and Conciliation Service providing for public access to information under the Freedom of Information Act, 5 U.S.C. 552. It is the policy of the FMCS to disseminate information on matters of interest to the public and to disclose upon request information contained in Agency records insofar as such disclosure is compatible with the discharge of its responsibilities and the principle of confidentiality and neutrality of dispute resolution by third party neutrals.

■ 3. Amend § 1401.21 by revising paragraphs (c), (d), and (e) to read as follows:

§ 1401.21 Information policy.

* * * * *

(c) FMCS maintains a public reading room that contains the records required by the FOIA to be made readily available for public inspection and copying. FMCS shall maintain and make available for public inspection and copying a current subject-matter index of its reading room records. Each index shall be updated regularly, at least quarterly, with respect to newly included records. FMCS shall also make reading room records created on or after November 1, 1996, available electronically through FMCS's World Wide Web Site (which can be found at *http://www.fmcs.gov*)

(d) Records or documents prepared by FMCS for routine public distribution, e.g., pamphlets and brochures, will be furnished upon request to Office of the Director of Public Affairs, Federal

Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427, as long as the supply lasts. The provisions of § 1401.36 (fees) are not applicable to such requests except when the supply of such material is exhausted and it is necessary to reproduce individual copies upon specific request.

(e) All existing FMCS records are subject to disposition according to agency record retention schedules and General Records Schedules promulgated by the National Archives and Records Administration.

■ 4. Revise § 1401.22 to read as follows:

§ 1401.22 Partial disclosure of records.

(a) If a record contains both disclosable and nondisclosable information, the nondisclosable information will be deleted and the remaining record will be disclosed unless the two are so inextricably intertwined that it is not possible to separate them.

(b) Records disclosed in part shall be marked or annotated to show both the amount and the location of the information deleted and the applicable exemption.

§ 1401.24 [Removed]

■ 5. Remove § 1401.24

■ 6. Revise § 1401.31 to read as follows:

§ 1401.31 Filing a request for records.

(a) Any person who desires to inspect or copy an Agency record should submit a written request to the Office of the General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW., Washington, DC 20427. The envelope [or cover sheet] should be marked ''Freedom of Information Act request.'' Electronic mail requests should be sent to *foia@fmcs.gov.*

(b) Each request should reasonably describe the records being sought, so that the records requested may be located and identified. If the description is insufficient to locate the requested records, the officer processing the request will notify the requester and ask for additional information.

§ 1401.32 [Amended]

■ 7. Amend § 1401.32 by removing the words ''Legal Services Office'' in the first sentence of paragraph (b) and adding in their place ''Office of the General Counsel''.

■ 8. Amend § 1401.34 as follows:

■ A. Revise paragraphs (a) and (b) introductory text;

■ B. Remove paragraphs (b)(3) and (4);

■ C. Revise paragraph (c);

■ D. Revise the paragraph designation of the second paragraph ''(b)'' to read ''(d)'' and revise correctly redesignated paragraph (d); and

■ E. Add paragraphs (e) and (f).

The revisions and additions read as follows:

§ 1401.34 Time for processing requests.

(a) All time limitations established pursuant to this section shall begin as of the time a request for records is received by the Office of the General Counsel.

(b) The officer or employee responsible for responding to the request shall, within twenty (20) working days following receipt of the request, respond in writing to the requester, determining whether, or the extent to which, the Agency shall comply with the request.

* * * * *

(c) Where the time limits for processing a request cannot be met because of unusual circumstances and FMCS determines to extend the time limit on that basis, FMCS will, as soon as practicable, notify the requester in writing of the unusual circumstances and the date by which the processing can be expected to be completed. Where the extension is for more than 10 working days, FMCS will provide the requester with an opportunity either to modify the request so that it may be processed within the time limits or to arrange an alternative time period for processing the request or a modified request. If FMCS reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated.

(d) If any request for records is denied in whole or in part, the response required by paragraph (b) of this section shall notify the requester of the denial. Such denial shall specify the reason and also advise that the denial may be appealed to the Office of the FMCS Deputy Director as specified in § 1401.35. In addition, such denial shall include an estimate of the volume of records or information withheld, in numbers of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through deletions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable estimation.

(e) FMCS offices may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and or time needed to process the request. A person making a request that does not qualify for the fastest multitrack processing should be given an opportunity to limit the scope of the request in order to qualify for faster processing.

(f) Requests and appeals will be taken out of order and given expedited processing in cases where the requester demonstrates a compelling need.

(1) Compelling need means:

(i) Circumstances in which failure to obtain copies of the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if the request is made by a person primarily engaged in disseminating information.

(2) A requester seeking expedited processing should so indicate in the initial request, and should state all the facts supporting the need to obtain the requested records quickly. The requester must also certify in writing that these facts are true and correct to the best of the requester's knowledge and belief.

(3) Within 10 calendar days of its receipt of a request for expedited processing, FMCS will notify the requester of its decision. If a request for expedited treatment is granted, the request shall be given priority and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

■ 9. Amend § 1401.36 as follows:

■ A. Revise paragraphs (a)(2) through (4), (b)(1)(i), (ii), and (iv), (b)(2)(ii), (b)(3)(v), and (b)(4) ; and

■ B. Remove the word ''the'' between ''forgoing'' and ''scheduling'' and add the words ''other than those related to arbitration'' between ''services'' and ''which'' in paragraph (b)(2)(i).

The revisions read as follows:

§ 1401.36 Freedom of Information Act fee schedules.

(a) * * *

(2) Search means the process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

(3) Duplication refers to the process of making a copy of a document necessary to respond to a FOIA request. Copies may be in various forms including machine-readable documentation (e.g. magnetic tape or disk) among others. A requester's specified preference of form or format of disclosure will be honored if the record is readily reproducible

with reasonable efforts in the requested form or format.

(4) Review refers to the process of examining documents located in response to a request that is for commercial use, to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure to the requester, e.g., doing all that is necessary to excise them or otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the applicability of particular exemptions or reviewing on appeal exemptions that are applied. However, records or portions withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review is assessable.

* * * * *

(b) * * *

(1) * * *

(i) Clerical time. For each one-quarter hour or portion thereof of clerical time, $4.00.

(ii) Professional time. For each one-quarter hour or portion thereof of profession time, $10.00.

* * * * *

(iv) Computer time. For computer searches of records, requestors will be charged the direct costs of conducting the search (as provided in paragraph (b)(3)(i) of this section), although certain requestors will be charged no search fee (as provided in paragraphs (b)(3)(ii) and (iii) of this section), and certain other requestors will be entitled to the cost equivalent of two hours of manual search time without charge (as provided in paragraph (b)(3)(iv) of this section). These direct costs will include the cost of operating a central processing unit for that portion of operating time that is directly attributable to the searching for responsive records, as well as the costs of operator/programmer salary attributable to the search. Computer time expressed in fractions of minutes will be rounded to the next whole minute.

* * * * *

(2) * * *

(ii) For those matters coming within the scope of this regulation, the FMCS will look to the provisions of the guidance published by in the Office of Management and Budget's Uniform Fee Schedule and Guidelines (available at *http://www.whitehouse.gov/omb/inforeg/infopoltech.html*) and the Department of Justice Attorney General's Memorandum on the 1986 Amendments to the Freedom of Information Act (available at *http://www.usdoj.gov/04foia/04_7.html*) for making such interpretations as necessary.

(3) * * *

(v) In no event shall fees be charged when the total charges are less than $14.00, which is the Agency cost of collecting and processing the fee itself. If the request is expected to involve an assessed fee in excess of $14.00, the response shall specify or estimate the fee involved before the records are made available.

(4) *Waiver or reduction of charge.* A fee waiver must be requested at the same time that a request for records is made. The requester should provide an explanation of why the waiver is appropriate. If the request for a waiver or reduction is denied, the denial may be appealed to FMCS Deputy Director. In the appeal letter the requester should discuss whatever reasons are given in the denial letter. Documents may be furnished without charge or at reduced levels if FMCS determines that disclosure of the information is in the public interest; that is, because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

* * * * *

§ 1401.37 [Removed]

■ 10. Remove § 1401.37.

Dated: October 24, 2012

Jeannette Walters-Marquez,

Attorney-Advisor.

[FR Doc. 2012–26585 Filed 11–5–12; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0902]

RIN 1625–AA00

Safety Zone; Alliance Road Bridge Demolition; Black Warrior River, Locust Fork; Birmingham, AL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for a portion of the Locust Fork to the Black Warrior River, Birmingham, AL. This action is necessary for the protection of persons and vessels on navigable waters during the demolition of the Alliance Road Bridge (Co. Rd. 61). Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Mobile or a designated representative.

DATES: This rule is effective with actual notice from October 10, 2012 through November 30, 2012. This rule is effective in the Code of Federal Regulations from November 6, 2012 until November 30, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0902. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Lenell J. Carson, Sector Mobile, Waterways Division, U.S. Coast Guard; telephone 251–441–5940, email *Lenell.J.Carson@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
COTP Captain of the Port

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because there is insufficient time to publish a NPRM.

The Coast Guard received notification on September 11, 2012 from R.R. Dawson Bridge Company LLC of their intentions to start the process to demolish the Alliance Road Bridge on September 24, 2012. Publishing a NPRM is impracticable because it would unnecessarily delay the required safety zone's effective date. The safety zone is needed to protect persons and vessels from safety hazards associated with the demolition of the Alliance Road Bridge. Additionally, delaying the safety zone for the NPRM process would unnecessarily interfere with the demolition and its possible commercial and contractual obligations.

For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date to provide a full 30 day notice is impracticable because immediate action is needed to protect persons and vessels from safety hazards associated with the demolition of the Alliance Road Bridge.

B. Basis and Purpose

R.R. Dawson Bridge Company LLC is under contract with the Alabama Department of Transportation to demolish the Alliance Road Bridge (Co. Rd. 61), which crosses the Locust Fork of the Black Warrior River, a navigable waterway. The demolition poses significant safety hazards to persons and vessels on the Locust Fork. The COTP Mobile is establishing a temporary safety zone for a portion of the Locust Fork to the Black Warrior River, Birmingham, AL, to protect persons and vessels during the demolition of the Alliance Road Bridge. The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The COTP anticipates minimal impact on vessel traffic due to this regulation. However, this safety zone is deemed necessary for the protection of life and property within the COTP Mobile zone.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone for a portion of the Locust Fork to the Black Warrior River, Birmingham, AL to include all waters between river mile 392 and river mile 393. This temporary rule will protect the safety of life and property in this area. Entry into, transiting or anchoring in this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated representative. The COTP may be contacted by telephone at 251–441–5976.

The COTP Mobile or a designated representative will inform the public through broadcast notice to mariners of changes in the effective period for the safety zone. This rule is effective from October 10, 2012 through November 30, 2012.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

The safety zone listed in this rule will restrict vessel traffic from entering, transiting or anchoring in a small portion of the Locust Fork to the Black Warrior River, Birmingham, AL. The effect of this regulation will not be significant for several reasons: (1) This rule will only affect vessel traffic for a short duration; (2) vessels may request permission from the COTP to transit through the safety zone; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through broadcast notice to mariners. These notifications will allow the public to plan operations around the affected area.

2. Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the affected portions of the Locust Fork to the Black Warrior River during the demolition of the Alliance Road Bridge. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The zone is limited in size, is of short duration and vessel traffic may request permission from the COTP Mobile or a designated representative to enter or transit through the zone.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has 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. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. 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.

9. 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.

10. 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.

11. 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.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. 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 determined that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone on a waterway during the demolition of the Alliance Road Bridge and is not expected to result in any significant adverse environmental impact as described in NEPA. This rule is categorically excluded from further review under paragraph (34)(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a categorical exclusion determination will be made available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0902 to read as follows:

§ 165.T08–0902 Safety Zone; Alliance Road Bridge Demolition; Black Warrior River, Locust Fork; Birmingham, AL.

(a) *Location.* The following area is a safety zone: A portion of the Locust Fork to the Black Warrior River, Birmingham, AL to include all waters between river mile 392 and river mile 393.

(b) *Effective dates.* This rule is effective and enforceable with actual notice from October 10, 2012 through November 30, 2012.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Persons or vessels desiring to enter into or passage through the zone must request permission from the Captain of the Port Mobile or a designated representative. They may be contacted on VHF–FM channels 16 or by telephone at 251–441–5976.

(3) If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative.

(d) *Informational Broadcasts.* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: October 10, 2012.

D.J. Rose,

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

[FR Doc. 2012–27026 Filed 11–5–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0381; FRL–9747–9]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Requirements for Prevention of Significant Deterioration and Nonattainment New Source Review; Fine Particulate Matter ($PM_{2.5}$); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: This document corrects an omission in the final rule document published on October 2, 2012, announcing EPA's final approval of several revisions to the Delaware State Implementation Plan (SIP). The revisions pertain to preconstruction requirements under the Prevention of Significant Deterioration (PSD) and nonattainment New Source Review (NSR) programs. The correction of this omission does not change EPA's final action to approve these regulations or their effectiveness.

DATES: This correcting amendment is effective November 6, 2012 and is applicable beginning November 1, 2012.

FOR FURTHER INFORMATION CONTACT: Gerallyn Duke, (215) 814–2084 or by email at *duke.gerallyn@.epa.gov.*

SUPPLEMENTARY INFORMATION: On October 2, 2012 (77 FR 60053), EPA published a final rulemaking action announcing its approval of revisions to the Delaware SIP pertaining to preconstruction requirements for fine particulate matter ($PM_{2.5}$) under the PSD and nonattainment NSR programs. In addition, that action approved select portions of several Delaware SIP submittals intended to address the ''infrastructure'' requirements of CAA section 110(a)(2). Our approval of those infrastructure elements was discussed in the preamble to the final rulemaking action. However, the document inadvertently omitted necessary revisions to table (e) of section 52.420 which incorporate the specific revisions which are the subject of the final rulemaking action. This action corrects that oversight.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because it merely corrects an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 Fed. Reg. 28355 (May 22, 2001)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of November 1, 2012. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action to add the revision to paragraph 52.420(e), is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Reporting and recordkeeping requirements.

Accordingly, in 40 CFR part 52, the following correcting amendments are made:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.420, the table in paragraph (e) is amended by revising the entries for section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS, section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS, section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS, section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS to read as follows:

§ 52.420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS.	Statewide	12/13/07 9/19/08 9/16/09	8/4/11, 76 FR 47068	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) or portions thereof.
	Statewide	12/13/07 9/19/08 9/16/09 4/1/10	11/6/12 [*Insert page number where the document begins*]	This action addresses the following CAA elements: 110(a)(2)(D)(i)(II) or portions thereof.
Section 110(a)(2) Infrastructure Requirements for the 1997 $PM_{2.5}$ NAAQS.	Statewide	12/13/07 3/12/08 9/16/09 3/10/10	8/4/11, 76 FR 47068	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) or portions thereof.
	Statewide	12/13/07 3/12/08 9/16/09 3/14/12	11/6/12 [*Insert page number where the document begins*]	This action addresses the following CAA elements: 110(a)(2)(D)(i)(II) or portions thereof.
Section 110(a)(2) Infrastructure Requirements for the 2006 $PM_{2.5}$ NAAQS.	Statewide	9/16/09 3/10/10	8/4/11, 76 FR 47068	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.
	Statewide	9/16/09 3/14/12	11/6/12 [*Insert page number where the document begins*]	This action addresses the following CAA elements: 110(a)(2)(D)(i)(II) or portions thereof.
* *	*	*	*	* *
Section 110(a)(2) Infrastructure Requirements for the 2008 Lead NAAQS.	Statewide	10/17/11	9/10/12, 77 FR 55420	This action addresses the following CAA elements: 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M) or portions thereof.
	Statewide	10/17/11 3/14/12	11/6/12 [*Insert page number where the document begins*]	This action addresses the following CAA elements: 110(a)(2)(C), (D)(i)(II), and (J) or portions thereof.

Dated: October 19, 2012.

W.C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. 2012–26951 Filed 11–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0467; FRL–9748–8]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Determination of Attainment of the 1997 Annual Fine Particle Standard for the Detroit-Ann Arbor Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making two final determinations under the Clean Air Act (Act) regarding the 1997 annual fine particle ($PM_{2.5}$) nonattainment area of Detroit-Ann Arbor, Michigan (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties) (Detroit-Ann Arbor area or area). First, EPA is determining that the Detroit-Ann Arbor area has attained the 1997 annual $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). EPA made this determination of attainment based upon complete, quality-assured, and certified ambient air monitoring data for 2009–2011, showing that the area has monitored attainment of the 1997 annual $PM_{2.5}$ NAAQS. Preliminary data available for 2012 indicate continued attainment. Pursuant to EPA rule, this determination suspends the requirements for the Detroit-Ann Arbor area to submit an attainment demonstration, associated reasonably available control measures (RACM) to include reasonably available control technology (RACT), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to attainment of the 1997 annual $PM_{2.5}$ NAAQS so long as the area continues to attain the $PM_{2.5}$ NAAQS. EPA is also determining, based on complete, quality-assured and certified monitoring data for the 2007–2010 monitoring period, that the Detroit-Ann Arbor area had attained the 1997 annual $PM_{2.5}$ NAAQS by the its attainment date of April 5, 2010.

DATES: *Effective Date:* This final rule is effective on December 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R05–OAR–2012–0467. All documents in these dockets 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, 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 U.S. 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 Carolyn Persoon at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. What action is EPA taking?
II. What is the effect of this action?
III. Statutory and Executive Order Reviews

I. What action is EPA taking?

In this action, EPA is making final determinations solely with respect to the 1997 annual $PM_{2.5}$ NAAQS. First, EPA is finalizing its proposed determination that the Detroit-Ann Arbor area has attained the 1997 annual $PM_{2.5}$ NAAQS, based upon complete, quality-assured, and certified ambient air monitoring data for 2009–2011. Preliminary data for 2012 indicate continued attainment. Second, pursuant to section 179(c) of the Act, EPA is finalizing the proposed determination that the Detroit-Ann Arbor area attained the 1997 annual $PM_{2.5}$ NAAQS by its attainment date, April 5, 2010.

On July 5, 2012 (77 FR 39659), EPA proposed these two determinations related to the 1997 annual $PM_{2.5}$ NAAQS. A discussion of the rationale for these determinations and their effects was included in the notice of proposed rulemaking. EPA received one supportive comment related to these proposed determinations which can be found in the docket. EPA received no adverse comments addressing these proposed determinations for the 1997 $PM_{2.5}$ NAAQS.

In its July 5, 2012 notice, EPA also proposed to make a separate determination with respect to the Detroit-Ann Arbor area's attainment of the 24-hour 2006 $PM_{2.5}$ standard. EPA is not finalizing its proposal with respect to the 2006 $PM_{2.5}$ standard here. Instead, EPA intends to address the attainment status of the Detroit-Ann Arbor area for the 2006 $PM_{2.5}$ standard in a future, separate rulemaking action.

II. What is the effect of this action?

Under the provisions of EPA's $PM_{2.5}$ implementation rule (40 CFR 51.1004(c)), EPA's final determination that the area has attained the 1997 annual $PM_{2.5}$ standard, based on the most recent quality-assured and certified data, suspends the requirements for the State of Michigan to submit for the Detroit Ann-Arbor area an attainment demonstration and associated RACM (including RACT), a RFP plan, contingency measures, and any other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS for so long as the area continues to attain the 1997 annual $PM_{2.5}$ NAAQS. If EPA subsequently determines, after notice and comment rulemaking, that this area violates the 1997 annual $PM_{2.5}$ NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.1004(c), would no longer exist and the area would thereafter have to address the pertinent requirements.

This action does not constitute a redesignation of the Detroit Ann-Arbor area to attainment of the 1997 annual $PM_{2.5}$ NAAQS under section 107(d)(3) of the Act. Further, this action is not an EPA approval of a maintenance plan for the area as required under section 175A of the Act, nor a finding that the area has met all other requirements for redesignation. Even after a determination of attainment by EPA, the designation status of the Detroit Ann-Arbor area remains nonattainment for the 1997 annual $PM_{2.5}$ NAAQS until such time as EPA determines that the area meets the Act requirements for redesignation to attainment and takes action to redesignate the Detroit Ann-Arbor area.

Pursuant to section 179(c)(1) of the Act, EPA is also determining that the Detroit-Ann Arbor area attained the 1997 annual $PM_{2.5}$ NAAQS by its attainment date of April 5, 2010. In finalizing this action, EPA has satisfied its obligation under section 179(c).

III. Statutory and Executive Order Reviews

This final action makes attainment determinations of the Detroit area's attainment of the 1997 $PM_{2.5}$ NAAQS based on air quality data and results in the suspension of certain Federal requirements and does not impose any additional requirements. For that reason, this final 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 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, these 1997 $PM_{2.5}$ NAAQS attainment determinations do 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 Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 7, 2013. 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, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 19, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.1173 is amended by adding paragraphs (h) and (i) to read as follows:

§ 52.1173 Control strategy: Particulates.

* * * * *

(h) *Determination of Attainment.* EPA has determined, as of November 6, 2012, that based on 2009–2011 ambient air quality data, the Detroit-Ann Arbor nonattainment area has attained the 1997 annual $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 51.1004(c), 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 annual $PM_{2.5}$ NAAQS.

(i) Pursuant to Clean Air Act section 179(c), EPA has determined that the Detroit-Ann Arbor area attained the annual 1997 $PM_{2.5}$ NAAQS by the applicable attainment date, April 5, 2010.

[FR Doc. 2012–26957 Filed 11–5–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0520; FRL 9748–9]

Approval and Promulgation of Implementation Plans; Michigan; Detroit-Ann Arbor Nonattainment Area; Fine Particulate Matter 2005 Base Year Emissions Inventory

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the fine particulate matter ($PM_{2.5}$) 2005 base year emissions inventory, a portion of the State Implementation Plan (SIP) revision submitted by the Michigan Department of Environmental Quality (MDEQ) on June 13, 2008. The emissions inventory is part of Michigan's SIP revision that was submitted to meet the nonattainment requirements related to the state's Detroit-Ann Arbor (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties) nonattainment area for the 1997 annual $PM_{2.5}$ national ambient air quality standards (NAAQS). This action is being taken pursuant to sections 110 and 172 of the Clean Air Act (CAA).

DATES: This final rule is effective on December 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R05–OAR–2008–0520. All documents in these dockets 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, 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 U.S. 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 Carolyn Persoon at (312) 353–8290 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What action is EPA taking?
II. Final Action
III. Statutory and Executive Order Reviews

I. What action is EPA taking?

On August 1, 2012 (77 FR 45532), EPA published a proposed rulemaking to approve Michigan's $PM_{2.5}$ 2005 base year emissions inventory for the Detroit-Ann Arbor area. EPA did not receive any comments, adverse or otherwise, on the August 1, 2012, proposed rulemaking. Pursuant to section 110 and 172 of the CAA, EPA is now taking final action to approve the Detroit-Ann Arbor area $PM_{2.5}$ 2005 base year emissions inventory as provided in EPA's August 1, 2012, proposed rulemaking. A summary of the background for today's final action is provided below. For more detail, please refer to EPA's proposed rulemaking at 77 FR 45532.

Section 172(c)(3) of the CAA requires areas to submit a comprehensive, accurate, and current inventory from all sources of actual emissions of the relevant pollutant or pollutants in such area. Michigan selected 2005 as the base year for the emissions inventory per 40 CFR 51.1008(b). Emissions contained in Michigan's SIP revision covered the general source categories of point sources, non-road mobile sources, area sources, marine, aircraft and rail, and on-road mobile sources. A detailed discussion of the emissions inventory and its development can be found in the August 1, 2012, proposal. EPA has reviewed Michigan's Detroit-Ann Arbor $PM_{2.5}$ 2005 base year emissions inventory and has determined that it is adequate for the purposes of meeting the section 172(c)(3) emissions inventory requirement. Further, EPA has made the determination that the emissions were developed consistent with the CAA, implementing regulations, and EPA guidance for emission inventories.

II. Final Action

EPA is taking final action to approve the $PM_{2.5}$ 2005 base year emissions inventory portion of the SIP revision submitted by MDEQ on June 13, 2008, consistent with sections 110 and 172 of the CAA.

III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 final 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 final 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 January 7, 2013. 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, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 19, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.1170 the table in paragraph (e) is amended by adding a new entry for ''1997 Annual Fine Particulate Matter 2005 Base Year Emissions Inventory'' at the end of the table to read as follows:

§ 52.1170 Identification of plan.

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(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI–REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
1997 Annual Fine Particulate Matter 2005 Base Year Emissions Inventory.	Detroit-Ann Arbor area (Livingston, Macomb, Monroe, Oakland, St. Clair, Washtenaw, and Wayne Counties).	6/13/08	11/6/12 [INSERT CITATION OF PUBLICATION].	

[FR Doc. 2012–26962 Filed 11–5–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0266; FRL–9736–9]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on April 26, 2012 and concerns oxides of nitrogen (NO_X) from solid fuel fired boilers. We are approving a local rule that regulates these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule will be effective on December 6, 2012.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2012–0266 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (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 Pérez, 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. Proposed Action

On April 26, 2012 (77 FR 24883), EPA proposed to approve the following rule into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4352	Solid Fuel Fired Boilers, Steam Generators and Process Heaters	12/15/11	02/23/12

We proposed to approve this rule based on our conclusion that it complies with the relevant CAA requirements. Our proposed rule and Technical Support Document (TSD) [1] contain moreinformation onthe rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Adenike Adeyeye, Earthjustice; letter dated and received May 29, 2012.

The comments and our responses are summarized below.

Comment #1: Earthjustice stated that these revisions are an improvement over prior versions of this rule.

Response #1: No response needed.

Comment #2: Earthjustice disagreed with EPA's proposal to approve the NO_X emission limit in Rule 4352 for municipal solid waste (MSW) fired units as RACT. Earthjustice provided several arguments in support of its objection to EPA's proposal, each of which we address following separate comment summaries below.

Comment #2.a: Earthjustice stated that the New Jersey Department of Environmental Protection (NJDEP) has set NO_X emissions limits for MSW-fired boilers at 150 ppmv at 7% O_2 (approximately 142 ppmv at 12% CO_2). Quoting from a SIP submission from NJDEP, Earthjustice asserted that NJDEP established this limit based on ''the capability of existing selective non-catalytic reduction (SNCR) emission controls to reduce emissions more than are now being achieved.'' The commenter stated that the District's unsupported assertion that it is impossible to meet a limit lower than 165 ppmv at 12% CO_2 is simply false.

Response #2.a: We disagree with the commenter's suggestion that the NO_X emissions limits established in NJDEP's rule generally represent NO_X RACT for existing MSW-fired boilers equipped with SNCR controls. As the commenter correctly notes, under Title 7, Chapter 27, Subchapter 19, Section 12 of the New Jersey Administrative Code (N.J.A.C. 7:27–19.12), NJDEP limits NO_X emissions from MSW combustors to 150 ppm at 7% O_2 averaged over 24 hours (approximately 142 ppm at 12% CO_2). In lieu of complying with this emissions limit, however, the rule allows an owner or operator of an MSW incinerator to comply with an alternative emission limit or a ''facility-specific NO_X control plan'' upon receipt of written approval from NJDEP, pursuant to section 13 of the rule (N.J.A.C. 7:27–19.13). *See* N.J.A.C. 7:27–19.12(b). Section 13 identifies, among other things, the types of information that an owner or operator must submit to NJDEP as part of a request for such an alternative emission limit or facility-specific NO_X control plan, including a list of all NO_X control technologies available for use with the equipment or source operation, an analysis of the technological feasibility and costs of installing and operating each such control technology, and estimates of the NO_X emissions reductions attainable through the use of each control technology which is technologically feasible. *See* N.J.A.C. 7:27–19.13(d). The rule authorizes NJDEP to approve a request for an alternative emission limit or facility-specific NO_X control plan *only if,* among other things, the request identifies all available NO_X control options and demonstrates that any control options that the owner/operator has rejected are ineffective or unsuitable for the particular equipment or would involve disproportionately high costs, in comparison to the associated NO_X reductions or costs borne by other like facilities. *See* N.J.A.C. 7:27–19.13(g)(3).

According to NJDEP, three of the five MSW incinerators subject to N.J.A.C. 7:27–19.12 appear to have obtained alternative emission limits pursuant to Section 13 of the rule and are not currently subject to the 24-hour NO_X limit of 150 ppm at 7% O_2. *See* email dated July 24, 2012, from Michael Klein (NJDEP) to Stanley Tong (EPA Region 9). Table 1 below shows the current NO_X limits in the operating permits for each of these five MSW incinerators under NJDEP jurisdiction.

TABLE 1

Facility	Emission limit (ppm at 7% O_2)	Emission limit (approximate ppm at 12% CO_2)	Averaging time (hours)
Essex [2]	300	285	1
	155	147	24
Warren [3]	300	285	3
	205	195	24

[1] *See* U.S. EPA Region 9, ''Technical Support Document for EPA's Notice of Proposed Rulemaking for the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District's Rule 4352, Solid Fuel Fired Boilers, Steam Generators and Process Heaters,'' April 2012 (TSD).

[2] *See* Air Pollution Control Operating Permit, Permit Activity No. BOP090001, Covanta Essex Co. (Essex PTO) at pg. 57 of 95.

[3] *See* Air Pollution Control Operating Permit, Permit Activity No. BOP090002, Covanta Warren Energy Resource Co. LP (Warren PTO) at pp. 57 and 60 of 101.

TABLE 1—Continued

Facility	Emission limit (ppm at 7% O_2)	Emission limit (approximate ppm at 12% CO_2)	Averaging time (hours)
Union [4]	225	214	3
	180	171	24
Gloucester [5]	350	333	3
	150	143	24
Camden [6]	300	285	3
	150	143	24

Of the three New Jersey facilities that have obtained permit limits exceeding the 24-hour NO_X limit of 150 ppm (at 7% O_2) in NJDEP's rule (Essex, Warren, and Union), two facilities (Warren and Union) have permit limits that also exceed the 24-hour NO_X limit of 165 ppm (at 12% CO_2) in SJVUAPCD's Rule 4352. *See* Table 1. The remaining two facilities, which are subject to the 150 ppm limit in NJDEP's rule (Gloucester and Camden), are both equipped with SNCR using urea injection as a NO_X control technique. *See* Gloucester PTO at pp. 45–46 of 106; Camden PTO at pg. 183 (of electronic file). Both of these facilities became subject to the 24-hour NO_X limit of 150 ppm (at 7% O_2) in N.J.A.C. 7:27–19.12 effective May 1, 2011. *See* Gloucester PTO at pp. 38 of 106; Camden PTO at pg. 34 of 99. Notably, for the Camden facility, the 150 ppm limit applied ''on and after May 1, 2011, if compliance is achieved by installing a new NO_X air pollution control system on an existing MSW incinerator or by physically modifying an existing MSW incinerator.'' Camden PTO at pg. 34 of 99. The Gloucester and Camden facilities are the only MSW incinerators we know of that are subject to the 24-hour NO_X limit of 150 ppm (at 7% O_2) in N.J.A.C. 7:27–19.12.

Only one existing facility in the SJV (Covanta Stanislaus, Inc.) currently operates MSW-fired boilers subject to SJVUAPCD's Rule 4352. The two MSW-fired boilers at the Covanta Stanislaus facility are equipped with SCNR using ammonia injection systems, instead of urea injection systems, for NO_X control. *See* Facility-wide Permit to Operate for Covanta Stanislaus, Inc., San Joaquin Valley Air Pollution Control District, Permit Unit: N–2073–1–10 (expiration date 10/31/2016), ''Equipment Description'' (Stanislaus PTO). Although ammonia and urea injection both serve as reducing agents for NO_X emissions in combination with SNCR control systems, these control methods require operation at different temperature windows and generally are not interchangeable without facility retrofits. *See Alternative Control Techniques Document—NO_X Emissions from Industrial/Commercial/ Institutional (ICI) Boilers,* U.S. EPA 453/ R–94–022 (March 1994) (1994 ACT) at sections 5.5.1.1 (''Ammonia-based SNCR'') and 5.5.1.2 (''Urea-based SNCR''). For example, the optimum reaction temperature range for the reduction of NO_X by ammonia is 870° to 1,100 °C, while the optimum range for the reduction of NO_X by urea is 900° to 1,150 °C, and ammonia can be injected both in aqueous solution or anhydrous form while urea may only be injected in aqueous form. *Id.* These technological distinctions between ammonia-based SNCR and urea-based SNCR highlight uncertainties about whether the controls implemented by the Gloucester and Camden incinerators in New Jersey (*i.e.,* urea-based SNCR) are technologicallyand economically feasiblefor implementation at the one existing MSW-fueled facility in SJV.

Additionally, according to information submitted by SJVUAPCD at EPA's request, four of the five MSW incinerators subject to the NJDEP rule have equipment that differs significantly from the equipment at the Covanta Stanislaus facility in SJV. *See* emails dated September 4, 2012 and September 11, 2012, from Nichole Corless (SJVUAPCD) to Idalia Perez (EPA Region 9), with attachments. Specifically, SJVUAPCD states that the Covanta Stanislaus facility is configured with stoker grates whereas the New Jersey MSW incinerators have reciprocating, horizontal, and roller grates, which enable them to meet a slightly lower NO_X limit. *Id.* These technological distinctions raise additional questions about whether the controls implemented by the New Jersey facilities are feasible for implementation in SJV. Moreover, the fact that both the Gloucester and Camden incinerators in New Jersey became subject to the 150 ppm limit in N.J.A.C. 7:27–19.12 only as of May 1, 2011, and in Camden's case only if the facility made physical modifications to, or installed new air pollution control equipment on, the existing MSW incinerator, further highlights uncertainties about whether the chosen control methods at these two facilities are ''reasonably available'' for implementation at existing MSW-fired boilers in SJV.

Finally, information submitted by the SJVUAPCD indicates that retrofits to existing SNCR systems to achieve additional NO_X reductions are not cost-effective in light of the relatively insignificant difference between the NO_X limit in NJDEP's rule (150 ppm at 7% O_2, or approximately 142 ppm at 12% CO_2, 24-hour average) and the limit in SJVUAPCD's Rule 4352 (165 ppm at 12% CO_2, 24-hour average). Specifically, with respect to staged combustion retrofits to an ammonia-based SNCR control system, SJVUAPCD submitted information indicating that the cost per ton of reductions in NO_X emissions from 165 to 142 ppm at 12% CO_2 would be $27,650/ton. *See* email dated September 4, 2012, from Nichole Corless (SJVUAPCD) to Idalia Perez (EPA Region 9), with attachment. Further taking into account certain operational conditions at the Covanta Stanislaus facility which indicate that the limit in NJDEP's rule (150 ppm at 7% O_2) would equate to approximately 148 ppm (rather than 142 ppm) at 12% CO_2, the cost per ton of NO_X emission reductions from 165 ppm to 148 ppm at 12% CO_2 would be $37,404/ton. *See id.* These costs exceed the levels generally

[4] *See* Air Pollution Control Operating Permit, Permit Activity No. BOP080001, Covanta Union (Union PTO) at pp. 56 and 57 of 90.

[5] *See* Air Pollution Control Operating Permit, Permit Activity No. BOP090002, Wheelabrator Gloucester Company (Gloucester PTO) at pp. 38 and 68 of 106.

[6] *See* Air Pollution Control Operating Permit, Permit Activity No. BOP080002, Camden Cnty Energy Recovery Assoc LP (Camden PTO) at pp. 34 and 66 of 99.

considered to be ''reasonable'' within the meaning of RACT.

In sum, the information before us raises significant questions about the technical and economic feasibility of achieving a 24-hour NO_X emission limit of 150 ppm at 7% O_2 (approximately 142 ppm at 12% CO_2) at existing MSW-fired boilers equipped with ammonia-based SNCR in the SJV, and the commenter has provided little information to substantiate its claim in this regard. Absent specific information to support a conclusion that further NO_X controls are ''reasonably available'' for implementation at existing MSW-fired boilers in the SJV, we find that the 24-hour NO_X emission limit of 165 ppm at 12% CO_2 in SJVUAPCD's Rule 4352 represents current RACT for these units.[7]

Comment #2.b: Earthjustice asserted that the District has not adequately analyzed and considered the feasibility of either injecting more ammonia or adding more nozzles to existing SNCR controls to meet a lower NO_X emissions limit. The commenter stated that according to the NJDEP State Implementation Plan (SIP) Revision for the Attainment and Maintenance of the Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standard (NJDEP 2009 $PM_{2.5}$ SIP) submitted to EPA in 2009, 11 regulated units at 4 facilities in New Jersey would meet the lower NO_X emissions limit in N.J.A.C. 7:27–19.12 by injecting more ammonia or adding more nozzles to existing SNCR controls. The commenter stated that ''technical analysis of these demonstrated options must be conducted before EPA can accept ammonia slip as an excuse for rejecting tighter SNCR limits.''

Response #2.b: We have generally evaluated the technical feasibility of injecting more ammonia or adding nozzles to existing SNCR controls but do not have sufficient information to conclude that these control methods represent RACT for existing MSW-fired boilers in SJV at this time. According to information submitted by SJVUAPCD at our request, the orientation of the nozzles in the combustion gas stream has a much greater impact on the resulting NO_X emissions than the number of nozzles in the system, and the Covanta Stanislaus facility's nozzles have already been optimized based on the ''temperature window where SNCR works to reduce NO_X effectively.'' *See* email dated September 4, 2012, from Nichole Corless (SJVUAPCD) to Idalia Perez (EPA Region 9), with attachments. SJVUAPCD also stated that the amount of ammonia injected into the flue gas at Covanta Stanislaus is closely controlled to maximize NO_X reductions and to prevent excessive ammonia slip, and that increases in ammonia injection would ''result in negligible NO_X reductions and would exit the system and cause a detached plume,'' causing violations of permit conditions regarding visible emissions, ammonia slip, and condensable particulate matter. *Id.* (citing continuous emissions monitoring data submitted by Covanta Stanislaus to support these conclusions).

EPA's Alternative Control Techniques document for NO_X emissions from Industrial/Commercial/Institutional Boilers (1994 ACT) supports the general conclusion that simply injecting more ammonia or adding nozzles will not necessarily reduce NO_X emissions in an ammonia-based SNCR system. The 1994 ATC describes the process in an ammonia-based SNCR system as follows:

> In this process, aqueous or anhydrous ammonia is vaporized and injected into the flue gas through wall-mounted nozzles at a location selected for optimum reaction temperature and residence time. The optimum reaction temperature range for this process is 870 to 1,100 °C (1,600 to 2,000 °F). * * * At temperatures above 1,100 °C (2,000 °F), ammonia injection becomes counterproductive, resulting in additional NO formation. Below 870 °C (1,600 °F), the reaction rate drops and undesired amounts of ammonia are carried out in the flue gas. Unreacted ammonia is commonly referred to as ammonia slip, breakthrough, or carryover. The amount of ammonia slip also depends in part on the amount of ammonia injected. Although the chemical reaction requires one mole of NH_3 for each mole of NO, the NH_3/NO_X ratio used is usually greater than 1 to avoid an undesired reaction which results in formation of NO. * * * Achievable NO_X reductions for an individual boiler depend on the flue gas temperature, the residence time at that temperature, the initial NO_X concentration, the NH_3/NO_X ratio, the excess oxygen level, and the degree of ammonia/flue gas mixing. Also, stratification of both temperature and NO_X in the flue gas can affect the performance of the SNCR control. The optimum placement of SNCR injectors requires a detailed mapping of the temperature profile in the convective passes of the boiler, because of the narrow temperature window. 1994 ACT at Section 5.5.1.1.

Thus, even assuming it is technologically feasible to inject more ammonia and/or to install additional ammonia injection nozzles, it is not clear that these methods would further reduce NO_X emissions in an ammonia-based SNCR system, and technical information indicates that such methods could instead lead to increased ammonia slip if not carefully adjusted to account for the specific temperature profile, NH_3/NO_X ratio, oxygen levels, degree of ammonia/flue gas mixing, and other factors specific to the particular boiler and control system.

As the commenter correctly notes, Appendix C of the NJDEP 2009 $PM_{2.5}$ SIP states that ''the NJDEP anticipates that the facilities will decrease their emissions due to optimizing their existing NO_X control systems (*i.e.,* either injecting more ammonia or adding more nozzles).'' *See NJDEP 2009 $PM_{2.5}$ SIP,* App. C., at 5. This statement alone, however, does not establish that the NO_X emission limit in N.J.A.C. 7:27–19.12 (150 ppm at 3% O_2) represents RACT for existing MSW-fueled boilers. As discussed above in Response 2.a, four of the five MSW incinerators subject to the NJDEP rule have equipment configurations that appear to differ significantly from the Covanta Stanislaus facility, and NJDEP has approved alternate, higher NO_X limits for three of the five subject sources based on the agency's assessment of source-specific technological and/or economic factors. Other than referencing statements of general intent in a New Jersey SIP submission, the commenter provides no technological or economic information to support its assertion that existing MSW-fired boilers, either generally or in SJV specifically, are capable of meeting a 24-hour NO_X emission limit of 150 ppm at 3% O_2 (142 ppm of at 12% CO_2) by the application of control technology that is reasonably available considering technological and economic feasibility.

Comment #2.c: Earthjustice asserted that the New Jersey rule, along with data presented in EPA's TSD for the proposed rule, ''highlights the need for further analysis of potential NO_X controls by the District.'' Earthjustice stated that information available in EPA's 1994 ACT, which shows NO_X emissions from MSW-fired boilers with SNCR controls ranging from 35 to 167 ppmv at 12% CO_2, calls into question the 165 to 210 ppmv at 12% CO_2 range provided in the District's 2011 Staff Report and places the District's NO_X emissions limit of 165 ppmv at 12% CO_2 at the highest end of the range. Earthjustice also asserted that ''[g]iven that the Valley is in nonattainment of

[7] The commenter states that ''the District's unsupported assertion that it is impossible to meet a limit lower than 165 ppmv at 12% CO_2 is simply false,'' but this assertion mischaracterizes the District's position, as test data for Covanta Stanislaus submitted by the District clearly show average NO_X emission levels below the 165 ppm limit in Rule 4352. *See* TSD at 6. An emission limit of 165 ppm at 12% CO_2 ensures that the source is obligated to continually operate its emission control system while leaving the facility a small compliance buffer to account for occasional short-term variabilities inherent in its process. *Id.*

the $PM_{2.5}$ NAAQS and is in extreme nonattainment of the 1-hour and 8-hour ozone NAAQS, EPA must require the District to conduct further analysis and ensure that MSW-fired boilers meet the lowest emission limit that can be achieved through the application of RACT.''

Response #2.c: First, with respect to the commenter's assertions about the NJDEP rule (N.J.A.C. 7:27–19.12), we addressed these comments above in Response #2.a. Second, with respect to the commenter's assertion about data presented in EPA's TSD, although we agree with the commenter's observation that the NO_X emission limit in Rule 4352 (165 ppmv at 12% CO_2) is at the highest end of the range of NO_X levels identified in EPA's 1994 ACT for MSW-fired boilers operating SNCR controls with ammonia or urea injection, we disagree with the assertion that this necessarily compels further evaluation of the NO_X limit in Rule 4352.

Municipal solid waste varies widely in composition—often including durable goods, non-durable goods, demolition and construction wastes, containers and packaging, food wastes and yard trimmings, and/or miscellaneous inorganic wastes—and the exact makeup of MSW at a particular facility may vary both seasonally and geographically. *See* 1994 ACT at Section 3.4.3. Variability in MSW can affect emissions both due to differences in the availability of fuel-bound nitrogen as well as differences in the heat content of the fuel, which can affect its combustion characteristics. Given the broad technical diversity of existing MSW-fired boilers and their varying fuel compositions, the NO_X emission level that one MSW-fired unit achieves by the application of reasonably available controls may not necessarily be achievable for others using similar controls. Even where boiler type, control technology, and fuel type are the same, emission levels may differ significantly from boiler to boiler depending on a number of site-specific factors, including furnace dimensions and operating characteristics, design and condition of burner controls, design and condition of stream control systems, and fan capacity. *See*, for example, 1994 ACT at Appendix B (page B–21), showing achievable NO_X emission levels ranging from 44 to 210 ppm at 3% O_2 for MSW boilers equipped with SNCR.

ACT documents describe available control techniques and their cost effectiveness but do not define presumptive RACT levels as EPA's Control Techniques Guidelines (CTGs) do. The wide range of emission levels provided in the 1994 ACT for MSW-fired boilers equipped with SNCR and using ammonia or urea injection as a control technique (35 to 167 ppmv at 12% CO_2) reflects the significant variation in emission levels that may result from site-specific technological considerations and fuel compositions at different MSW-fired units. Notably, the NO_X emission ranges provided in Appendix B of the 1994 ACT do not identify applicable averaging periods and therefore may not be directly comparable to the 24-hour NO_X emission limit in Rule 4352. *See* 1994 ACT at Appendix B.

EPA has evaluated the control techniques and applicable permit conditions for the two MSW incinerators in New Jersey that are currently subject to the 24-hour NO_X emission limit of 150 ppm (at 3% O_2) in N.J.A.C. 7:27–19.12 (Gloucester and Camden) and concluded that technical distinctions between these facilities and the Covanta Stanislaus facility in SJV raise significant questions about the technological and economic feasibility of those same emission control methods at existing MSW-fired boilers in the SJV. *See* Response #2.a. We do not currently have information sufficient to support a conclusion that existing MSW-fired boilers using ammonia-based SNCR systems, either generally or specifically in the SJV, are capable of meeting a 24-hour NO_X emission limit of 150 ppm at 3% O_2 (142 ppm of at 12% CO_2) by the application of control technology that is reasonably available considering technological and economic feasibility.

Finally, with respect to the commenter's statement about the SJV area's air quality designations for the $PM_{2.5}$ and ozone National Ambient Air Quality Standards (NAAQS), we note that attainment status designations are not relevant to our evaluation of Rule 4352 for compliance with the technology-based RACT control requirement in CAA section 182(b)(2). The RACT requirement in CAA section 182 is a control mandate that applies independent of the emission reductions needed for attainment of the NAAQS. *See, e.g.,* EPA's Proposed Rule to Implement the 8-Hour Ozone [NAAQS], 68 FR 32802, 32837 (June 2, 2003) (explaining that ''[u]nder subpart 2, RACT requirements for ozone nonattainment areas apply independent of the emissions reductions needed to attain the standard''). We note, however, that the general requirement in CAA section 172(c)(1) to adopt all ''reasonably available control measures'' (RACM) continues to apply in the SJV area for purposes of attaining the ozone and $PM_{2.5}$ NAAQS (*see, e.g.,* 40 CFR 51.912(d) and 51.1010). Given the severity of the ozone and $PM_{2.5}$ pollution problems in the SJV and the NO_X and $PM_{2.5}$ emission reduction commitments contained in the SIP-approved plans for attainment of the 1997 $PM_{2.5}$ and 1997 8-hour ozone standards in the SJV,[8] we encourage the District to further evaluate potential NO_X and PM control options at its earliest opportunity to determine whether additional controls for existing MSW-fired boilers may be reasonably available for implementation in the Valley.

Comment #3: Earthjustice asserted that EPA should urge the District to reevaluate the startup and shutdown provisions in Rule 4352 as the rule allows units to emit excess emissions for far longer than necessary. In support of this assertion, the commenter referred to rules adopted by the Placer County Air Pollution Control District (PCAPCD), Yolo Solano Air Quality Management District (YSAQMD) and Sacramento Metropolitan Air Quality Management District (SMAQMD), each of which contain shorter time periods for startup and shutdown operations. Citing a 1999 EPA policy document providing that startup and shutdown periods should be limited ''to the maximum degree practicable,'' the commenter asserted that the District had neglected to evaluate the possibility of requiring shorter startup and shutdown times under Rule 4352 for solid fuel-fired boilers.

Response #3: We disagree with the commenter's assertion that the startup and shutdown provisions in Rule 4352 are deficient. EPA policy for SIPs regarding excess emissions during malfunctions, startup, shutdown, and maintenance provides that for some source categories, ''given the types of control technologies available, there may exist short periods of emissions during startup and shutdowns when, despite best efforts regarding planning, design, and operating procedures, the otherwise applicable emission limitation cannot be met.'' Thus, with limited exceptions, it may be appropriate in consultation with EPA to create ''narrowly-tailored SIP revisions'' that take these technological limitations into account and state that the otherwise applicable emissions limitations do not apply during these periods. *See* Memorandum dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert

[8] *See, e.g.,* SIP-approved NO_X emission reduction commitments in 40 CFR 52.220(c)(356)(ii)(B)(*2*) and 52.220(c)(356)(ii)(B)(*4*), and 52.220(c)(397)(ii)(B)(*2*).

Perciasepe, Assistant Administrator for Air and Radiation, to Regional Administrators, Regions I–X, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown'' (1999 SSM Policy) at Attachment, pp. 4–5. According to the 1999 SSM Policy, SIP provisions addressing these circumstances should, among other things, be limited to specific, narrowly-defined source categories. *Id.* Additionally, use of the control technology for the source category should be technically infeasible during startup or shutdown periods; the frequency and duration of operation in startup or shutdown mode should be minimized to the maximum extent practicable; and all possible steps should be taken to minimize the impact of emissions during startup and shutdown on ambient air quality. *Id.*

Rule 4352 generally applies to any boiler, steam generator or process heater fired on ''solid fuel'' that is operated at a stationary source with a potential to emit at least 10 tons per year of NO_X or VOC. *See* Rule 4352 at sections 2.0, 3.18, and 4.0. Section 5.3 of the rule states that the applicable emission limits established for this defined source category ''shall not apply during start-up or shutdown provided an operator complies with the requirements specified below.'' The rule then limits the duration of each start-up to 96 hours, except that if curing of the refractory is required after a modification to the unit is made, the duration of start-up is limited to 192 hours, with exceptions only as approved by the District, CARB, and EPA. *See* Rule 4352 at section 5.3.2. The rule also limits the duration of each shutdown to 12 hours, with exceptions only as approved by the District, CARB, and EPA. *Id.* at section 5.3.1. Significantly, Rule 4352 requires, in all cases, that ''the emission control system shall be in operation and emissions shall be minimized insofar as technologically feasible during start-up or shutdown.'' *Id.* at section 5.3.3. These provisions for start-up and shutdown apply to all solid fuel-fired boilers subject to Rule 4352, including biomass-fired and MSW-fired boilers.

Earthjustice refers to rules adopted by the PCAPCD, YSAQMD and SMAQMD to support its assertion that the District should consider establishing shorter exemption periods for startup and shutdowns, but these other California rules apply to source categories that differ from the source category subject to Rule 4352. Both YSAQMD Rule 2.43 and PCAPCD Rule 233, which apply to boilers fueled entirely or primarily with biomass, limit normal startups and all shutdowns to 24 hours and curing startups to 96 hours. *See* YSAQMD Rule 2.43 at sections 102 and 302, and PCAPCD Rule 233 at sections 101, 206, 214 and 215. Thus, although both the YSAQMD rule and PCAPCD rule limit the allowed duration of startup and shutdown to periods that are shorter than the limits in Rule 4352, both rules apply only to a subset of the boilers subject to Rule 4352. Biomass-fired boilers may not require start-up or shutdown periods as long in duration as those needed by the range of solid fuel-fired boilers subject to SJVUAPCD's Rule 4352, which combust more complex and heterogeneous fuel mixes, including biomass, MSW, coal, and other solid fuels. Notably, neither the YSAQMD rule nor the PCAPCD rule explicitly requires continued operation of emission control systems to the extent feasible during start-up and shutdown periods, as does Rule 4352.[9]

SMAQMD Rule 411, which applies to units fueled with gaseous and non-gaseous fuels, limits startup to a maximum of two hours after a period in which the gas flow is shut off for a continuous period of 30 minutes or longer and limits shutdown to two hours. *See* SMAQMD Rule 411 at sections 102, 220–222. We are not aware, however, of any solid fuel fired boilers operating in the Sacramento metro area subject to Rule 411. Thus, SMAQMD Rule 411 does not appear to establish that shorter limits on startup and shutdown periods are technologically feasible for solid fuel-fired boilers.

In sum, the start-up and shutdown provisions in SJVUAPCD's Rule 4352 are narrowly-tailored to address the technological limitations of emissions controls at solid fuel-fired boilers and require, unlike the other California district rules cited by the commenter, that source owners/operators continue to operate emission control systems and to minimize emissions to the extent technologically feasible, even during start-up or shutdown periods. We conclude that these provisions in Rule 4352 are consistent with EPA's 1999 SSM policy and appropriate for SIP approval for this particular source category. We agree with the commenter, however, that the District should reevaluate these provisions at its earliest opportunity to determine whether shorter limits on the duration of startup and shutdown periods may be feasible for certain types of solid fuel-fired boilers covered by the rule, and to consider establishing limits on the frequency of such events, to ensure that emissions during start-up and shutdown events are minimized to the maximum extent practicable. We also encourage the District to carefully review the CEMS data required by section 5.4 of Rule 4352 (monitoring provisions), in particular NO_X emissions data during start-up and shutdown periods, to ensure that owners/operators of solid fuel-fired boilers are in fact operating emission control systems and minimizing emissions insofar as technologically feasible during start-up or shutdown as required by Rule 4352, section 5.3.3.

[9] The YSAQMD rule states that ''the frequency and duration of startup and shutdown periods and their associated emissions shall be minimized as much as technologically feasible.'' YSAQMD Rule 2.43 at section 302.3. The PCAPCD rule includes alternative pound per hour emission limits for NO_X and CO during startup and shutdown periods. *See* PCAPCD Rule 233 at section 302.2.

III. EPA Action

For the reasons provided in our proposed rule and above, and pursuant to section 110(k)(3) of the Act, EPA is fully approving Rule 4352 into the San Joaquin Valley portion of the California SIP. This final approval of Rule 4352 satisfies California's obligation to implement RACT under CAA section 182(b)(2) for solid fuel-fired boilers in the SJV for the 1-hour ozone and 1997 8-hour ozone NAAQS and thereby terminates all CAA sanctions clocks and Federal Implementation Plan (FIP) clocks associated with this source category. *See* 75 FR 60623 (October 1, 2010) (final limited approval and disapproval of Rule 4352); 77 FR 1417 (January 10, 2012) (final partial approval and disapproval of SJV RACT SIP); and 77 FR 24857 (April 26, 2012) (interim final determination to stay and defer sanctions).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

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

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

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

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

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

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

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

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 January 7, 2013. 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: September 13, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(411) (i)(B)(*4*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(411) * * *

(i) * * *

(B) * * *

(*4*) Rule 4352, ''Solid Fuel Fired Boilers, Steam Generators and Process Heaters,'' amended on December 15, 2011.

* * * * *

[FR Doc. 2012–26779 Filed 11–5–12; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 303–70

[FTR Amendment 2012–07; FTR Case 2011–308; Docket Number 2011–0022, Sequence 1]

RIN 3090–AJ21

Federal Travel Regulation (FTR); Payment of Expenses Connected With the Death of Certain Employees

AGENCY: Office of Government-wide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA has adopted as final, an interim rule amending the Federal Travel Regulation (FTR) to establish policy for the transportation of the immediate family, household goods, personal effects, and one privately owned vehicle of a covered employee whose death occurred as a result of personal injury sustained while in the performance of the employee's duty as defined by the agency.

DATES: *Effective date:* November 6, 2012.

Applicability date: This final rule applies to travel relating to employees who died on or after June 9, 2010.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (MVCB), 1275 First Street NE. Washington, DC 20417, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Rick Miller, Office of Government-wide Policy, Travel and Relocation Policy Division, at (202) 501–3822 or email at *rodney.miller@gsa.gov.* Please cite FTR Amendment 2012–07, FTR Case 2011–308.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707, the Administrator of General Services is authorized to prescribe necessary regulations to implement laws regarding Federal employees who travel in the performance of official business away from their official stations. Similarly, 5 U.S.C. 5738 mandates that the Administrator of General Services prescribe regulations relating to official relocation. In addition, the Presidential Memorandum, ''Delegation Under Section 2(a) of the Special Agent Samuel Hicks Families of Fallen Heroes Act,'' dated September 12, 2011, published in the **Federal Register** on September 15, 2011 (76 FR 57621), delegates to the Administrator of

General Services the authority to issue regulations under Public Law 111–178, the Special Agent Samuel Hicks Families of Fallen Heroes Act, codified at 5 U.S.C. 5724d, relating to the payment of certain expenses when a covered employee dies as a result of injuries sustained in the performance of his or her official duties. The overall implementing authority is the FTR, codified in Title 41 of the Code of Federal Regulations, Chapters 300–304 (41 CFR Chapters 300–304).

This final rule incorporates language based on Public Law 111–178, the Special Agent Samuel Hicks Families of Fallen Heroes Act, codified at 5 U.S.C. 5724d, to allow agencies to provide for relocation of dependents and the household effects of a ''covered employee'' whose death occurred as a result of personal injury sustained while in the performance of the employee's duty as defined by the agency. The term ''covered employees'' means: (A) A law enforcement officer, as defined in 5 U.S.C. 5541; (B) an employee in or under the Federal Bureau of Investigation who is not described in subparagraph (A), and (C) a Customs and Border Protection officer, as defined in 5 U.S.C. 8331(31).

B. Summary of Comments Received

GSA received no comments on the interim rule published in the **Federal Register** on November 21, 2011 (76 FR 71890).

C. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

D. Regulatory Flexibility Act

This final rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions are not considered substantive. This final rule is also exempt from Regulatory Flexibility Act per 5 U.S.C. 553 (a)(2), because it applies to agency management or personnel. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

F. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 303–70

Government employees, Relocation, Transportation expenses, and Travel.

Dated: October 25, 2012.

Dan Tangherlini,

Acting Administrator of U.S. General Services.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 41 CFR part 303–70, which was published in the **Federal Register** at 76 FR 71890 on November 21, 2011, is adopted as a final rule without change.

[FR Doc. 2012–27023 Filed 11–5–12; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Associate Administrator for Mitigation has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30,

1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Levy County, Florida, and Incorporated Areas Docket No.: FEMA–B–1166			
Bronson North Ditch	At Ifshie Avenue	+55	Town of Bronson, Unincorporated Areas of Levy County.
	Approximately 0.4 mile upstream of U.S. Route 27A	+57	
Bronson South Ditch	Just upstream of Lime Rock Road	+59	Town of Bronson, Unincorporated Areas of Levy County.
	Approximately 600 feet upstream of West Main Street	+60	
Long Pond	At Levy County Route 345	+27	City of Chiefland, Unincorporated Areas of Levy County.
	Just downstream of Northwest 60th Street	+28	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Chiefland
Maps are available for inspection at City Hall, 214 East Park Avenue, Chiefland, FL 32626.

Town of Bronson
Maps are available for inspection at the Town Hall, 650 Oak Street, Bronson, FL 32621.

Unincorporated Areas of Levy County
Maps are available for inspection at the Levy County Building Department, 9010 Northeast 79th Street, Bronson, FL 32621.

Cobb County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1204			
Bishop Creek	At the Sope Creek confluence	+905	Unincorporated Areas of Cobb County.
	At the downstream side of Indian Hills Trail Northeast	+909	
Blackjack Creek	At the Sope Creek confluence	+990	City of Marietta.
	Approximately 250 feet upstream of the Sope Creek confluence.	+998	
Campground Creek	At the Sope Creek confluence	+927	Unincorporated Areas of Cobb County.
	Approximately 0.5 mile upstream of the Sope Creek confluence.	+930	
Eastside Creek	At the Sope Creek confluence	+915	Unincorporated Areas of Cobb County.
	Approximately 1,375 feet upstream of the Sope Creek confluence.	+919	
Elizabeth Branch	At the Sope Creek confluence	+998	City of Marietta, Unincorporated Areas of Cobb County.
	Approximately 300 feet upstream of the Sope Creek confluence.	+999	
Piney Grove Creek	At the Sewell Mill Creek confluence	+945	Unincorporated Areas of Cobb County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 50 feet upstream of the Sewell Mill Creek confluence.	+949	
Robertson Creek	At the Sewell Mill Creek confluence	+921	Unincorporated Areas of Cobb County.
	Approximately 725 feet upstream of the Sewell Mill Creek confluence.	+923	
Sewell Mill Creek	At the Sope Creek confluence	+915	Unincorporated Areas of Cobb County.
	Approximately 300 feet upstream of Karen Lane	+1083	
Sope Branch	At the Sope Creek confluence	+1021	City of Marietta.
	Approximately 550 feet upstream of the Sope Creek confluence.	+1022	
Sope Creek	Approximately 250 feet upstream of the Chattahoochee River confluence.	+804	City of Marietta, Unincorporated Areas of Cobb County.
	Approximately 200 feet upstream of Rigby Street	+1041	
Thompson Creek	At the Sewell Mill Creek confluence	+933	Unincorporated Areas of Cobb County.
	Approximately 1,500 feet upstream of the Sewell Mill Creek confluence.	+933	
Wildwood Branch	At the Sope Creek confluence	+976	City of Marietta, Unincorporated Areas of Cobb County.
	Approximately 0.5 mile upstream of the Sope Creek confluence.	+984	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Marietta

Maps are available for inspection at the Public Works Department, 205 Lawrence Street, Marietta, GA 30060.

Unincorporated Areas of Cobb County

Maps are available for inspection at the Cobb County Development and Inspection Department, 205 Lawrence Street, Marietta, GA 30060.

Cole County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1218

Boggs Creek	At the upstream side of Missouri Pacific Railroad	+558	City of Jefferson City, Unincorporated Areas of Cole County.
	Approximately 475 feet upstream of U.S. Route 50	+633	
Boggs Creek Tributary 1	At the Boggs Creek confluence	+559	City of Jefferson City.
	Approximately 1,150 feet upstream of McCarty Street	+573	
Dickerson Creek	Approximately 1,600 feet downstream of Henwick Lane	+600	City of St. Martins, Unincorporated Areas of Cole County.
	Approximately 1,400 feet upstream of the U.S. Route 50 West exit ramp.	+725	
Dickerson Creek Tributary 1	At the Dickerson Creek confluence	+648	City of St. Martins, Unincorporated Areas of Cole County.
	Approximately 0.47 mile upstream of U.S. Route 50B West.	+669	
Dickerson Creek Tributary 2	At the confluence with Dickerson Creek	+697	City of Jefferson City, Unincorporated Areas of Cole County.
	Approximately 170 feet upstream of Turnberry Drive	+738	
East Branch Wears Creek	At the Wears Creek confluence	+557	City of Jefferson City.
	Approximately 80 feet upstream of Mesa Avenue	+606	
Frog Hollow Tributary	At the Wears Creek confluence	+614	City of Jefferson City.
	Approximately 115 feet upstream of Sardonyx Drive	+640	
Grays Creek	Approximately 0.75 mile upstream of the Missouri River confluence.	+560	City of Jefferson City, Unincorporated Areas of Cole County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 285 feet downstream of Missouri Pacific Railroad.	+567	
Grays Creek Tributary 4	At Scott Station Lane	+580	City of Jefferson City, Unincorporated Areas of Cole County.
	Approximately 950 feet upstream of Catalina Drive	+685	
Grays Creek Tributary 5	At the Grays Creek confluence	+561	Unincorporated Areas of Cole County.
	Approximately 0.57 mile upstream of Schumate Chapel Road.	+578	
Grays Creek Tributary 6	At the Grays Creek confluence	+561	City of Jefferson City.
	Approximately 800 feet downstream of Belair Drive	+564	
Meadows Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,200 feet upstream of State Route 179.	+568	Unincorporated Areas of Cole County.
Meadows Creek Tributary 2 (backwater effects from Missouri River).	From the Meadows Creek confluence to approximately 650 feet upstream of State Route 179.	+568	Unincorporated Areas of Cole County.
Missouri River	At the Osage County boundary	+551	City of Jefferson City, Unincorporated Areas of Cole County.
	At the Moniteau County boundary	+574	
Moniteau Creek Tributary 1 (backwater effects from Missouri River).	From the Moniteau Creek confluence to approximately 0.63 mile upstream of State Route 179.	+573	Unincorporated Areas of Cole County.
Moniteau Creek Tributary 2 (backwater effects from Missouri River).	From the Moniteau Creek confluence to approximately 0.58 mile upstream of State Route 179.	+570	Unincorporated Areas of Cole County.
Moreau River (backwater effects from Missouri River).	From the Missouri River confluence to approximately 750 feet downstream of Missouri Pacific Railroad.	+553	City of Jefferson City.
Moreau River Tributary 6	At the upstream side of Green Meadow Drive	+571	City of Jefferson City.
	Approximately 600 feet downstream of Tanner Bridge Road.	+611	
Mud Creek West (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.61 mile upstream of the Missouri River confluence.	+569	Unincorporated Areas of Cole County.
North Branch Wears Creek	At the Wears Creek confluence	+557	City of Jefferson City.
	Approximately 650 feet upstream of Jaycee Drive	+622	
Osage River (backwater effects from Missouri River).	At the Osage County boundary	+551	City of Taos, Unincorporated Areas of Cole County.
	Approximately 9.3 miles upstream of U.S. Route 50	+551	
Osage River Tributary 47 (backwater effects from Missouri River).	From the Osage River confluence to approximately 1,600 feet upstream of Big Meadows Road.	+551	Unincorporated Areas of Cole County.
Rising Creek	At the Missouri River confluence	+552	City of Jefferson City, City of Taos, Unincorporated Areas of Cole County.
	Approximately 2,000 feet upstream of the U.S. Route 50 East exit ramp.	+561	
Rising Creek Tributary 4	At the Rising Creek confluence	+552	City of Jefferson City.
	Approximately 250 feet downstream of Stertzer Road	+557	
Rock Creek North (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.70 mile upstream of State Route 179.	+569	Unincorporated Areas of Cole County.
Sanford Creek (backwater effects from Missouri River).	From the Osage River confluence to approximately 1,200 feet upstream of U.S. Route 50 East.	+551	Unincorporated Areas of Cole County.
Wears Creek	At the Missouri River confluence	+557	City of Jefferson City.
	Approximately 0.44 mile upstream of Edgewood Drive	+683	
Workman Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.47 mile upstream of State Route 179.	+566	Unincorporated Areas of Cole County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Jefferson City

Maps are available for inspection at City Hall, 320 East McCarty Street, Jefferson City, MO 65101.

City of St. Martins

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Maps are available for inspection at City Hall, 6909 A Business 50 West, Jefferson City, MO 65109.

City of Taos

Maps are available for inspection at the Cole County Courthouse, 311 East High Street, Jefferson City, MO 65101.

Unincorporated Areas of Cole County

Maps are available for inspection at the Cole County Courthouse, 311 East High Street, Jefferson City, MO 65101.

Jasper County, Missouri, and Incorporated Areas
Docket No.: FEMA–B–1208

Brownell West	At the Silver Creek Tributary 2 confluence	+1011	City of Joplin.
	At the downstream side of East 32nd Street	+1025	
Center Creek Tributary 28 (backwater effects from Center Creek).	From approximately 500 feet upstream of the Center Creek confluence to approximately 1,012 feet upstream of the Center Creek confluence.	+852	Unincorporated Areas of Jasper County.
Eagle Picher Creek	Approximately 1,010 feet upstream of Northwest Murphy Boulevard.	+959	City of Joplin.
	Approximately 75 feet downstream of West 2nd Street	+989	
Eagle Picher Creek Tributary 1	At the Eagle Picher Creek confluence	+978	City of Joplin.
	Approximately 81 feet downstream of North Maiden Lane	+991	
Silver Creek Tributary 2	Approximately 776 feet upstream of the Silver Creek confluence.	+988	City of Joplin.
	Approximately 77 feet downstream of East 32nd Street	+1021	
Swifty Creek	Approximately 114 feet upstream of I–44	+1086	City of Sarcoxie, Unincorporated Areas of Jasper County.
	Approximately 500 feet upstream of 5th Street	+1099	
Tin Cup Creek	Approximately 289 feet upstream of 32nd Street	+973	City of Joplin.
	Approximately 178 feet upstream of West 30th Street	+988	
Turkey Creek Tributary 3 (overflow effects from Turkey Creek).	At the Turkey Creek confluence	+995	City of Duquesne, City of Joplin.
	Approximately 1,941 feet downstream of I–44	+997	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Duquesne

Maps are available for inspection at City Hall, 1501 South Duquesne Road, Joplin, MO 64801.

City of Joplin

Maps are available for inspection at City Hall, 602 South Main Street, Joplin, MO 64801.

City of Sarcoxie

Maps are available for inspection at City Hall, 111 North 6th Street, Sarcoxie, MO 64862.

Unincorporated Areas of Jasper County

Maps are available for inspection at the Jasper County Courthouse, 302 South Main Street, Carthage, MO 64836.

Walsh County, North Dakota, and Incorporated Areas
Docket No.: FEMA–B–1145

Red River of the North	Approximately 2,000 feet downstream of 77th Street Northeast extended.	+802	Unincorporated Areas of Walsh County.
	Approximately 260 feet upstream of North Dakota Highway 54.	+812	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Walsh County

Maps are available for inspection at 600 Cooper Avenue, Grafton, ND 58237.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Luzerne County, Pennsylvania (All Jurisdictions) Docket No.: FEMA–B–1127			
Bear Creek	Approximately 0.4 mile downstream of Bear Creek Boulevard.	+1502	Borough of Bear Creek Village.
	Approximately 940 feet upstream of the confluence with Tenmile Run.	+1530	
Big Wapwallopen Creek	Approximately 0.41 mile upstream of State Route 239	+522	Township of Hollenback.
	Approximately 0.45 mile upstream of State Route 239	+524	
Big Wapwallopen Creek	Approximately 385 feet downstream of Hobbie Wapwallopen Road.	+845	Township of Dorrance, Township of Fairview, Township of Hollenback, Township of Rice, Township of Wright.
	Approximately 535 feet upstream of Dale Drive	+1526	
Black Creek	Approximately 910 feet upstream of Susquehanna Boulevard.	+1461	Borough of West Hazleton.
	Approximately 0.56 mile upstream of Susquehanna Boulevard.	+1470	
Bow Creek	Approximately 1,185 feet upstream of the confluence with Bow Creek Tributary A.	+1346	Township of Fairview.
	Approximately 0.38 mile downstream of the railroad	+1546	
Bow Creek Tributary A	Approximately 520 feet downstream of Wilkes Lane	+1341	Township of Fairview.
	Approximately 1,865 feet upstream of Shady Tree Drive	+1491	
Browns Creek	Approximately 100 feet downstream of Private Road	+901	Township of Jackson.
	Approximately 1,390 feet upstream of Chase Road	+988	
Harveys Creek	Approximately 590 feet downstream of Shady Lane	+1098	Township of Lehman.
	Approximately 410 feet downstream of Shady Lane	+1099	
Huntington Creek	Approximately 1,320 feet downstream of Henrico Road	+894	Township of Ross.
	Approximately 1,290 feet downstream of Henrico Road	+894	
Lattimer Creek	Approximately 900 feet downstream of West 28th Street	+1491	Township of Hazle.
	Approximately 745 feet upstream of Hillside Drive	+1585	
Lidy Creek	Approximately 265 feet downstream of the Pennsylvania Turnpike.	+833	Township of Pittston.
	Approximately 115 feet downstream of the Pennsylvania Turnpike.	+837	
Little Nescopeck Creek No. 2	Approximately 0.77 mile downstream of Sunset Drive	+942	Township of Butler.
	Approximately 0.76 mile downstream of Sunset Drive	+942	
Mill Creek No. 2	Approximately 650 feet downstream of I–81	+783	Township of Pittston.
	Approximately 500 feet downstream of I–81	+799	
Pikes Creek	Approximately 815 feet downstream of State Route 29	+1127	Township of Lehman.
	Approximately 700 feet downstream of State Route 29	+1127	
	Approximately 965 feet upstream of the confluence with Fades Creek.	+1141	
	Approximately 1,005 feet downstream of State Route 118	+1143	
Pine Creek No. 1	Approximately 540 feet downstream of White Haven Road	+1355	Borough of Penn Lake Park.
	Approximately 390 feet downstream of White Haven Road	+1359	
Pine Creek No. 2	Approximately 1.1 miles downstream of Town Hill Road	+731	Township of Huntington.
	Approximately 0.91 mile downstream of Town Hill Road	+736	
Pine Creek No. 2	Approximately 885 feet downstream of Volanski Road	+842	Township of Fairmount.
	Approximately 810 feet downstream of Volanski Road	+842	
South Branch Newport Creek	Approximately 450 feet upstream of the confluence with Newport Creek.	+560	Township of Newport.
	Approximately 670 feet upstream of the confluence with Newport Creek.	+560	
Spring Run	Approximately 110 feet upstream of railroad	+576	Borough of Ashley.
	Approximately 300 feet upstream of railroad	+578	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Susquehanna River	Approximately 1.95 miles downstream of Salem Creek	+500	Borough of Duryea, Borough of Edwardsville, Borough of Exeter, Borough of Forty Fort, Borough of Kingston, Borough of Larksville, Borough of Nescopeck, Borough of Plymouth, Borough of Shickshinny, Borough of West Pittston, Borough of Wyoming, City of Nanticoke, City of Pittston, City of Wilkes-Barre, Township of Conyngham, Township of Exeter, Township of Hanover, Township of Hunlock, Township of Jenkins, Township of Nescopeck, Township of Newport, Township of Plains, Township of Plymouth, Township of Salem, Township of Union.
	Approximately 2.49 miles upstream of the confluence with Sutton Creek.	+579	
Sutton Creek	Approximately 300 feet upstream of Miller Road	+845	Township of Exeter.
	Approximately 405 feet upstream of Miller Road	+846	
Toby Creek	Approximately 700 feet downstream of Cross Valley Expressway.	+644	Borough of Courtdale, Borough of Luzerne.
	Approximately 0.49 mile upstream of Cross Valley Expressway.	+759	
Toby Creek	Approximately 205 feet upstream of Woodlawn Avenue	+1125	Township of Dallas.
	Approximately 240 feet upstream of Woodlawn Avenue	+1125	
Watering Run	At the confluence with Big Wapwallopen Creek, approximately 440 feet upstream of Morio Drive.	+1071	Township of Wright.
	Approximately 0.58 mile upstream of South Mountain Boulevard.	+1422	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Borough of Ashley
Maps are available for inspection at the Borough Building, 10 North Main Street, Ashley, PA 18706.

Borough of Bear Creek Village
Maps are available for inspection at the Bear Creek Village Borough Building, 867 Railroad Lane, Bear Creek, PA 18602.

Borough of Courtdale
Maps are available for inspection at the Borough Building, 5 Blackman Street, Courtdale, PA 18704.

Borough of Duryea
Maps are available for inspection at the Borough Building, 315 Main Street, Duryea, PA 18642.

Borough of Edwardsville
Maps are available for inspection at the Edwardsville Borough Building, 470 Main Street, Kingston, PA 18704.

Borough of Exeter
Maps are available for inspection at the Borough Building, 1101 Wyoming Avenue, Exeter, PA 18643.

Borough of Forty Fort
Maps are available for inspection at the Borough Building, 1271 Wyoming Avenue, Forty Fort, PA 18704.

Borough of Kingston
Maps are available for inspection at the Borough Building, 500 Wyoming Avenue, Kingston, PA 18704.

Borough of Larksville
Maps are available for inspection at the Borough Building, 211 East State Street, Larksville, PA 18704.

Borough of Luzerne
Maps are available for inspection at the Borough Building, 144 Academy Street, Luzerne, PA 18709.

Borough of Nescopeck

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Maps are available for inspection at the Borough Building, 501 Raber Avenue, Nescopeck, PA 18635.

Borough of Penn Lake Park
Maps are available for inspection at the Penn Lake Park Borough Building, 51 Woodland Drive, White Haven, PA 18661.

Borough of Plymouth
Maps are available for inspection at the Borough Building, 162 West Shawnee Avenue, Plymouth, PA 18651.

Borough of Shickshinny
Maps are available for inspection at the Borough Building, 35 West Union Street, Shickshinny, PA 18655.

Borough of West Hazleton
Maps are available for inspection at the Borough Building, 12 South 4th Street, West Hazleton, PA 18202.

Borough of West Pittston
Maps are available for inspection at the Borough Building, 555 Exeter Avenue, West Pittston, PA 18644.

Borough of Wyoming
Maps are available for inspection at the Borough Building, 277 Wyoming Avenue, Wyoming, PA 18644.

City of Nanticoke
Maps are available for inspection at City Hall, 15 East Ridge Street, Nanticoke, PA 18634.

City of Pittston
Maps are available for inspection at City Hall, 35 Broad Street, Pittston, PA 18640.

City of Wilkes-Barre
Maps are available for inspection at City Hall, 40 East Market Street, Wilkes-Barre, PA 18711.

Township of Lehman
Maps are available for inspection at the Lehman Town Hall, 1183 Old Route 115, Dallas, PA 18612.

Township of Butler
Maps are available for inspection at the Butler Township Building, 415 West Butler Drive, Drums, PA 18222.

Township of Conyngham
Maps are available for inspection at the Conyngham Township Building, 10 Pond Hill Road, Mocanaqua, PA 18655.

Township of Dallas
Maps are available for inspection at the Township Building, 601 Tunkhannock Highway, Dallas, PA 18612.

Township of Dorrance
Maps are available for inspection at the Dorrance Township Building, 7844 Blue Ridge Trail, Mountain Top, PA 18707.

Township of Exeter
Maps are available for inspection at the Exeter Municipal Building, 2305 State Route 92, Harding, PA 18643.

Township of Fairmount
Maps are available for inspection at the Fairmount Township Building, 867 Old Tioga Turnpike, Benton, PA 17814.

Township of Fairview
Maps are available for inspection at the Fairview Township Building, 65 Shady Tree Drive, Mountain Top, PA 18707.

Township of Hanover
Maps are available for inspection at the Township Building, 1267 Sans Souci Parkway, Hanover, PA 18706.

Township of Hazle
Maps are available for inspection at the Hazle Township Building, Rear 101 West 27, Harleigh, PA 18225.

Township of Hollenback
Maps are available for inspection at the Hollenback Township Building, 660 East County Road, Wapwallopen, PA 18660.

Township of Hunlock
Maps are available for inspection at the Township Building, 33 Village Drive, Hunlock Creek, PA 18621.

Township of Huntington
Maps are available for inspection at the Huntington Township Building, 815 Municipal Road, Shickshinny, PA 18655.

Township of Jackson
Maps are available for inspection at the Jackson Township Building, 2211 Huntsville Road, Shavertown, PA 18708.

Township of Jenkins
Maps are available for inspection at the Township Building, 46 1/2; Main Street-Inkerman Section, Jenkins, PA 18640.

Township of Nescopeck
Maps are available for inspection at the Township Building, 429 Berwick-Hazleton Highway, Nescopeck, PA 18635.

Township of Newport
Maps are available for inspection at the Newport Township Building, 1002 Center Street, Wanamie, PA 18634.

Township of Pittston
Maps are available for inspection at the Township Building, 421 Broad Street, Pittston, PA 18640.

Township of Plains
Maps are available for inspection at the Township Building, 126 North Main Street, Plains, PA 18705.

Township of Plymouth
Maps are available for inspection at the Township Building, 925 West Main Street, Plymouth, PA 18651.

Township of Rice

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Maps are available for inspection at the Rice Township Building, 3000 Church Road, Mountain Top, PA 18707.

Township of Ross

Maps are available for inspection at the Ross Township Building, 72 Broadway Road, Sweet Valley, PA 18656.

Township of Salem

Maps are available for inspection at the Salem Township Building, 38 Bomboy Lane, Berwick, PA 18603.

Township of Union

Maps are available for inspection at the Union Township Building, 21 Municipal Road, Shickshinny, PA 18655.

Township of Wright

Maps are available for inspection at the Wright Township Building, 321 South Mountain Boulevard, Mountain Top, PA 18707.

Vernon County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1214

Mississippi River	Approximately 185 feet upstream of the Crawford County boundary.	+633	Unincorporated Areas of Vernon County, Village of De Soto, Village of Genoa, Village of Stoddard.
	Approximately 2.75 miles downstream of the La Crosse County boundary.	+638	
West Branch Baraboo River	Approximately 272 feet downstream of the West Branch Baraboo River Split Flow 2 confluence.	+932	City of Hillsboro, Unincorporated Areas of Vernon County.
	At Sebranek Lane	+966	
West Branch Baraboo River Split Flow 2.	Approximately 704 feet downstream of the West Branch Baraboo River confluence.	+931	City of Hillsboro, Unincorporated Areas of Vernon County.
	At the West Branch Baraboo River confluence	+932	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Hillsboro

Maps are available for inspection at 123 Mechanic Street, Hillsboro, WI 54634.

Unincorporated Areas of Vernon County

Maps are available for inspection at 400 Courthouse Square, Viroqua, WI 54665.

Village of De Soto

Maps are available for inspection at 115 South Houghton Street, De Soto, WI 54624.

Village of Genoa

Maps are available for inspection at 111 Main Street, Genoa, WI 54632.

Village of Stoddard

Maps are available for inspection at 180 North Main Street, Stoddard, WI 54658.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: September 27, 2012.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2012–26996 Filed 11–5–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC333

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Western Regulatory Area of the Gulf of Alaska Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl gear and hook-and-line catcher/processors (C/Ps) to vessels using pot gear in the Western Regulatory Area of the Gulf of Alaska management area (GOA). This action is necessary to allow the 2012 total allowable catch of Pacific cod in the Western Regulatory Area of the GOA to be harvested.

DATES: Effective November 1, 2012, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2012.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Gulf of Alaska 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 2012 Pacific cod total allowable catch specified for catcher vessels using trawl gear in the Western Regulatory Area of the GOA is 7,802 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012) and reallocation on September 1, 2012 (77 FR 54838, September 6, 2012). The 2012 Pacific cod total allowable catch specified for hook-and-line C/Ps in the Western Regulatory Area of the GOA is 4,100 mt as established by the final 2012 and 2013 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012). The Administrator, Alaska Region (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 1,400 mt and hook-and-line C/Ps will not be able to harvest 600 mt of the 2012 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(A). In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that the pot vessels currently have the capacity to harvest this excess allocation and reallocates 2,000 mt to vessels using pot gear in the Western Regulatory Area of the GOA.

The harvest specifications for Pacific cod in the Western Regulatory Area of the GOA included in the final 2012 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012) are revised as follows: 6,402 mt for catcher vessels using trawl gear, 3,500 mt for hook-and-line C/Ps and 9,869 mt for vessels using pot gear.

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 reallocation of Pacific cod specified from catcher vessels using trawl gear and hook-and-line C/Ps to vessels using pot gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 31, 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: November 1, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–27045 Filed 11–1–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

RIN 0648–XA500

North Pacific Fishery Management Council; Essential Fish Habitat Amendments

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

ACTION: Notice of agency decision.

SUMMARY: NMFS announces approval of Amendment 98 to the Fishery Management Plan (FMP) for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI Groundfish FMP); Amendment 90 to the FMP for Groundfish of the Gulf of Alaska (GOA Groundfish FMP); Amendment 40 to the FMP for Bering Sea/Aleutian Islands King and Tanner Crabs (BSAI Crab FMP); Amendment 15 to the FMP for the Scallop Fishery off Alaska (Scallop FMP); and Amendment 1 to the FMP for Fish Resources of the Arctic Management Area (Arctic FMP). These amendments update the existing essential fish habitat (EFH) provisions in the FMPs based on a 5-year EFH review. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act, the FMPs, and other applicable laws.

DATES: The amendments were approved on October 31, 2012.

ADDRESSES: Electronic copies of the Final EFH 5-year Review for 2010

Summary Report, the Environmental Assessment prepared for this action and the amendments may be obtained from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah Ellgen, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP amendment, immediately publish a notice in the **Federal Register** announcing that the amendment is available for public review and comment.

On August 8, 2012, NMFS published the notice of availability for the amendments, with a comment period that ended on October 9, 2012 (77 FR 47356). NMFS did not receive any comments on these proposed amendments.

NMFS determined that these amendments are consistent with the Magnuson-Stevens Act and other applicable laws and approved the amendments on October 31, 2012. The notice of availability contains additional information on this action. No changes to Federal regulations are necessary to implement these FMP amendments.

NMFS and regional fishery management councils must describe and identify EFH in FMPs. The Magnuson-Stevens Act defines EFH as ''those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.'' The FMPs contain various EFH components, including the requirement to review EFH every 5 years.

In 2009 and 2010, a 5-year EFH review was conducted for the North Pacific Fishery Management Council (Council), and the results of this review are documented in the Final EFH 5-year Review for 2010 Summary Report (see **ADDRESSES**). Based on the 5-year review and the summary report, the Council identified various elements of the EFH FMP text that merited revision. EFH revisions to the FMP for the Salmon Fisheries in the EEZ off the Coast of Alaska (Salmon FMP), Amendment 11, were proposed with Amendments 10 and 12 to the Salmon FMP (77 FR 19605, April 2, 2012). The Secretary of Commerce approved Amendments 10, 11, and 12 to the Salmon FMP on June 29, 2012.

The five amendments addressed by this notice revise the following FMP components for EFH:

- The EFH provisions of the BSAI and GOA Groundfish FMPs for 24 groundfish species or complexes.
- The EFH provisions of the BSAI Crab FMP for five crab species or complexes.
- The EFH provisions of the Scallop FMP for weathervane scallop.
- The EFH conservation recommendations for non-fishing activities in all five FMPs.
- The timeline for considering habitat areas of particular concern from 3 years to 5 years in all five FMPs.
- The research objectives for EFH in the four FMPs subject to the 2010 EFH 5-year review (excludes the Arctic FMP).

The details of these revisions are in each amendment (see **ADDRESSES**).

The 5-year review concluded that no change to the 2005 EFH EIS conclusions on the evaluation of fishing effects on EFH was warranted based on information from 2005 through 2010.

An Environmental Assessment was prepared for the amendments that describe the EFH background, the purpose and need for action, the EFH alternatives, and the environmental, social, and economic impacts of the alternatives (see **ADDRESSES**). These amendments improve fisheries management by updating EFH provisions in the FMPs with the best available information.

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

Dated: November 1, 2012.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2012–27075 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 215
Tuesday, November 6, 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.

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1238

RIN 2590–AA47

Stress Testing of Regulated Entities

AGENCY: Federal Housing Finance Agency.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On October 5, 2012, the Federal Housing Finance Agency (FHFA) published in the **Federal Register** a notice of proposed rulemaking for public comment concerning stress testing of the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the twelve Federal Home Loan Banks (Banks) as required by section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The comment period was to end on November 4, 2012 (the 30th day after publication of the proposal in the **Federal Register**). This document extends the comment period by an additional 30 days, through and including December 4, 2012, to allow the public additional time to comment on the proposed rule.

DATES: Written comments must be received on or before December 4, 2012. For additional information, see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590–AA47, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by email to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by FHFA. Please include ''RIN 2590–AA47'' in the subject line of the message.
- *Email:* Comments to Alfred M. Pollard, General Counsel may be sent by email to *RegComments@fhfa.gov.* Please include ''RIN 2590–AA47'' in the subject line of the message.
- *U.S. Mail, United Parcel Service, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA47, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA47, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Naa Awaa Tagoe, Senior Associate Director, Office of Financial Analysis, Modeling and Simulations, (202) 649–3140, *naaawaa.tagoe@fhfa.gov;* Fred Graham, Associate Director, Risk Modeling and Market Analysis, (202) 649–3500, *fred.graham@fhfa.gov;* or Mark D. Laponsky, Deputy General Counsel, Office of General Counsel, (202) 649–3054 (these are not toll-free numbers), *mark.laponsky@fhfa.gov.* The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION: On October 5, 2012, FHFA published for comment in the **Federal Register** a proposed rule, and invited comments. *See* 77 FR 60948. The comment period for the proposed rule was originally scheduled to close on November 4, 2012 (the 30th day after the date of publication); but, FHFA determined to extend the comment period an additional 30 days, changing the deadline for submitting comments on the proposed rule from November 4, 2012 to December 4, 2012.

Dated: October 31, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–27024 Filed 11–5–12; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1180; Directorate Identifier 2012–CE–032–AD]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation (HBC) Models 58, 58TC, 58P, 95C55, E55, and 56TC airplanes. This proposed AD was prompted by reports of elevator balance weights becoming loose or failing because the balance weight material was under strength and did not meet material specifications. This proposed AD would require inspections of elevator balance weights and replacement of defective elevator balance weights. We are proposing this AD to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by December 21, 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 Hawker Beechcraft Corporation, B091–A04, 10511 E. Central Ave., Wichita, Kansas 67206; telephone: 1 (800) 429–5372 or (316) 676–3140; fax: (316) 676–8027; email: *tmdc@hawkerbeechcraft.com;* or Internet: *http://www.hawkerbeechcraft.com/*

customer_support/technical_and_field_support/. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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: Steven E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; fax: (316) 946–4107; email: *steven.potter@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–2012–1180; Directorate Identifier 2012–CE–032–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

We received reports of elevator balance weights becoming loose or failing on Hawker Beechcraft Model 58 airplanes. The balance weight material was under strength and did not meet the material specification requirements. The balance weight looseness and/or failure could reduce the flutter speed and lead to loss of control.

Relevant Service Information

We reviewed Hawker Beechcraft Mandatory Service Bulletin SB 55–4089, Revision 1, dated February, 2012. Hawker Beechcraft Mandatory Service Bulletin SB 55–4089, Revision 1, dated February, 2012, describes procedures for inspection and replacement of the elevator balance weight assembly.

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 designs.

Proposed AD Requirements

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

Differences Between the Proposed AD and the Service Information

The service information specifies an inspection of the elevator balance weight with an optional replacement. This proposed AD requires that the elevator balance weight be replaced within 200 hours time-in-service (TIS) after the effective date of this proposed AD, with a 100-hour TIS inspection before the replacement.

Costs of Compliance

We estimate that this proposed AD affects 343 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of the elevator balance weight.	.5 work-hour × $85 per hour = $42.50	Not applicable	$42.50	$14,577.50
Replacement of elevator balance weight.	1 work-hour × $85 per hour = $85	$300	385	132,055

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

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):

Hawker Beechcraft Corporation: Docket No. FAA–2012–1180; Directorate Identifier 2012–CE–032–AD.

(a) Comments Due Date

We must receive comments by December 21, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Hawker Beechcraft Corporation (HBC) airplanes, certificated in any category:

(1) Model 58, serial numbers TH–1768 through TH–2110; and

(2) Models 58, 58TC, 58P, 95C55, E55, and 56TC that are equipped with elevator balance weight assemblies purchased between January 1, 1996, and December 31, 2005.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 2730: Elevator Balance Weight.

(e) Unsafe Condition

This AD was prompted by reports of reports of elevator balance weights becoming loose or failing because the balance weight material was under strength and did not meet material specifications. We are issuing this AD to prevent the elevator balance weights from becoming lose or failing, which could result in reduced flutter speed and lead to loss of control.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done, following the instructions in Hawker Beechcraft Mandatory Service Bulletin SB 55–4089, Revision 1, dated February, 2012.

(g) Inspection of Elevator Balance Weight

Before further flight after the effective date of this AD and thereafter at intervals not to exceed 100 hours time-in-service (TIS) until the replacement required by this AD is done, inspect the elevator balance weights for looseness, failure, and/or working (smoking) fasteners and inserts.

(h) Replacement of Elevator Balance Weight

(1) Replace the defective elevator balance weight with an airworthy balance weight as specified in Hawker Beechcraft Mandatory Service Bulletin SB 55–4089, Revision 1, dated February, 2012, at whichever of the following occurs first:

(i) Before further flight after any inspection required by paragraph (g) of this AD where any looseness, failure, and/or working (smoking) fasteners and inserts are found; or,

(ii) Within the next 200 hours TIS after the effective date of this AD.

(2) Replacement of the elevator balance weights with airworthy elevator balance weights terminates the 100-hour inspection requirement in paragraph (g) of this AD.

(3) If only one elevator balance weight is replaced before 200 hours TIS after the effective date of this AD, then the other elevator balance weight is subject to the repetitive inspections until the replacement required by paragraph (h)(1) of this AD.

(i) Special Flight Permit

Special flight is permitted with the following limitations: Maximum structural cruising speed (V_{no}) = Design Speed for maximum gust intensity (V_b) = 195 Knots Calibrated Airspeed (KCAS), or $V_{no} = V_b$ = 195KCAS. This special flight is not allowed in turbulent weather conditions and the duration of this flight should not be more than a total of 10 t hours TIS.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Wichita 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.

(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.

(k) Related Information

(1) For more information about this AD, contact Steven E. Potter, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4124; fax: (316) 946–4107; email: *steven.potter@faa.gov.*

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, B091–A04, 10511 E. Central Ave., Wichita, Kansas 67206; telephone: 1 (800) 429–5372 or (316) 676–3140; fax: (316) 676–8027; email: *tmdc@hawkerbeechcraft.com;* or Internet: *http://www.hawkerbeechcraft.com/customer_support/technical_and_field_support/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on October 30, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27052 Filed 11–5–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM12–17–000]

Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations to provide optional notice procedures for processing rate filings by those natural gas pipelines that fall under the Commission's jurisdiction pursuant to the Natural Gas Policy Act of 1978 or the Natural Gas Act. An intrastate pipeline may elect to use these procedures for approval of a filing pursuant to the Commission's regulations. Under these procedures, if there is no protest to the filing as determined under this proposal, the filing would be deemed approved without a Commission order. The proposed rule would result in regulatory certainty and a reduction of regulatory burdens.

DATES: Comments are due December 6, 2012.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- *Electronic Filing through: http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures section of this document

FOR FURTHER INFORMATION CONTACT:

David Tishman (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8515, *David.Tishman@ferc.gov.*
James Sarikas (Technical Information), Office of Energy Market Regulation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6831, *James.Sarikas@ferc.gov.*

SUPPLEMENTARY INFORMATION:

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141 FERC ¶ 61,037

(October 18, 2012)

1. The Commission proposes new optional notice procedures which intrastate pipelines may elect to use when filing proposed rates or operating conditions pursuant to § 284.123 of the Commission's regulations.[1] Section 284.123 applies to filings by: (1) Intrastate pipelines providing interstate services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) [2] and (2) Hinshaw[3] pipelines providing interstate services subject to the Commission's Natural Gas Act (NGA) jurisdiction pursuant to blanket certificates issued under § 284.224 of the Commission's regulations.[4] If there is no protest to a filing made under these notice procedures, the filing would be deemed approved without a Commission order. The Commission finds that the new procedures will result in regulatory certainty and a reduction of regulatory burdens on intrastate pipelines.

I. Background

2. NGPA section 311 authorizes the Commission to allow intrastate pipelines to transport gas ''on behalf of'' interstate pipelines or local distribution companies served by interstate pipelines ''under such terms and conditions as the Commission may prescribe.'' [5] NGPA section 601(a)(2) exempts transportation service authorized under NGPA section 311 from the Commission's NGA jurisdiction. Congress adopted these provisions to eliminate the regulatory barriers between the intrastate and interstate markets and to promote the entry of section 311 pipelines into the interstate market. Shortly after the adoption of the NGPA, the Commission authorized Hinshaw pipelines to apply for NGA section 7 certificates authorizing them to transport gas in interstate commerce in the same manner as section 311 pipelines may do under NGPA section 311.[6]

3. Subpart C of the Commission's Part 284 open access regulations (18 CFR 284.121–126) implements the provisions of NGPA section 311 concerning transportation by intrastate pipelines. NGPA section 311 provides that the rates of intrastate pipelines performing transportation service under the NGPA shall be fair and equitable. Section 284.123 of the regulations provides procedures for section 311 and Hinshaw pipelines to establish fair and equitable rates for interstate services.

4. Section 284.123(b) allows intrastate pipelines an election of the methodology upon which to base their rates for interstate services. Section 284.123(b)(1) permits an intrastate pipeline to elect to base its rates on the methodology used by the appropriate state regulatory agency (A) to design rates to recover transportation or other relevant costs included in a then effective firm sales rate for city-gate service on file with the state agency; or (B) to determine the allowance permitted by the state agency to be included in a natural gas distributor's rates for city-gate natural gas service. Section 284.123(b)(1) also permits an intrastate pipeline to use the rates contained in one of its then effective transportation rate schedules for intrastate service on file with the appropriate state regulatory agency which the intrastate pipeline determines covers service comparable to service under Subpart C of Part 284.

5. If the intrastate pipeline does not make an election under paragraph (b)(1) of § 284.123, § 284.123(b)(2) requires that it ''apply for Commission approval, by order, of the proposed rates and charges'' pursuant to the procedures in that paragraph. Section 284.123(b)(2)(i) provides for the pipeline to file a petition for approval of the proposed rates and charges, as well as information showing the proposed rates and charges are fair and equitable. Upon filing the petition for approval, the intrastate pipeline is permitted to commence the transportation service and charge and collect the proposed rate, subject to refund. Section 284.123(b)(2)(ii) provides that the rate proposed in the application will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for providing similar transportation service, unless within the 150 day period after the date on which the Commission received a filed application, the Commission either extends the time for action, or institutes a proceeding in which all interested parties will be afforded an opportunity for written comments and for the oral presentation of views, data, and arguments. The Commission has extended this 150 day period when necessary, for example, to allow settlement in contested proceedings or institute proceedings in complex cases.

6. Section 284.123(e) requires that, within thirty days of commencement of a new service, any intrastate pipeline that engages in transportation arrangements under Subpart C of Part 284 must file with the Commission a statement that includes the pipeline's interstate rates, the rate election made pursuant to § 284.123(b) of that section, and a description of how the pipeline will engage in these transportation arrangements, including operating conditions, such as gas quality standards and financial viability of the shipper. This statement is generally referred to as the pipeline's ''Statement of Operating Conditions.'' Section 284.123(e) also requires that, if the pipeline changes its operations, rates, or rate election, it must amend the statement and file such amendments no later than thirty days after commencement of the change in operations or the change in rate election.

7. As part of its overall, more light-handed regulation of section 311 and

[1] 18 CFR 284.123.

[2] 15 U.S.C. 3372.

[3] Section 1(c) of the NGA exempts from the Commission's NGA jurisdiction pipelines which transport gas in interstate commerce if (1) they receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the pipeline is regulated by a state Commission. This exemption is referred to as the Hinshaw exemption after the Congressman who introduced the bill amending the NGA to include § 1(c). *See ANR Pipeline Co.* v. *Federal Energy Regulatory Comm'n,* 71 F.3d 897, 898 (1995) (briefly summarizing the history of the Hinshaw exemption).

[4] 18 CFR 284.224.

[5] 15 U.S.C. 3371(c).

[6] *Certain Transportation, Sales and Assignments by Pipeline Companies not Subject to Commission Jurisdiction Under Section 1(c) of the Natural Gas Act,* Order No. 63, FERC Stats. & Regs. ¶ 30,118, at 30,824–825 (1980).

Hinshaw pipelines, the Commission has established a policy of requiring a periodic review of the rates of both types of pipelines. The Commission has held that, because these pipelines are not subject to the same reporting requirements or level of rate review as interstate pipelines, a periodic review of the rates of section 311 and Hinshaw pipelines is necessary to ensure that those rates remain fair and equitable. In Order No. 735, the Commission modified its previous triennial rate review policy in order to decrease the frequency of review from three to five years from the date the approved rates took effect.[7] While the periodic rate review requirement is not part of the Commission's regulations, the Commission has consistently imposed that requirement in its orders approving each rate filing by an intrastate pipeline. The Commission imposes this rate requirement, both when the intrastate pipeline has chosen to elect a state-based rate pursuant to § 284.123(b)(1) or has proposed a rate for a Commission-approved rate pursuant to § 284.123(b)(2).[8]

II. Discussion

A. Optional Notice Procedure

8. In an effort to reduce burdens on regulated entities, the Commission is proposing to add a new optional notice procedure under which section 311 and Hinshaw pipelines could seek approval of proposed rates or operating conditions without the need for a Commission order. Under this procedure, the intrastate pipeline's filing would be deemed approved without any order of the Commission, if the filing is not protested within a specified period after notice of the filing or if any protests are resolved during a reconciliation period. This optional procedure would be included in § 284.123(g) of our regulations.

9. The Commission is taking this action as part of its commitment to continually review its regulations and streamline or eliminate requirements that impose an unnecessary burden on regulated entities. The Commission believes that this notice procedure would provide an expedited and less burdensome method of processing filings by section 311 and Hinshaw pipelines which present few, if any, contested issues. Many of the intrastate pipeline companies filing rates and/or statements of operating conditions pursuant to § 284.123 are small and have few interstate shippers. Discount rate agreements are common, with the result that often the pipeline performs most of its interstate services at rates which are discounted substantially below its maximum rates for such services. Most pipeline filings under § 284.123 are not protested by any shipper. If a rate filing is protested, the protests often raise issues which are relatively amenable to settlement. The proposed optional notice procedure would permit approval of uncontested filings without the need for any Commission order upon expiration of a 60-day notice period (or other period established by the Secretary of the Commission for a particular filing). If a protest were filed within the notice period, proposed § 284.123(g) provides for an additional 30-day reconciliation period to resolve contested filings without the need for the parties to file a formal settlement offer pursuant to the Commission's settlement rules in § 385.601, *et seq.*[9] or a Commission order on the pipeline's proposal.

10. Currently our regulations permit similar prior notice blanket certificate procedures for interstate pipelines in § 157.205. That program has been in place for over three decades and has significantly reduced regulatory burden and provides pipelines certainty with regard to the disposition of their applications.[10] The Commission believes that proposed § 284.123(g) would similarly lessen regulatory burdens, provide increased regulatory certainty, and create an improved framework in which to achieve settlement of contested cases.

11. The optional notice procedure in proposed § 284.123(g) would operate as follows: Within ten days after a filing by an intrastate pipeline pursuant to the optional notice procedure, the Secretary of the Commission would issue a notice of the filing, which would be published in the **Federal Register**. That notice would provide a deadline for interventions and initial comments fourteen days after the date of the filing and for final comments and protests sixty days after the date of the filing or such other date established by the Secretary of the Commission. As proposed, any person or the Commission's staff is permitted to file a protest prior to the deadline. If no protest is filed within the time allowed, the filing would be deemed approved without a Commission order, upon expiration of the time for filing protests, unless the intrastate pipeline has withdrawn, amended, or modified its filing or the filing is rejected prior to that date.

12. If a protest is filed, proposed § 284.123(g)(5) allows a reconciliation period for negotiations in a structured process to promote settlement of contested cases. Specifically, this section would permit the intrastate pipeline, the person who filed the protest in accordance with proposed § 284.123(g)(4), any intervenors, and staff thirty days from the deadline for protests to the pipeline's filing, to resolve the protest, and to convene informal settlement conferences to assist in resolving the protest. If all protests to the filing are withdrawn pursuant to proposed paragraph (g)(6) by the end of the reconciliation period, the filing would be deemed approved. Alternatively, proposed paragraph (g)(7) permits the pipeline to amend or modify a tariff record in order to resolve concerns raised in a protest. Proposed paragraph (g)(7) provides that such a filing will toll the notice period established under paragraph (g)(3) of this section for the original filing, and the Secretary of the Commission will issue a notice establishing new deadlines for comments and protests for the entire filing pursuant to paragraph (g)(3). The intrastate pipeline may request a deadline for protests less than 60 days after the date of the filing. If there are no protests to the amendment or modification and any protests to the entire filing which have been filed are withdrawn, the amended filing would be deemed approved as of the day after the new deadline for protests established by the Secretary.

13. If a filing is still contested after the above procedures are completed, the filing would not be deemed approved and, within sixty days from the deadline for filing protests, the Commission would establish procedures to resolve the proceeding. The 150-day period in existing § 284.123(b)(2)(ii) under which filings are deemed approved unless the Commission acts within that period does not apply to filings pursuant to the new notice procedures.

14. While the proposed rules would establish a reconciliation period to promote settlement of protested filings, compliance with the Commission's rules regarding off-the-record communications in § 385.2201 would be required. Under the general rule set forth in § 385.2201(b), in any proceeding where an intervenor disputes any material issue resulting in a contested

[7] *Contract Reporting Requirements of Intrastate Natural Gas Companies,* Order No. 735, 75 FR 29,404, (May 26, 2010) FERC Stats. & Regs. ¶ 31,310, at P 96 (2010), *order on reh'g,* Order No. 735–A, 75 FR 80,685 (Dec. 23, 2010), FERC Stats. & Regs. ¶ 31,318, (2010).

[8] Order No. 735 FERC Stats. & Regs. ¶ 31,310 at P 92 and cases cited.

[9] 18 CFR 385.601, *et seq.* (2012).

[10] *Interstate Pipeline Certificates for Routine Transactions,* Order No. 234, FERC Stats & Regs. ¶ 30,368 (1982).

proceeding, no person outside the Commission shall make or knowingly cause to be made to a decisional employee, and no decisional employee shall make or knowingly cause to be made to any person outside the Commission, any off-the-record conversation, except off-the-record communications exempted by § 385.2201(e). Therefore, under the Commission's proposed revisions to § 284.123, when an intervenor disputes any material issue in the filings by intrastate pipelines the rules governing off-the-record conversations in § 385.2201 would be applicable.

15. The Commission is also adding procedures to further streamline the processing of these filings. The Director of the Office of Energy Market Regulation or his designee is required pursuant to paragraph (g)(2) to reject within seven days of the date of the filing any filing which patently fails to comply with the provisions of §§ 284.123(e) or 284.123(f), without prejudice to the intrastate pipeline's refiling a complete application. If such filing was required by § 284.123, it must be refiled within fourteen days of the date of the rejection.

16. The protestor may withdraw a protest under proposed paragraph (g)(6) by submitting written notice of withdrawal to the Secretary of the Commission pursuant to § 385.216 of the Commission's regulations and serving a copy on the intrastate pipeline, any intervenors, and any other person who has filed a motion to intervene in the proceeding. If any protest is filed within the time allowed for protests and is subsequently withdrawn under proposed paragraph (g)(6), the filing by the intrastate pipeline would be deemed approved effective upon the later of the day after the deadline for filing protests, if there are no other protests to the filing, or the day after the withdrawal of all protests unless the intrastate pipeline withdraws, amends, or modifies its filing or the filing is rejected in accordance with this paragraph prior to that date.

17. Under proposed paragraphs (g)(10) and (h) an intrastate pipeline may file to withdraw its filing prior to Commission action. Because § 284.123(b)(2)(i) permits an intrastate pipeline to commence collecting a proposed rate subject to refund upon making its filing, the pipeline must state in its withdrawal motion that any amounts collected subject to refund in excess of the rates authorized by the Commission will be refunded with interest, and that it will file a refund report. The refunds must be made within sixty days of the date the withdrawal motion becomes effective. A filing that is withdrawn will not fulfill the requirements under proposed paragraph (g)(8) for approval of a filing.

B. Periodic Rate Review of the Rates and Charges of Intrastate Pipelines

18. The Commission has a policy of requiring a review of the rates of both section 311 and Hinshaw pipelines every five years. While the periodic rate review requirement is not part of the Commission's existing regulations, the Commission has consistently imposed that requirement in its orders approving each rate filing by an intrastate pipeline. The proposed optional notice procedures provide for approval of the filing without a Commission order. Therefore, the Commission proposes in § 284.123(g)(9) to require that a NGPA section 311 intrastate pipeline whose rates are deemed approved under the optional notice procedures file an application for rate approval under § 284.123 on or before the date five years following the date it filed the application for approval of the rates pursuant to § 284.123(g). Similarly, a Hinshaw pipeline whose rates are deemed approved under § 284.123(g) would be required to file either (1) cost and throughput data sufficient to allow the Commission to determine whether any change to the pipeline's rates should be ordered pursuant to section 5 of the Natural Gas Act or (2) a petition for rate approval pursuant to § 284.123, on or before the date five years following the date it filed the application for approval of rates pursuant to § 284.123(g).[11]

19. Under the Commission's proposal, the periodic rate review in our regulations would only be applicable when intrastate pipelines file under these proposed procedures in § 284.123(g). Therefore, the overall regulatory burden for the proposed procedures is less than current procedures for rate approval.

C. Withdrawal Procedures

20. The Commission proposes in § 284.123(h) to codify the procedures for section 311 and Hinshaw pipelines to withdraw any filing under § 284.123 in its entirety prior to its approval, including filings made under the existing procedures in § 284.123. Currently, the practice would require a request to withdraw a filing to be filed under the Commission's general rules of practice and procedure. Because § 284.123(b)(2)(i) permits an intrastate pipeline to commence collecting a proposed rate subject to refund upon making its filing, proposed § 284.123(h)(1) would require the pipeline to acknowledge that any amounts collected subject to refund in excess of the rates authorized the Commission will be refunded with interest and a refund report will be filed. The refunds must be made within sixty days of the date the withdrawal motion becomes effective. A shipper will have 15 days to respond to the pipeline's filing. Section 284.123(h)(2) would make the pipeline's withdrawal of its filing effective at the end of 15 days from the date of filing the withdrawal motion, if no opposition to the motion is filed within that period and the Commission does not issue an order disallowing the motion. This proposal would add regulatory certainty as to the Commission's treatment of withdrawal filings, and ensure that the pipeline will know its obligations if it withdraws a filing.

III. Information Collection Statement

21. The Paperwork Reduction Act (PRA)[12] requires each federal agency to seek and obtain Office of Management and Budget (OMB) approval before undertaking a collection of information directed to ten or more persons or contained in a rule of general applicability.[13] The OMB's regulations implementing the PRA require approval of certain information collection requirements imposed by agency rules.[14] Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

22. The Commission is submitting these proposed reporting and recordkeeping requirements to OMB for its review and approval. The Commission solicits comments on the proposed modifications, the accuracy of burden estimates, ways to enhance the

[11] The courts have held that the Commission cannot require interstate pipelines subject to its NGA jurisdiction to make new rate filings under NGA section 4. *Public Service Commission of New York* v. *FERC,* 866 F.2d 487 (DC Cir. 1989). *Consumers Energy Co.* v. *FERC,* 226 F.3d 777 (6th Cir. 2000). Because the Commission regulates interstate services performed by Hinshaw pipelines under the NGA, the Commission gives them the option of filing a cost and revenue study every five years, instead of a new petition for rate approval. *Consumers Energy Co.,* 94 FERC ¶ 61,287 (2001).

[12] 44 U.S.C. 3501–3520.

[13] OMB's regulations at 5 CFR 1320.3(c)(4)(i) require that ''[a]ny recordkeeping, reporting, or disclosure requirement contained in a rule of general applicability is deemed to involve ten or more persons.''

[14] 5 CFR 1320.

quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden.

23. The Commission's estimates of the average annual public reporting burden imposed on the section 311 and Hinshaw intrastate pipelines of making filings for rate approval under § 284.123 will not change, except for an estimated burden of only 12 hours per year for the new withdrawal filing requirements as a result of the proposed rule in Docket No. RM12–17–000. Following is a table showing the existing burden estimate, a relabeling to reflect the new filing option, and the additional withdrawal procedures specifically tailored for intrastate pipelines.

FERC–549 (OMB Control No. 1902–0086)	Number of respondents (a)	Burden hours per respondent per year (1 filing/year) (b)	Total annual burden hours (a × b)
Existing Inventory:			
Rates and Charges for Intrastate Pipelines (18 CFR 284.123(b) and (e))	67	12	804
Proposed in NOPR in RM12–17:			
Rates and Charges for Intrastate Pipelines (18 CFR 284.123(b), (e) and (g))	67	12	804
Withdrawal of Filing prior to Approval (18 CFR 284.123(h))	1	12	12
FERC–549 Total (Proposed)	67	12	816

Information Collection Costs: The Commission has reviewed the burdens imposed by this rulemaking. The Commission's review found that the proposed changes will not affect the burden on section 311 intrastate and Hinshaw pipelines of making an initial filing seeking approval of proposed rates or operating conditions pursuant to § 284.123. The preparation effort or the substance of a filing made pursuant to § 284.123(g) would be the same as for a filing made pursuant to existing §§ 284.123(b) and/or 284.123(e).

24. The Commission is also proposing a new withdrawal procedure for filings made prior to their approval to reflect the unique nature of the intrastate pipeline regulations that allow a pipeline to file for a rate change and begin charging the new rates prior to Commission approval. The proposed new § 284.123(h) regulation will reflect the regulatory process that addresses that unique rate implementation issue. The Commission believes it would add certainty to any intrastate pipeline making a withdrawal filing.

25. The proposed changes will primarily affect the post-filing process and cost. The changes will reduce overall cost and delay for stakeholders; however that post-filing burden is beyond the scope of requirements of the Paperwork Reduction Act. The new optional procedures will provide both intrastate pipelines and their shippers greater regulatory certainty and a simpler process without any change in the upfront burden of preparing and making a filing.

Title: FERC–549, NGPA Title III Transactions and NGA Blanket Certificate Transactions (OMB Control No. 1902–0086).

Action: Proposed revisions.

Respondents: Section 311 Intrastate and Hinshaw Natural Gas Pipelines.

Frequency of Responses: At least once every five years.

Need for Information: The Commission proposes adding a new optional notice procedure in § 284.123(g) which section 311 intrastate and Hinshaw pipelines could use when making a filing seeking approval of proposed rates or operating conditions pursuant to § 284.123. As proposed, an intrastate pipeline may choose to file using the current procedures pursuant to §§ 284.123(b) and 284.123(e), or may elect to file pursuant to the new procedure. Section 284.123(g) provides a shortened period for final approval of the proposed rates and operating conditions and authorization if no protest is filed within the time allowed and a reconciliation period of 30 days from the deadline for protests to resolve contested filings without the need for a Commission order on the pipeline's rate proposal.

26. In 18 CFR 284.123(h), the Commission also proposes to implement new regulations with respect to withdrawal of a filing prior to approval. The regulations provide more details about the rights and obligations of the intrastate pipeline and its shippers. These procedures would lessen regulatory costs, provide increased regulatory certainty, and result in an improved framework in which to achieve settlement of contested cases.

Internal Review: The Commission has reviewed the proposed changes and has determined that the changes are necessary. These requirements conform to the Commission's need for efficient information collection, communication, and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements.

27. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873]. Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0086, FERC–549, and Docket No. RM12–17 in your submission.

IV. Environmental Analysis

28. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[15] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[16] The actions proposed to

[15] *Regulations Implementing National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[16] 18 CFR 380.4.

be taken here fall within categorical exclusions in the Commission's regulations for rules that are corrective, clarifying or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[17] Therefore an environmental review is unnecessary and has not been prepared in this rulemaking.

V. Regulatory Flexibility Act

29. The Regulatory Flexibility Act of 1980 (RFA) [18] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The Commission identified two small entities as respondents to the requirements in the proposed rule.[19] As explained above, the Commission estimates that the proposed § 284.123(g) regulations will serve as a substitute for filings currently done pursuant to §§ 284.123(b) and (e), and § 284.123(h) provides regulatory certainty if a pipeline decides to withdraw its filing. The Commission estimates that intrastate pipelines will experience little if any change in regulatory burden associated with making their filings, and pipelines will be able to avoid certain costs and delays post-filing due to the new streamlined process. Accordingly, the Commission certifies that this rule will not have a significant impact on a substantial number of small entities and no regulatory flexibility analysis is required.

VI. Comment Procedures

30. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due December 6, 2012. Comments must refer to Docket No. RM12–17–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

31. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

32. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

33. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

34. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street NE., Room 2A, Washington DC 20426.

35. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

36. User assistance is available for eLibrary and the Commission's Web site during normal business hours from the Commission's Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirement.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 284, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for Part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717z, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.123 is amended by adding paragraphs (g) and (h) to read as follows:

§ 284.123 Rates and charges.

* * * * *

(g) *Election of Notice Procedures.* (1) *Applicability.* An intrastate pipeline filing for approval of rates, a statement of operating conditions, and any amendments or modifications thereto pursuant to this section may use the notice procedures in this paragraph. Any intrastate pipeline electing to use these notice procedures for a filing must clearly state its election to use these procedures on the first page of its filing. Such filing is approved and the rates deemed fair and equitable and not in excess of the amount that an interstate pipeline would be permitted to charge for similar transportation service if the requirements paragraph (g)(8) of this section have been fulfilled.

(2) *Rejection of filing.* The Director of the Office of Energy Market Regulation or his designee shall reject within 7 days of the date of filing a request which patently fails to comply with the provisions of paragraphs (e) or (f) of this section, without prejudice to the intrastate pipeline's refiling a complete application. If such filing was required by this section, that filing must be refiled within 14 days of the date of the rejection.

(3) *Publication of notice of filing.* The Secretary of the Commission shall issue a notice of the filing within 10 days of the date of the filing, which will then be published in the **Federal Register**. The notice shall designate a deadline for filing interventions, initial comments, final comments, and protests to the filing. The deadline for interventions and initial comments shall be 14 days after the date of the filing. The deadline for final comments and protests shall be 60 days after the date of the filing or such other date established by the Secretary of the Commission.

(4) *Protests.* (i) Any person or the Commission's staff may file a protest prior to the deadline for protests. Copies of the protest must be served on the

[17] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5) and 380.4(a)(27).

[18] 5 U.S.C. 601–612.

[19] The U.S. Small Business Administration's (SBA) Table of Small Business Size Standards is found in 13 CFR 121.201. SBA's updated version of the size standards (effective March 26, 2012, and available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*) defines a natural gas pipeline (contained in Subsector 486, Pipeline Transportation) as ''small'' when it has average annual receipts of $25,500,000 or less.

Secretary of the Commission and the intrastate pipeline.

(ii) Protests shall be filed with the Commission in the form required by Part 385 of this Chapter including a detailed statement of the protestor's interest in the filing and the specific reasons and rationale for the objection and whether the protestor seeks to be an intervenor.

(5) *Effect of protest.* If a protest is filed in accordance with paragraph (g)(4) of this section, then the intrastate pipeline, the person who filed the protest, any intervenors, and staff shall have 30 days from the deadline for filing protests established by the Secretary of the Commission in accordance with paragraph (g)(3) of this section, to resolve the protest, and to file a withdrawal of the protest pursuant to paragraph (g)(6) of this section. Informal settlement conferences may be convened by the Director of the Office of Energy Market Regulation or his designee during this 30 day period. If a protest is not withdrawn or dismissed by end of that 30 day period, the filing shall not be deemed approved pursuant to this paragraph. Within 60 days from the deadline for filing protests established by the Secretary of the Commission in accordance with paragraph (g)(3) of this section the Commission will establish procedures to resolve the proceeding.

(6) *Withdrawal of protests.* The protestor may withdraw a protest by submitting written notice of withdrawal to the Secretary of the Commission pursuant to § 385.216 and serving a copy on the intrastate pipeline, any intervenors, and any person who has filed a motion to intervene in the proceeding.

(7) *Amendments or modifications to tariff record prior to approval.* An intrastate pipeline may file to amend or modify a tariff record contained in the initial filing pursuant to the procedures under this paragraph (g) which has not yet been approved pursuant to paragraph (g)(8) of this section. Such filing will toll the notice period established in paragraph (g)(3) of this section and the Secretary of the Commission will issue a notice establishing new deadlines for comments and protests for the entire filing pursuant to paragraph (g)(3).

(8) *Final approval.* (i) If no protest is filed within the time allowed by the Secretary of the Commission under paragraph (g)(3) of this section, the filing by the intrastate pipeline is approved, effective on the day after time expires for filing protests unless, during that time, the intrastate pipeline withdraws, amends, or modifies its filing or the filing is rejected pursuant to this paragraph.

(ii) If any protest is filed within the time allowed by the Secretary of the Commission under paragraph (g)(3) of this section and is subsequently withdrawn before the end of the 30-day reconciliation period provided by paragraph (g)(5) of this section, the filing by the intrastate pipeline is approved effective upon the later of the day after the deadline for filing protests, if there are no other protests to the filing, or the day after the withdrawal of all protests unless the intrastate pipeline withdraws, amends, or modifies its filing or the filing is rejected, prior to that date.

(9) *Periodic rate review.* Rates of pipelines approved by the Commission pursuant to this paragraph are required to be periodically reviewed. Any intrastate pipeline with rates so approved must file an application for rate approval under this section on or before the date five years following the date it filed the application for authorization of rates pursuant to this paragraph. Any Hinshaw pipeline that has been a granted a blanket certificate under § 284.224 of this chapter and with rates approved pursuant to this paragraph must on or before the date five years following the date it filed the application for authorization of the rates pursuant to this paragraph either file cost, throughput, revenue and other data, in the form specified in § 154.313 of this chapter to allow the Commission to determine whether any change in rates is required pursuant to 5 of the Natural Gas Act or an application for rate authorization pursuant to this section.

(10) *Withdrawal of filing prior to approval.* A pipeline may, pursuant to paragraph (h) of this section, withdraw in its entirety a filing made pursuant to this paragraph (g) that has not been approved by filing a withdrawal motion with the Commission. A filing that is withdrawn will not fulfill the requirements under paragraph (g)(8) of this section.

(h) *Withdrawal of filing.* A pipeline may withdraw in its entirety a filing pursuant to this section that has not been approved by filing a withdrawal motion with the Commission.

(1) The withdrawal motion must state that any amounts collected subject to refund in excess of the rates authorized the Commission will be refunded with interest calculated and a refund report filed with the Commission in accordance with § 154.501 of this chapter. The refunds must be made within 60 days of the date the withdrawal motion becomes effective.

(2) The withdrawal motion will become effective, and the filing will be deemed withdrawn at the end of 15 days from the date of filing of the withdrawal motion, if no order disallowing the motion is issued within that period. If an answer in opposition is filed within the 15 day period, the withdrawal is not effective until an order accepting the withdrawal is issued.

[FR Doc. 2012–26748 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SATS No. TX–065–FOR; Docket ID: OSM–2012–0019]

Texas Regulatory Program

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

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

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes revisions to its regulations regarding: definitions; review of permit applications; criteria for permit approval or denial; commission review of outstanding permits; challenge of ownership or control and applicant/violator system procedures; identification of interests and compliance information; mining in previously mined areas; conditions of permits; revegetation standards; cessation orders; alternative enforcement; application approval and notice; permit revisions; permit renewals; transfer, assignment or sale of permit rights; and requirements for new permits for persons succeeding to rights granted under a permit. Texas intends to revise its program to be no less effective than the Federal regulations and improve operational efficiency.

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

DATES: We will accept written comments on this amendment until 4:00 p.m., c.d.t., December 6, 2012. If requested, we will hold a public hearing on the amendment on December 3, 2012. We will accept requests to speak at a hearing until 4:00 p.m., c.d.t. on November 21, 2012.

ADDRESSES: You may submit comments, identified by SATS No. TX–065–FOR, by any of the following methods:

- *Mail/Hand Delivery:* Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629.
- *Fax:* (918) 581–6419.
- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

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

Docket: For access to the docket to review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office or going to *www.regulations.gov.*

Alfred L. Clayborne, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 1645 South 101st East Avenue, Suite 145, Tulsa, Oklahoma 74128–4629, Telephone: (918) 581–6430, Email: *aclayborne@osmre.gov.*

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

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711–2967, Telephone: (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Alfred L. Clayborne, Director, Tulsa Field Office. Telephone: (918) 581–6430. Email: *aclayborne@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * * ; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15, and 943.16.

II. Description of the Proposed Amendment

By email dated February 14, 2012 (Administrative Record No. TX–701), Texas sent us an amendment (TX–060–FOR) to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas submitted the proposed amendment in response to a September 30, 2009, letter (Administrative Record No. TX–665) that OSM sent to Texas in accordance with 30 CFR 732.17(c) with additional changes submitted on its own initiative. The proposed rule was published, and its public comment period and opportunity for public hearing on the proposed amendment was announced in the **Federal Register** (77 FR 25949) on May 2, 2012. During our review of the amendment, we found several sections that were less effective than their counterpart Federal regulations. A list of the concerns was sent to Texas via a letter dated July 18, 2012 (Administrative Record No. TX–701.04). By letter dated August 09, 2012 (Administrative Record No. TX–702), Texas responded to the July 18, 2012, letter by withdrawing its amendment (TX–060–FOR) regarding ownership and control changes.

By letter dated August 09, 2012 (Administrative Record No. TX–702), Texas sent us a new amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). This amendment was a corrected version of its withdrawn amendment (TX–060–FOR) as discussed in the previous paragraph. Texas submitted this proposed amendment in response to a September 30, 2009, letter (Administrative Record No. TX–665) that OSM sent to Texas in accordance with 30 CFR 732.17(c) with additional changes submitted on its own initiative. Below is a summary of the changes proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

Texas proposes to revise its regulation at 16 Texas Administrative Code (TAC) at the following sections:

A. § 12.3 Definitions

Texas proposes to modify this section by revising, adding, or deleting language for the definitions of Applicant/Violator System; Control or controller; Knowing or knowingly; Lands eligible for remining; Own, owner, or ownership; Owned or controlled and owns and controls; Remining; Violation; Violation, failure, or refusal; Violation notice; and Willful or willfully.

B. § 12.100 Responsibilities

Texas proposes to remove the word ''renewal'' from the provision that places the burden on the applicant to establish that an application is in compliance with all the Commission's requirements.

C. § 12.116 Identification of Interests and Compliance Information (Surface Mining)

Texas proposes to delete language in this section regarding identification of interests and compliance information and replace it with new language regarding certifying and updating existing permit information, permit applicant and operator information, permit history information, property interest information, violation information, and commission actions.

D. § 12.155 Identification of Interests

Texas proposes to delete this section and incorporate the language into § 12.156 for efficiency.

E. § 12.156 Identification of Interest and Compliance Information (Underground Mining)

Texas proposes to add language to this section regarding identification of interests, specifically: certifying and updating permit application information, permit applicant and operator information, permit history information, property interest information, violation information, and commission actions.

F. § 12.206 Mining in Previously Mined Areas

Texas proposes to add new language regarding application requirements for operations on lands eligible for remining.

G. § 12.215 Review of Permit Applications

Texas proposes to add language requiring the entry and updating of data into AVS. Additionally, language is being added regarding the review of permit history, review of compliance history, and making a permit eligibility determination based on this information.

H. § 12.216 Criteria for Permit Approval or Denial

Texas proposes to add language stating that permits related to remining must contain lands eligible for remining, an identification of potential environmental and safety problems, and mitigation plans that address any potential environmental or safety problems.

I. § 12.225 Commission Review of Outstanding Permits

Texas proposes to add language regarding written findings and preliminary findings for improvidently issued permits. Additionally, changes are proposed regarding permit suspension and rescission timeframes and appeal rights.

J. § 12.234 Challenge of Ownership or Control, Information on Ownership and Control, and Violations, and Applicant/Violator System Procedures

Texas proposes to renumber its § 12.234 as § 12.235 and add new language to create a new § 12.234 regarding ownership and control challenges—specifically—the applicability, procedures, burden of proof, written agency decisions, and post-permit issuance information requirements.

K. § 12.395 Revegetation: Standards for Success (Surface Mining) and § 12.560 Revegetation: Standards for Success (Underground Mining)

Texas proposes to delete language in this section regarding liability periods and replace it with new language that is no less effective than the Federal regulations.

L. § 12.676 Alternative Enforcement

Texas proposes to add new language regarding alternative enforcement, specifically for general provisions, criminal penalties, and civil actions for relief.

M. § 12.677 Cessation Orders

Texas proposes to add new language requiring written notification to the permittee, the operator, and anyone listed or identified as an owner or controller of an operation, within 60 days of issuing a cessation order.

N. § 12.221 Conditions of Permits: Environment, Public Health, and Safety; § 12.239 Application Approval and Notice; § 12.226 Permit revisions; § 12.228 Permit Renewals: Completed Applications; § 12.232 Transfer, Assignment or Sale of Permit Rights: Obtaining Approval; and § 12.233 Requirements for New Permits for Persons Succeeding to Rights Granted Under a Permit

Texas proposes to make minor, nonsubstantial reference changes in these sections.

III. Public Comment Procedures

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

Electronic or Written Comments

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

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

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on November 21, 2012. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

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

Public Meeting

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

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

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

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At

that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 16, 2012.

Ervin J. Barchenger,

Regional Director, Mid-Continent Region.

[FR Doc. 2012–27086 Filed 11–5–12; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–XC165

Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Trawl Rationalization Program; Notice of Non-Whiting At-Sea Processing Prohibition Exemption

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

ACTION: Notice of availability of exemptions to the non-whiting at-sea processing prohibition.

SUMMARY: NMFS announces the receipt of applications for, and the issuance of, exemptions to the prohibition of at-sea processing for non-whiting groundfish caught in the Shorebased Individual Fishing Quota (IFQ) Program, a prohibition implemented as part of the trawl rationalization program.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, phone: 206–526–4656, fax: 206–526–6736, and email *jamie.goen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is accessible via the Internet at the Office of the Federal Register's Web site at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the Pacific Fishery Management Council's Web site at *http://www.pcouncil.org/.*

Background

In January 2011, NMFS implemented a trawl rationalization program, a catch share program, for the Pacific coast groundfish fishery's trawl fleet. The trawl rationalization program consists of an IFQ program for the shorebased trawl fleet (including whiting and non-whiting fisheries); and cooperative (coop) programs for the at-sea mothership and catcher/processor trawl fleets (whiting only).

The Shorebased IFQ Program includes a prohibition on processing non-whiting groundfish at sea, as specified in the Code of Federal Regulations (CFR) at 50 CFR 660.112(b)(1)(xii) and implemented through a final rule published in the **Federal Register** on December 15, 2010 (75 FR 78344). The prohibition was implemented to ensure that shoreside processing plants would continue to have access to groundfish landed in the Shorebased IFQ Program. The preamble to the proposed rule dated August 31, 2010 (75 FR 53380) further described the prohibition on processing at sea in the Shorebased IFQ Program.

Over 2011, the Pacific Fishery Management Council (Council) responded to public testimony and decided it had not intended to negatively impact any at-sea non-whiting processing operations that existed prior to announcement of the prohibition on processing at sea in the Shorebased IFQ Program. Therefore, the Council recommended and NMFS implemented an exemption from the prohibition on processing non-whiting groundfish at sea in the Shorebased IFQ Program through a final rule published on December 1, 2011 (76 FR 774725). For more background on the exemption, see the preamble to the proposed rule published on September 2, 2011 (76 FR 54888).

With the December 1, 2011 final rule (also called the trawl rationalization program improvement and enhancement (PIE) rule), NMFS implemented regulations providing a one-time opportunity for vessels to apply for an exemption from the prohibition on processing non-whiting groundfish at-sea in the Shorebased IFQ Program. Between January and March of 2012, NMFS completed the application and review process for an exemption from the prohibition, as provided for in Federal regulations at § 660.25(b)(6)(ii). Effective March 16, 2012, two vessels qualified for the exemption: F/V LAST STRAW and F/V MISS LEONA. The non-whiting at-sea processing exemption is associated with those specific vessels, not with the vessel owner's limited entry permit, and may not be transferred to any other vessel, vessel owner, or permit owner for any reason.

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

Dated: November 1, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–27070 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 77, No. 215

Tuesday, November 6, 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

Cancellation of Indianapolis Grain Inspection & Weighing Service, Inc. Designation; Selection of Interim Provider; Opportunity for Designation in the Indianapolis, IN Area; Correction

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice; correction.

SUMMARY: The USDA, Grain Inspection, Packers and Stockyards Administration published a document in the **Federal Register** on October 31, 2012, concerning persons or governmental agencies interested in providing official services in the area presently assigned to Indianapolis to submit an application for designation. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Eric Jabs, (816) 659–8408 or *Eric.J.Jabs@usda.gov.*

Correction

In the **Federal Register** of October 31, 2012, in FR Doc. 2012–26824, on page 65856, under section Opportunity for Designation make a correction to the ending date. Correct the ending date from ''December 31, 2016'' to show ''December 31, 2015''.

Dated: October 31, 2012.

Larry Mitchell,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 2012–27079 Filed 11–5–12; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Forest Service

San Bernardino National Forest, Mountaintop Ranger District, CA, Santa Ana Watershed Hazardous Fuels Reduction and Forest Health Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Mountaintop Ranger District, San Bernardino National Forest proposes to reduce fire risk and improve forest health within approximately 19,850 acres around the Barton Flats area of the upper Santa Ana Watershed under the authority of the Healthy Forests Restoration Act (HFRA) of 2003. To meet the primary purposes of providing for firefighter safety and community protection, it is proposed to create shaded fuelbreaks along private property boundaries adjacent to communities, along roads, and ridge tops that are strategically important as defensible fire-fighting zones. Outside of these fuelbreaks, it is proposed to reduce the potential for stand-replacing wildfire by reducing tree densities and removing excess fuels, while at the same time maintaining essential forest structure required by wildlife. The proposed action includes the long-term maintenance of the treatments proposed to meet the desired conditions.

DATES: Comments concerning the scope of the analysis must be received by December 6, 2012. The draft environmental impact statement is expected July 2013 and the final environmental impact statement is expected September 2013.

ADDRESSES: Send written comments to San Bernardino National Forest, 602 S. Tippecanoe Ave., San Bernardino, CA 92408. Comments may also be sent via email to *comments-pacificsouthwest-san-bernardino@fs.fed.us,* on the project Web site at *https://cara.ecosystem-management.org/Public/CommentInput?Project=24122,* or via facsimile to (909) 383–5770.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

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.

FOR FURTHER INFORMATION CONTACT: Tom Hall, Environmental Coordinator at *thall@fs.fed.us;* (909) 382–2905; or 602 S. Tippecanoe Ave., San Bernardino, CA 92408.

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: This project will be performed under the authority of, and must comply with, the Healthy Forests Restoration Act (HFRA) of 2003. This project qualifies under Title 1 of the HFRA because the project area is in Wildland-Urban Interface (WUI) as designated in the Mill Creek Canyon (2006), Angelus Oaks (2005), and Big Bear Valley (2006) Community Wildfire Protection Plans (CWPPs) and the San Bernardino National Forest Land Management Plan (2006); and the project reduces the risk of wildland fire to the quality of the municipal water supply for communities downstream in San Bernardino, Riverside, and Orange counties, California. The predecisional administrative review, ''objection'', process that was authorized under the HFRA will be implemented per 36 Code of Federal Regulations (CFR) 218 for this project.

Purpose and Need for Action

The probability of stand-replacing wildfire is high in much of the project area. No large communities occur within the project area, but thousands of recreationists use the area during summer and a number of communities occur just outside the project area, including Angelus Oaks to the west, and Big Bear Lake, Big Bear City, and other smaller communities to the north. Of major concern are the high concentrations of recreationists during the summer months, specifically organizational camps and recreational residence cabins on both NFS and private lands in the watershed, coupled with the limited ability to evacuate them quickly from the watershed in case of wildland fire. There is a high risk of accidental fire being started by the thousands of recreationists that occupy the watershed during summer, especially on weekends. There is a need to reduce the rate of fire spread throughout the watershed in order to provide for firefighter safety in the event

of a wildfire, protect the recreationists using the watershed, and protect the neighboring communities.

The watershed has experienced a range of fires in the past century; approximately 31 percent of the project area has burned. However, only about 1,700 acres have burned within the past 50 years. Some mechanical treatments, thinning, and prescribed burning have occurred in Barton Flats and in other areas within the watershed. Nevertheless, the lack of recent fuels reduction treatments and fires in much of the watershed, has resulted in forest conditions where the vegetation is denser, ladder fuels are present, and there are unnaturally high levels of woody material in some parts of the project area. The San Bernardino National Forest has experienced drought conditions in recent years, the forest conditions with unnaturally high levels of fuel loading are still evident. Extensive crown fires are now occurring in similar southern California forests because of accumulated surface fuels. There is a need to improve forest health within the watershed in order to improve stand composition and the overall watershed condition.

Many wildlife species occur within the project area, including Southwestern willow flycatcher and California spotted owl. California spotted owl forest habitat is characterized by high canopy cover, as well as greater within-stand vertical (e.g., tree regeneration layers, snags) and horizontal (e.g., downed woody material) heterogeneity. There is a need to protect wildlife habitat and improve forest health to help sustain wildlife habitat and complement ecological restoration of the watershed.

Proposed Action

Strategically, the proposed treatments would provide defensible zones for firefighting within WUI defense zones, and would break up fuel continuity in WUI threat zones. To meet the primary purposes of providing for firefighter safety and community protection, shaded fuelbreaks will be created or maintained along private property boundaries adjacent to communities and along roads and ridge tops that are strategically important as defensible fire-fighting zones. Shaded fuelbreaks provide firefighters a defensible space from which to carry out firefighting operations. Most shaded fuelbreaks in the project area will be about 600 feet wide. For the Sugarloaf fuelbreak and along private property boundaries, this width may be expanded to meet desired conditions. Most of the proposed fuelbreaks in the project area would be new fuelbreaks. However, the fuelbreaks along the Jenks Lake County Road, the Santa Ana River Road (Forest Road 1N45), and Highway 38 have already been established and this project would include the maintenance of those fuelbreaks so that they meet the desired conditions.

Treatment Level 1 is the most intensive treatment and would result in an open forest structure with no standing dead trees, down logs, or other fuels on the ground. Treatment Level 2 is a little less intensive and would occur as outer bands on both sides of most Treatment level 1 corridors, as well as within relatively narrow areas between Treatment Level 1 corridors. Forest structure would be opened, but not as extensively as in Treatment level 1. Treatment Level 3 includes treatments in areas outside of shaded fuelbreaks and habitat suitable for California spotted owls. The objective is to reduce the potential of stand-replacing fires. The focus of this objective is to break up the continuity of the canopy fuels that now exists and change fire behavior under the 90th percentile weather conditions, so that flame length and rates of spread are reduced. There are many areas with sensitive resources (e.g., heritage resources, rare plants, riparian areas, designated Critical Habitat, etc.) within the project area and they may fall within any treatment level. Design Features have been developed to protect those individual sites either through avoidance or through modification of the treatment at and around those areas. The project area also contains large amounts of habitat for the California spotted owl, including mapped nest stands, protected activity centers (PACs), home range core (HRC) areas, and suitable habitat. Treatment Level 4 is designed to protect habitat components and characteristics important to spotted owls while improving the fire behavior under some conditions.

When trees are thinned the residual slash (limbs, tops, etc) would be treated either by chipping, direct removal, or through hand or machine piling and burning. Wood slash piles would be burned, once the wood has dried, under controlled conditions that minimize smoke within the communities. Prescribed broadcast burns are proposed to reduce fuels in some areas and would serve to break up the continuity of the shrub and herbaceous fuels and down wood in these areas. In some of these areas, dead trees would be cut and piled or removed prior to burning. Prescribed broadcast burning may also be used after thinning has been conducted to reduce fine fuels. Broadcast burns would only occur when weather conditions provide for safe burning around adjacent communities.

The proposed action also includes reforestation/native plant restoration in treatment areas. Reforestation will be focused in disturbed areas such as landings but may also include fire scars and areas damaged by off-road vehicles, etc. The intent would be to enhance the restoration progress of those sites. Reforestation and native plant restoration units are not specifically identified in the Proposed Action maps but planting opportunities would be indentified during the implementation phase and could occur in any of the mapped treatment areas. Restoration would be done with native plant species from locally-collected seeds and would represent the historic species composition on the site.

A complete description of the proposed action and maps can be found at *http://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=24122* or can be requested from the project contact.

Possible Alternatives

A ''No Action'' alternative will be analyzed as a part of this project. Under this alternative no actions would be taken to reduce wildland fire behavior, protect communities and the municipal watershed, or improve firefighter safety and forest health at this time.

Responsible Official

The responsible Official will be the Mountaintop District Ranger, San Bernardino National Forest.

Nature of Decision To Be Made

The Responsible Official will decide whether or not to implement the action as proposed or an alternative way to achieve the desired outcomes.

Preliminary Issues

The Santa Ana Watershed Hazardous Fuels Reduction and Forest Health project was scoped for 30 days beginning on July 7, 2011 and a public fieldtrip was held on July 23, 2011. Based on the comments received on the project the issues were identified and will be analyzed for recreation, wildlife, fire behavior, hydrology and soils, and plants.

Significant issues included: the impacts to recreational residence tract cabins, impacts to California spotted owl habitat, the scale of treatments, and cumulative beneficial affects of treatments within the project.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. A public meeting will be held on Thursday, November 29, 2012 at 6–8 p.m. in the Big Bear Discovery Center located at 41374 North Shore Drive, Highway 38, Fawnskin, CA 92333.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Dated: October 26, 2012.

Scott Tangenberg,

Mountaintop District Ranger, San Bernardino National Forest.

[FR Doc. 2012–27030 Filed 11–5–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of the Record of Decision (ROD) for the Gulf Coast Pipeline Project

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: This notice represents the Record of Decision (ROD) regarding the Natural Resources Conservation Service's (NRCS's) decision to subordinate its rights, acquired under the Wetland Reserve Program, to allow the Gulf Coast Segment (Gulf Coast Pipeline Project) of the TransCanada Keystone Pipeline, LP to cross one NRCS held conservation easement in Fannin County, Texas associated with this approximately 480 mile pipeline from Cushing, Oklahoma, to Nederland, Texas. This is in accordance with agency policy CPM–440, Part 514, Circular 7, Infrastructure Policy on Easements, dated September 6, 2007.

ADDRESSES: Copies of the ROD are available upon request from the Natural Resource Conservation Service, 101 South Main, Temple, Texas 76502.

FOR FURTHER INFORMATION CONTACT: Claude W. Ross, Natural Resources Specialist, Natural Resources Conservation Service, 101 South Main, Temple, TX 76501; Phone: 254–742–9822.

SUPPLEMENTARY INFORMATION: In September 2008, TransCanada Keystone Pipeline, LP (TransCanada) filed an application for a Presidential Permit with the U.S. Department of State (DOS) to build and operate the Keystone XL Project.

In the original application, TransCanada had proposed that the project would consist of 1,375 miles of new 36-inch diameter pipeline, to be built in three segments: The approximately 850-mile long ''Steele City'' segment from the U.S. border to Steele City, Nebraska; the approximately 478-mile long ''Gulf Coast'' segment from Cushing, Oklahoma to Nederland, Texas; and the 47-mile long ''Houston Lateral'' segment from Liberty County, Texas, to the Moore Junction area in Harris County, Texas.

On February 27, 2012, TransCanada submitted a letter to the Department of State giving advanced notice of the intent to move forward with the Gulf Coast Segment (Gulf Coast Pipeline Project). The Final Environmental Impact Statement (FEIS) included analysis of the Gulf Coast Pipeline Project.

The ROD noticed herein pertains only to the Gulf Coast Pipeline Project and to NRCS's decision to subordinate its rights, acquired under the Wetlands Reserve Program, thereby allowing the pipeline to cross a conservation easement in Fannin County, Texas.

Dated: October 29, 2012.

Salvador Salinas,

State Conservationist.

[FR Doc. 2012–26979 Filed 11–5–12; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–813]

Certain Preserved Mushrooms From India: Preliminary Results of Antidumping Duty Administrative Review; 2011–2012

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain preserved mushrooms (mushrooms) from India. The period of review (POR) is February 1, 2011, through January 31, 2012, and the review covers one producer and exporter of the subject merchandise, Agro Dutch Industries Limited (Agro Dutch). We have preliminarily assigned to Agro Dutch an antidumping duty margin based upon the application of adverse facts available.

DATES: *Effective Date:* November 6, 2012.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Terre Keaton Stefanova, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone (202) 482–4929 or (202) 482–1280, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The merchandise subject to the order is certain preserved mushrooms. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, 0711.51.0000, 0711.90.4000, 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043 and 2003.10.0047. Although the HTS numbers are provided for convenience and customs purposes, the written product description, available in *Antidumping Duty Order: Mushrooms From India,* 64 FR 8311 (February 19, 1999) (*Mushroom Antidumping Duty Order*), remains dispositive.

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). In making our preliminary results, we have relied on facts available and, because the respondent did not act to the best of its ability to respond to the Department's requests for information, we have drawn an adverse inference in selecting from among the facts otherwise available.[1]

For a full description of the methodology underlying our conclusions, please see ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Certain Preserved Mushrooms from India'' (Preliminary Decision Memorandum) from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with these results and hereby adopted by this notice. The Preliminary Decision Memorandum is a public document and is on file

[1] *See* sections 776(a) and (b) of the Act.

electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Preliminary Decision Memorandum and the electronic version of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Review

As a result of this review, we are preliminarily assigning the following dumping margin to Agro Dutch for the period February 1, 2011, through January 31, 2012.

Manufacturer/exporter	Percent margin
Agro Dutch Industries Limited ..	114.76

Public Comment

Interested parties may submit case briefs not later than 30 days after the date of publication of this notice.[2] Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[3] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[4] Case and rebuttal briefs should be filed using IA ACCESS.[5]

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically via IA ACCESS.[6] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[7] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. Unless extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results, the Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the publication of the final results of this review. Where assessments are based upon total facts available, including total adverse facts available, we instruct CBP to assess duties at the adverse facts available margin rate. If these preliminary results are unchanged in the final results, then the Department intends to instruct CBP to assess antidumping duties on POR entries of the subject merchandise produced or exported by Agro Dutch at the rate of 114.76 percent of the entered value.[8] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of mushrooms from India entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Agro Dutch will be the rate established in the final results of this administrative review; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.30 percent, the all-others rate established in *Mushroom Antidumping Duty Order*. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 31, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

1. Application of Facts Available
2. Application of Adverse Facts Available
3. Selection of Adverse Facts Available Rate
4. Corroboration of Information

[FR Doc. 2012–27102 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* 19 CFR 351.309(c).

[3] *See* 19 CFR 351.309(d).

[4] *See* 19 CFR 351.309(c)(2) and (d)(2).

[5] *See* 19 CFR 351.303.

[6] *See* 19 CFR 351.310(c).

[7] *See* 19 CFR 351.310(c).

[8] *See* 19 CFR 351.212(b)(1).

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Renewal of the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Renewal of the Civil Nuclear Trade Advisory Committee.

SUMMARY: The Department of Commerce (the Department) International Trade Administration is giving notice that the charter for the Civil Nuclear Trade Advisory Committee (CINTAC) has been renewed as of September 16, 2012.

FOR FURTHER INFORMATION CONTACT: David Kincaid, Office of Energy and Environmental Industries, Room 4053, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; phone 202–482–1706 or email *David.Kincaid@trade.gov.*

SUPPLEMENTARY INFORMATION: The Department of Commerce, as of September 16, 2012, has renewed the charter for the CINTAC in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, for another two-year term. The CINTAC

functions solely as an advisory committee advising the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services for use by the Department of Commerce in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee.

CINTAC was chartered in 2008 and is now in its third two-year iteration. The third charter of the committee will be comprised of up to forty executives representing companies and associations from across the United States' civil nuclear supply chain.

Dated: October 31, 2012.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2012–26999 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Request for Information for the Proposed United States-East African Community Commercial Dialogue

AGENCY: U.S. Department of Commerce, International Trade Administration.

ACTION: Notice of Request for Information.

SUMMARY: In June 2012, the East African Community (EAC) Secretariat, the EAC member country Governments, and the Government of the United States agreed to explore establishing a Commercial Dialogue as part of the U.S.-EAC Trade and Investment Partnership (''Partnership''). The U.S.-EAC Commercial Dialogue will be a consultative mechanism through which the United States, the EAC Secretariat, and EAC member country governments, will work to advance priorities that will strengthen the U.S.-EAC trade and investment relationship, as well as support the EAC's regional integration process. The Market Access and Compliance division of the International Trade Administration, through its Office of Africa, seeks public comment and recommendations concerning those areas upon which the Commercial Dialogue should focus its efforts in order to reflect the priorities and concerns of the business community, civil society, and other interested stakeholders. Proposed activities and areas of focus for the Commercial Dialogue are described in the Supplementary Information below.

DATES: Please send comments no later than 5:00 p.m. Eastern Daylight Time (EDT) on November 19, 2012.

ADDRESSES: You may send comments to Ludwika Alvarez, East Africa Desk Officer, Office of Africa, at *Ludwika.Alvarez@trade.gov* and Kate Innelli, Special Assistant to the Assistant Secretary for Market Access and Compliance, at *Kate.Innelli@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Ludwika Alvarez, East Africa Desk Officer, Office of Africa, U.S. Department of Commerce, telephone: 202–482–4228, and email: *Ludwika.Alvarez@trade.gov* and Kate Innelli, Special Assistant to the Assistant Secretary for Market Access and Compliance, telephone: 202–482–3290, and email: *Kate.Innelli@trade.gov.*

SUPPLEMENTARY INFORMATION: International investors have recognized the EAC as the fastest growing economic region and the most economically attractive regional block in Sub-Saharan Africa. Under the EAC Customs Union (launched in 2005), the five member countries of the EAC (Kenya, Tanzania, Uganda, Rwanda and Burundi) have established a common external tariff; agreed to eliminate customs duties and remove non-tariff barriers on trade between member countries; made plans to harmonize procedures on customs, anti-dumping, and safeguards; and agreed to undertake common export promotion programs. The EAC member countries are also in the process of establishing a Common Market (launched in 2010), which aims to provide for free movement of goods, labor, services and capital among the EAC member countries.

In June 2011, United States Trade Representative Ron Kirk presented the EAC Secretary General with a proposal to enhance trade and investment at the U.S.-Sub-Saharan African Trade and Economic Cooperation Forum (AGOA Forum) in Zambia. On June 15, 2012, the Obama Administration, the EAC Secretary General, and Ministers of Trade from the EAC member countries announced their resolve to pursue a new Trade and Investment Partnership between the United States and the EAC, which would include exploring: (1) A regional investment treaty, (2) a trade facilitation agreement, (3) continued trade capacity building and (4) a Commercial Dialogue [*http://www.ustr.gov/about-us/press-office/press-releases/2012/june/joint-statement-US-East-African-Community-Trade-Investment-Partnership*]. This Partnership is part of the White House Strategy Toward Sub-Saharan Africa and builds on the existing trade and investment relationship, including AGOA and the U.S.-EAC Trade and Investment Framework Agreement [*http://www.whitehouse.gov/sites/default/files/docs/africa_strategy_2.pdf*].

The Department of Commerce is leading U.S. efforts to establish a Commercial Dialogue with the EAC, which would be the first U.S. Commercial Dialogue with Sub-Saharan African partners and the first U.S. Commercial Dialogue with a regional customs union.

The Commercial Dialogue will serve as an inter-governmental consultative forum, reflecting private sector priorities and input. The Commercial Dialogue will also promote business opportunities in key sectors linked to EAC development goals; foster an open and predictable business climate by providing a forum for addressing non-tariff trade barriers and other constraints to trade; support the EAC's integration process by facilitating stronger private sector ties between companies in the United States and the EAC and throughout the EAC region; and increase private sector input into the U.S.-EAC Trade and Investment Partnership. The EAC Secretariat, member countries' Ministries of Trade and the Department of Commerce are in the process of formalizing the Commercial Dialogue and developing an appropriate structure and agenda that would drive its activities.

Additional information, including a draft concept paper for the proposed Commercial Dialogue, can be found at *https://www.trade.gov/EastAfricanCommunity* (link expires on November 30, 2012).

The Department of Commerce is considering proposing two principal areas of focus for work under the Commercial Dialogue. First, Commerce plans to propose *the promotion of business opportunities in key growth sectors,* including the energy, transportation infrastructure, information and communication technology, and agribusiness sectors. A second proposed area of focus will be efforts to *foster an open and predictable business climate* by addressing: trade facilitation, customs and logistics; intellectual property rights; standards; and transparency. In developing a focused and strategic agenda for the work of the proposed Commercial Dialogue, Commerce is requesting comments on the above proposed areas of focus and on the development of an agenda for the proposed Commercial Dialogue from U.S. companies, U.S. trade associations (including American Chambers of Commerce in East Africa),

and EAC Diaspora organizations in the United States.

In submitting comments, please address: Your company's, your member companies' or your organization's (hereafter ''You'' or ''Your'') experiences and business activities in the above referenced areas of focus; Your viewpoint on any other appropriate areas of focus for the proposed Commercial Dialogue; Your perspective on priorities and challenges You face with respect to doing business in the EAC, especially with respect to the above referenced areas of focus; and Your proposals for actions or activities that Commerce could undertake in working with our EAC partners under the proposed Commercial Dialogue to promote business opportunities or to foster an open and predictable business climate. Please include with comments the name of your company or organization submitting comments, as well as email and telephone number for an appropriate contact person with the company or organization.

The Department of Commerce anticipates continuing to need input on the agenda and focus of the U.S.-EAC Commercial Dialogue going forward. Please feel free to contact the Office of Africa to provide advice and input on the U.S.-EAC trade and investment relationship or the U.S.-EAC Commercial Dialogue even after the close of the comment period.

Dated: November 1, 2012.

Michael C. Camuñez,

Assistant Secretary of Commerce for Market Access and Compliance.

[FR Doc. 2012–27088 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–HE–P

DEPARTMENT OF COMMERCE

International Trade Administration

Solicitation of Nominations for Membership on the Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Solicitation of Nominations for Membership on the Civil Nuclear Trade Advisory Committee.

SUMMARY: The Department of Commerce (the Department), as of September 2012, has rechartered the Civil Nuclear Trade Advisory Committee (CINTAC) and is seeking nominations for 40 members to be appointed for the new two-year charter term. The purpose of the CINTAC is to advise the Secretary of Commerce regarding the development and administration of programs to expand United States exports of civil nuclear goods and services in accordance with applicable United States laws and regulations, for use by the Department as chair of the Civil Nuclear Trade Working Group (CINTWG) of the Trade Promotion Coordinating Committee (TPCC).

DATES: All applications for immediate consideration for appointment must be received by close of business on December 7, 2012. After that date, ITA will continue to accept applications under this notice for a period of up to two years from the deadline to fill any vacancies that may arise.

ADDRESSES: All nominations should be submitted in pdf or MS Word format via email to *David.Kincaid@trade.gov,* via FAX to 202–482–5665, or via mail to David Kincaid, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: David Kincaid, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; phone 202–482–1706; fax 202–482–5665; email *David.Kincaid@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The Department of Commerce, as of September 6, 2012, has rechartered the CINTAC in accordance with the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, for another two-year term, to be concluded September 6, 2014. The CINTAC functions solely as an advisory committee advising the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services for use by the Department of Commerce in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee. In particular, the Committee advises on matters including, but not limited to:

(1) Trade policy development and negotiations relating to U.S. civil nuclear exports;

(2) The effect of U.S. and foreign government policies, regulations, programs, and practices on the export of U.S. civil nuclear goods and services;

(3) The competitiveness of U.S. industry and its ability to compete for civil nuclear products and services opportunities in international markets, including specific problems in exporting, and provide specific recommendations regarding U.S. Government and public/private actions to assist civil nuclear companies in expanding their exports;

(4) The identification of priority civil nuclear products and services markets with the potential for high immediate returns for U.S. exports, as well as emerging markets with a longer-term potential for U.S. exports;

(5) Strategies to increase private sector awareness and effective use of U.S. Government export promotion programs, and recommendations on how U.S. Government programs may be more efficiently designed and coordinated;

(6) The development of complementary industry and trade association export promotion programs, including ways for greater or more effective coordination of U.S. Government efforts with private sector organizations' civil nuclear industry export promotion efforts; and

(7) The development of U.S. Government programs to encourage producers of civil nuclear products and services to enter new foreign markets, in connection with which the CINTAC may advise on how to gather, disseminate, and promote awareness of information on civil nuclear exports and related trade issues.

II. Membership and Nominations

The CINTAC shall consist of approximately 40 members appointed by the Secretary, in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the CINTAC. Members shall represent U.S. entities involved in the export of civil nuclear products and services and reflect the diversity of this sector, including in terms of entities' size and geographic location, and shall be drawn from U.S. civil nuclear manufacturing and services companies, U.S. utilities, U.S. trade associations, and other U.S. organizations in the U.S. civil nuclear sector. The Secretary shall appoint to the Committee at least one individual representing each of the following:

a. Civil nuclear manufacturing and services companies;

b. Small businesses;

c. Utilities;

d. Trade associations in the civil nuclear sector; and

e. Private sector organizations involved in strengthening the export competitiveness of U.S. civil nuclear products and services.

Members shall serve in a representative capacity, expressing the views and interests of a U.S. entity or organization, as well as its particular

sector; they are, therefore, not Special Government Employees. Each member of the CINTAC must be a U.S. citizen, and must not be registered as a foreign agent under the Foreign Agents Registration Act. No member shall represent a company that is majority owned or controlled by a foreign government entity or entities.

Members shall serve at the pleasure of the Secretary from the date of appointment to the Committee to the date on which the Committee's charter terminates. The Secretary shall designate the CINTAC Chair and Vice Chair. The Chair and Vice Chair shall serve in those positions at the pleasure of the Secretary. The Assistant Secretary of Commerce for Manufacturing and Services shall designate a Designated Federal Officer (DFO) from among the employees of the Office of Energy and Environmental Industries. The Committee meets approximately four times a year, usually in Washington, D.C.

III. Compensation

Members of the CINTAC will not be compensated for their services or reimbursed for their travel expenses.

IV. Nominations

The Secretary of Commerce invites nominations to the CINTAC for the charter term consistent with the above membership requirements. Self-nominations will be accepted. If you are interested in nominating someone to become a member of the CINTAC, please provide the following information (2 pages maximum):

(1) Name;

(2) Title;

(3) Work phone, fax, and, email address;

(4) Company or trade association name and address including Web site address;

(5) Short biography of nominee including credentials;

(6) Brief description of the company or trade association and its business activities, company size (number of employees and annual sales), and export markets served; and,

(7) An affirmative statement that the applicant and entity to be represented meet all eligibility criteria, specifically addressing that the applicant:

(a) Is a U.S. citizen;

(b) Is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended; and,

(c) Is not a federally-registered lobbyist, and that the applicant understands that if appointed, the applicant will not be allowed to continue to serve as a CINTAC member if the applicant becomes a federally-registered lobbyist.

Please do not send company or trade association brochures or any other information.

All nominations should be submitted in pdf or MS Word format via email to *David.Kincaid@trade.gov,* via FAX to 202–482–5665, or via mail to David Kincaid, Office of Energy & Environmental Industries, Room 4053, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Nominations for immediate consideration must be received by close of business December 7, 2012. Nominees selected for appointment to CINTAC will be notified by return mail.

Dated: October 31, 2012.

Edward A. O'Malley,

Director, Office of Energy and Environmental Industries.

[FR Doc. 2012–26998 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period January 1 through June 30, 2012.

DATES: Comments must be submitted within thirty days after publication of this notice.

ADDRESSES: See the Submission of Comments section below.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3965.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidy provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies.

The Department submitted its last subsidy report on June 15, 2012. As part of its newest report, the Department intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comments

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period January 1 through June 30, 2012. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that only one country, Canada, exported softwood lumber to the United States during that time period in amounts sufficient to account for at least one percent of U.S. imports of softwood lumber products. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period July 1 through December, 2012, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where a government authority: (i) Provides a financial contribution; (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994; or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. *See* section 771(5)(B) of the Tariff Act of 1930, as amended.

Parties should include in their comments: (1) The country which provided the subsidy; (2) the name of the subsidy program; (3) a brief description (at least 3–4 sentences) of the subsidy program; and (4) the

government body or authority that provided the subsidy.

Submission of Comments

Persons wishing to comment should file comments by the date specified above. Comments should only include publicly available information. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments or materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department requests submission of comments filed in electronic Portable Document Format (PDF) submitted on CD–ROM or by email to the email address of the IA Webmaster, below.

The comments received will be made available to the public in PDF on the Import Administration Web site at the following address: *http://ia.ita.doc.gov/public-comments.html*. Any questions concerning file formatting, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: *webmaster_support@trade.gov*.

All comments and submissions in response to this Request for Comment should be received by the Department no later than 5 p.m., on the above-referenced deadline date.

Dated: October 26, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–26947 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC304

Atlantic Coastal Fisheries Cooperative Management Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. This EFP application would exempt 11 commercial fishing vessels from the following Federal American lobster regulations: (1) Gear specifications, including escape vents; (2) trap limits; and (3) trap tag requirements. In order to understand patterns of larval dispersal and settlement in the offshore Lobster Management Area 3 (Area 3), 11 federally permitted vessels would utilize a maximum combined total of 50 modified lobster traps to target juvenile American lobsters.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before November 21, 2012.

ADDRESSES: Comments on this notice may be submitted by email. The mailbox address for providing email comments is *NERO.EFP@noaa.gov.* Include in the subject line ''Comments on AOLA Lobster EFP.'' Written comments should be sent to: John Bullard, Regional Administrator, NMFS, NE Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on AOLA Lobster EFP.''

- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Maria Jacob, Environmental Technician, 978–281–9180, *Maria.Jacob@noaa.gov.*

SUPPLEMENTARY INFORMATION: This proposed project would be conducted by the Atlantic Offshore Lobstermen's Association (AOLA) in conjunction with scientists and the fishing industry. AOLA submitted a complete application for an EFP on September 28, 2012, to conduct commercial fishing activities that the regulations would otherwise restrict. This EFP application would exempt 11 commercial fishing vessels from the following Federal regulations: Gear specifications (including escape vents) specified under § 697.21(c); trap limits specified under § 697.19(b)(5); and trap tags specified under § 697.19(f). The EFP would authorize 11 federally permitted vessels to be exempted from parts of the Federal lobster regulations to allow the participating vessels to fish modified lobster traps, exceed trap limits, and deploy the modified traps without trap tags to analyze the extent to which young lobsters are present in the offshore Area 3. Some scientists believe that the lobster larvae will only survive in the inshore fishery due to the depths and available light, and that there are no small lobsters offshore; however, data resulting from this project are intended to determine whether there are new lobster nursery grounds offshore.

The modified gear may include smaller wire mesh sizes, modified entrance heads/rings, and closed escape vents. The deployment of the experimental traps throughout Area 3 (statistical areas 464, 465, 561, 562, 525, 526, 537, 613, 616, and 626) would begin shortly after the issuance of the EFP and is expected to continue for 1 year. AOLA would submit progress reports twice a year to cover the first and second half of the 12-month study period. The exact specification for the chosen design would be provided in the first progress report. Participating vessels would use the experimental lobster traps as part of a commercial lobster trap trawl deployed under routine industry conditions, by adding up to three of the modified traps to the trap trawl. Under these exemptions, each vessel would be allowed to fish up to 10 traps in excess of its Federal trap allocation, for no more than 50 modified traps in the water at any given time. Modified traps would remain in the water for up to 12 consecutive months (365 days), being hauled weekly following the normal fishing schedule of the participating vessels. The gear would be compliant with the Atlantic Large Whale Take Reduction Plan.

The research activities occurring in Area 3 are not anticipated to have any more environmental impacts than those already occurring as part of a commercial lobster trap trawl deployed under usual industry conditions. Impacts to the lobster resource would be negligible given the limited scope of the exempted activity. Given the small mesh and entrance heads, the modified gear is not expected to catch legal lobsters. Any sublegal lobsters caught would briefly be retained onboard only for the purposes of recording their size, sex, egg stage of female lobsters, and presence of shell disease, before being promptly released back into the ocean. There should be minimal impact to bycatch species due to the use of small mesh and small entrance heads and, in addition, all bycatch species hauled from modified gear would be returned promptly to the ocean. Likewise, there would not be significant impacts on benthic habitats, given that 50 additional traps is negligible in comparison to the number of traps deployed by the lobster commercial fishery at large.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: November 1, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–27078 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC315

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Joint Mid-Atlantic Fishery Management Council's and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting.

DATES: The meeting will be held on Tuesday, November 27, 2012, from 1 p.m. to 4:30 p.m.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and the telephone-only connection details are available at: *http://www.mafmc.org.*

ADDRESSES: *Council address:* Mid-Atlantic Fishery Management Council, 800 North 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 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331, extension 255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Advisory Panel will discuss recreational management measures for the upcoming fishing year(s). Summer flounder recreational measures will be discussed from 1 p.m. to 2 p.m., scup measures from 2 p.m. to 3 p.m., and black sea bass measures from 3 p.m. to 4:30 p.m.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

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: November 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–27021 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC327

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Joint Mid-Atlantic Fishery Management Council's and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public meeting.

DATES: The meeting will be held on Tuesday, November 20, 2012, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held via webinar with a telephone-only connection option. Details on webinar registration and the telephone-only connection details are available at: *http://www.mafmc.org.*

ADDRESSES: *Council address:* Mid-Atlantic Fishery Management Council, 800 North 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 North State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331, extension 255.

SUPPLEMENTARY INFORMATION: The Summer Flounder, Scup, and Black Sea Bass Advisory Panel will discuss potential options for the designation of Delaware artificial reef sites as Special Management Zones (SMZs) under provisions of Amendment 9 to the Summer Flounder, Scup and Black Sea Bass FMP. Based on input from its industry advisory panel, the Council will be developing SMZ designation alternatives at its December 2012 meeting to take out to public hearings in early 2013.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

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: November 1, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–27022 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA832

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations From San Nicolas Island, CA

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a letter of authorization (LOA) has been issued to the Naval Air Warfare Center Weapons Division, U.S. Navy (Navy), to take three species of seals and sea lions incidental to missile launch operations from San Nicolas Island (SNI), California, a military readiness activity.

DATES: Effective December 1, 2012, through November 30, 2013.

ADDRESSES: The LOA and supporting documentation are available for review on the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, 301–427–8401, or Monica DeAngelis, NMFS, 562–980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS 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) within a specified geographical region if certain findings are made and regulations are issued. However, for military readiness activities, the National Defense Authorization Act (Public Law 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals (*Phoca vitulina richardsi*), and California sea lions (*Zalophus californianus*), by harassment, incidental to missile launch operations at SNI, were issued on June 2, 2009, and remain in effect until June 2, 2014 (74 FR 26580, June 3, 2009). For detailed information on this action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile launches at SNI.

Summary of Request

On October 9, 2012, NMFS received a request for an LOA renewal pursuant to the aforementioned regulations that would authorize take of pinnipeds, by harassment, incidental to missile launch operations from SNI. The Navy requested an 18-month LOA to cover the remaining time under their current regulations. However, the regulations specify ''annual'' LOAs; therefore, NMFS can only issue an LOA not to exceed a one-year period.

Summary of Activity Conducted During 2011–2012

As described in the Navy's annual monitoring report, the missile launch operations conducted by the Navy during this time period were within the scope and amounts authorized by the 2011–2012 LOA, and the levels of take remain within the scope and amounts contemplated by the final rule and detailed in the 2011–2012 LOA. A total of 11 launches took place using four missile types on seven different days.

Planned Activities and Estimated Take for 2011–2012

During 2012–2013, the Navy expects to conduct the same type and amount of launches identified in the 2011–2012 LOA. Therefore, NMFS is authorizing the same amount of take authorized in 2011.

2011–2012 Monitoring

The Navy conducted the monitoring required by the 2011–2012 LOA and described in the Monitoring Plan, which included acoustic monitoring of missile launches and visual monitoring of pinnipeds. The Navy submitted their 2011–2012 Monitoring Report, which is posted on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. In summary, visual monitoring shows that pinnipeds startled and moved in response to launch sounds and most individuals returned to normal behavior within 5 minutes.

Authorization

The Navy complied with the requirements of the 2011–2012 LOA and NMFS has determined that there was no evidence of pinniped injuries or mortalities related to vehicle launches from SNI. The Navy's activities fell within the scope of the activities analyzed in the 2009 rule, and the observed take did not exceed that authorized in the 2011–2012 LOA. NMFS has determined that this action continues to have a negligible impact on the affected species or stocks of marine mammals on SNI. Accordingly, NMFS has issued an LOA to the Navy authorizing the take of marine mammals, by harassment, incidental to missile launch activities from SNI. The provision requiring that the activities not have an unmitigable adverse impact on the availability of the affected species or stock for subsistence uses does not apply for this action.

Dated: October 24, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–27071 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No: 121031596–2596–01]

RIN 0660–XC003

Development of the Nationwide Interoperable Public Safety Broadband Network

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice of Inquiry; Reopening of Comment Period.

SUMMARY: The National Telecommunications and Information Administration (NTIA) issued a Notice of Inquiry (NOI) on September 28, 2012, seeking public comment on two conceptual presentations made at the inaugural Board meeting of the First Responder Network Authority (FirstNet) as well as to invite input on other network design and business plan considerations. The comment deadline was November 1, 2012, at 5 p.m. Eastern Daylight Time (EDT). NTIA has received several requests to extend the comment deadline from states and first responders that were impacted by the widespread destruction caused by Hurricane Sandy. Therefore, NTIA issues this notice announcing that it is reopening the comment period and will accept comments responsive to the NOI until 5 p.m. Eastern Standard Time (EST) on Friday, November 9, 2012. Comments received after the November 1, 2012, deadline until this notice is published reopening the comment period will be accepted.

DATES: Comments must be received no later than Friday, November 9, 2012 at 5:00 p.m. EST.

ADDRESSES: Written comments may be submitted by email to *firstnetnoi@ntia.doc.gov*. Written comments also may be submitted by mail to: National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., HCHB Room 7324, Attn: FirstNet NOI, Washington, DC 20230. Please note that all material sent via the U.S. Postal Service (including ''Overnight'' or ''Express Mail'') is subject to delivery delays of up to two weeks due to mail security procedures. Responders should include the name of the person or organization filing the comment, as well as a page number, on each page of their submissions. Paper submissions should also include a CD or DVD with an electronic version of the document, which should be labeled with the name and organizational affiliation of the filer. Do not submit Confidential Business Information or otherwise sensitive or protected information. All email messages and comments received are a part of the public record and will generally be posted without change to the NTIA Web site at *http://www.ntia.doc.gov/federal-register-notice/2012/comments-nationwide-interoperable-public-safety-broadband-network-noi*. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Comments should not exceed 25 double-spaced pages.

FOR FURTHER INFORMATION CONTACT: Uzoma Onyeije, Senior Advisor for Public Safety, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Room 7324, Washington, DC 20230; telephone: (202) 482–0016; email: *uonyeije@ntia.doc.gov*. Please direct media inquiries to NTIA's Office of Public Affairs, (202) 482–7002.

SUPPLEMENTARY INFORMATION:

Background

The Middle Class Tax Relief and Job Creation Act of 2012 created the First Responder Network Authority (FirstNet) as an independent authority within NTIA and authorized it to take all actions necessary to ensure the building, deployment, and operation of a nationwide public safety broadband network (PSBN) based on a single, national network architecture.[1]

The FirstNet Board held its first public meeting on September 25, 2012, during which it heard a presentation from FirstNet Board member Craig Farrill that outlined a possible framework for designing the public safety network architecture in a manner that leverages existing resources and infrastructure, as is contemplated in the Act.[2] Additionally, FirstNet Board Chairman Sam Ginn also discussed a general concept for developing applications designed specifically for public safety users. These conceptual presentations mark a starting point for further discussions.

On behalf of the FirstNet Board, NTIA issued a NOI requesting public comment on these two conceptual presentations relating to network architecture and applications as well as to invite input on other network design and business plan considerations. Notice of Inquiry, 77 FR 60680 (Oct. 4, 2012). The NOI set a deadline for the submission of comments on November 1, 2012. Due to the severity of the impact from Hurricane Sandy, which resulted in a two-day closure of the Federal Government and forced the closure of many other government agencies and businesses across the East Coast, NTIA has received multiple requests asking for an extension of the comments deadline. In recognition of the need for impacted states to focus their attention and resources to address the widespread destruction caused by Hurricane Sandy, NTIA announces that it is reopening the comment period and will accept comments responsive to the NOI until 5 p.m. EST on Friday, November 9, 2012. Comments received after the November 1, 2012, deadline until the publication of this notice reopening the comment period will also be accepted. This extension is warranted to ensure that FirstNet receives input on these conceptual presentations from all interested stakeholders to better inform its efforts to establish the interoperable public safety broadband network called for under the Act.

Dated: October 31, 2012.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2012–27031 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–60–P

[1] Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 126 Stat. 156 (2012) (Act); 47 U.S.C. 1422(b).

[2] The presentation of the FNN concept is available for review on NTIA's Web site at *http://www.ntia.doc.gov/files/ntia/publications/firstnet_fnn_presentation_09-25-2012_final.pdf*.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

[Docket 121018561–2561–01; OMB Control #: 0625–0272 (Expiration: 10/31/2015)]

RIN 0625–XC004

Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States-Colombia Trade Promotion Agreement

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice of Interim Procedures and Request for Comments.

SUMMARY: This notice sets forth the interim procedures the Committee for the Implementation of Textile Agreements (''CITA'') will follow in implementing certain provisions of the

United States-Colombia Trade Promotion Agreement (''US-Colombia TPA''). Section 203(o)(4) of the United States-Colombia Trade Promotion Agreement Implementation Act (''Implementation Act'') authorizes the President to establish procedures to modify the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner in either the United States or Colombia as set out in Annex 3–B of the US-Colombia TPA. The President has delegated to CITA the authority to determine whether fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in either the United States or Colombia and has directed CITA to establish procedures that govern the submission of a request and provide the opportunity for interested entities to submit comments and supporting evidence for any such determination pursuant to the Implementation Act. CITA hereby gives notice to interested entities of the procedures CITA will follow in considering such requests and solicits public written comments on these interim procedures. CITA will be using the procedures detailed in this notice as of November 6, 2012.

DATES: Comments on the interim procedures must be received no later than December 6, 2012 of this notice, either in hard copy or electronically.

ADDRESSES: If submitting comments in hard copy, an original, signed hard copy must be submitted to the Chairman, Committee for the Implementation of Textile Agreements, Room 30003, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. If submitting comments electronically, the electronic copy must be submitted to *OTEXA_COLOMBIA@trade.gov.* All submitted comments will be posted for public review on the Web site dedicated to US-Colombia TPA commercial availability proceedings. The Web site is located on the U.S. Department of Commerce's Office of Textile and Apparel Web site (*www.otexa.ita.doc.gov*), under ''Commercial Availability''/''Colombia TPA.'' Additional instructions regarding the submission of comments may be found at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION: *Legal Authority:* Section 203(o) of the Implementation Act and Proclamation No. 8818, 77 FR 29519 (May 18, 2012).

Background

The US-Colombia TPA provides a list in Annex 3–B for fabrics, yarns, and fibers that the United States has determined are not available in commercial quantities in a timely manner from producers in the United States or Colombia. A textile or apparel good must satisfy the specific rules of origin in Annex 3–A of the US-Colombia TPA as well as other requirements of the Agreement. However, a textile and apparel good containing fabrics, yarns, or fibers that are included on the list in Annex 3–B of the US-Colombia TPA will be treated as if it is an originating good for purposes of the US-Colombia TPA, regardless of the actual origin of those inputs in accordance with the specific rules of origin in Annex 3–A, Notes to Section XI. The Implementation Act provides that the President will establish procedures governing the submission of requests under Section 203(o)(4) (''the commercial availability provision''), and as set forth in the US-Colombia TPA, and may determine whether additional fabrics, yarns, or fibers are available or are not available in commercial quantities in a timely manner in the United States or Colombia. In addition, Section 203(o)(4) of the Implementation Act establishes that the President may restrict the quantity of, or remove a fabric, yarn, or fiber from the list, if it has been added to the list in an unrestricted quantity or has had a restriction eliminated, if he determines that the fabric, yarn, or fiber has become available in commercial quantities in a timely manner.

In Proclamation No. 8818 (77 FR 29519, May 18, 2012), the President delegated to CITA his authority under the commercial availability provision to establish procedures for modifying the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner, as set out in Annex B of the US-Colombia TPA.

Pursuant to that delegation, CITA provides below its interim procedures governing the submission of requests under Section 203(o)(4) set forth in the Implementation Act. As of November 6, 2012, CITA intends to use these procedures to process requests for modifying the list of fabrics, yarns, or fibers not available in commercial quantities. CITA intends to publish its final procedures after considering any public comments received pursuant to its request for comments.

Interim Procedures

1. Introduction

The intent of these procedures is to foster trade in U.S. and Colombian textile and apparel goods by allowing non-originating fibers, yarns, or fabrics to be placed on or removed from a list of items not available in commercial quantities in a timely manner, and in a manner that is consistent with normal business practice. To this end, these procedures are intended to facilitate the transmission, on a timely basis, of requests for commercial availability determinations and offers to supply the products that are the subject of the requests; have the market indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and parties, information regarding the requests for products and offers to supply received; ensure wide participation by interested entities and parties; provide careful scrutiny of information provided to substantiate order requests and response to supply offers; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

2. Definitions

(a) *Commercial Availability Request.* A Commercial Availability Request (''Request'') is a request for a commercial availability determination submitted by an interested entity requesting that CITA place a good on the Commercial Availability List in Annex 3–B of the US-Colombia TPA in a restricted or unrestricted quantity because that fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a US-Colombia TPA supplier.

(b) *Commercial Availability List.* The Commercial Availability List is the list of products (fibers, yarns, and/or fabrics) in Annex 3–B of the US-Colombia TPA that have been determined to be not commercially available from US-Colombia TPA suppliers in commercial quantities in a timely manner.

(c) *Fiber, Yarn, or Fabric.* The terms ''fiber, yarn, or fabric'' mean a single product or a range of products, which meet the same specifications provided in a submission, and which may be only part of a Harmonized Tariff Schedule of the United States (''HTSUS'') classification.

(d) *Interested Entity.* An ''interested entity'' means the government of Colombia, a potential or actual purchaser of a textile or apparel good, or a potential or actual supplier of a

textile or apparel good. CITA recognizes that a legal or other representative may act on behalf of an interested entity. *See* Section 203(o)(4)(B)(i) of the Implementation Act.

(e) *Interested Party.* An ''interested party'' means any interested person that requests to be included on the email notification list for commercial availability proceedings. Any interested person may become an interested party by contacting CITA either by sending an email to *OTEXA_COLOMBIA@trade.gov*, or through the Web site dedicated to commercial availability proceedings under the US-Colombia TPA (''Web site''). The Web site is located on the U.S. Department of Commerce's Office of Textile and Apparel Web site (www.otexa.ita.doc.gov), under ''Commercial Availability''/''Colombia TPA.''

(f) *Official Receipt.* The ''official receipt'' is CITA's email confirmation that it has received both the electronic version and the original submission signed by the interested entity delivered via express courier.

(g) *Rebuttal Comment.* A ''Rebuttal Comment'' (''Rebuttal'') is a submission from an interested entity providing information in response to evidence or arguments raised in a Response. A Rebuttal must be limited to evidence and arguments provided in a Response.

(h) *Request To Remove or Restrict.* A ''Request to Remove or Restrict'' is a submission from an interested entity requesting that CITA either remove a product or that a quantity restriction be introduced, made no sooner than six months after a product has been added to the Commercial Availability List in Annex 3–B of the US-Colombia TPA in an unrestricted quantity pursuant to Section 203(o)(4) of the Implementation Act.

(i) *Requestor.* The ''Requestor'' refers to the interested entity that files a Commercial Availability Request or a Request to Remove or Restrict, under the commercial availability provision of the US-Colombia TPA, for CITA's consideration.

(j) *Response with an Offer to Supply.* A ''Response with an Offer to Supply'' (''Response'') is a submission from an interested entity to CITA objecting to the Commercial Availability Request and asserting its ability to supply the subject product by providing an offer to supply the subject product described in the Request.

(k) *U.S. Business Day.* A ''U.S. business day'' is any calendar day other than a Saturday, Sunday, or a legal holiday observed by the Government of the United States. See section 203(o)(4)(B)(ii) of the Implementation Act.

(l) *US-Colombia TPA Supplier.* A ''US-Colombia TPA Supplier'' is a potential or actual supplier of a textile or apparel good of a producer.

3. Submissions for Participation in a US-Colombia TPA Commercial Availability Proceeding

(a) *Filing a Submission.* All submissions in a US-Colombia TPA commercial availability proceeding (e.g., Request, Response, Rebuttal, and Request to Remove or Restrict) must be in English. If any attachments are in a language other than English, then a complete translation must be provided. Each submission must be submitted to the Chairman of CITA, in care of the U.S. Department of Commerce's Office of Textiles and Apparel (''OTEXA'') in two forms: email and an original signed submission.

(1) An electronic version of the submission must be either in PDF, Word, or Word-Perfect format, must contain an adequate public summary of any business confidential information and the due diligence certification, and be sent to *OTEXA_COLOMBIA@trade.gov.* The electronic version of the submission will be posted for public review on the US-Colombia TPA commercial availability Web site. No business confidential information should be submitted in the electronic version of any document.

(2) The original signed submission must be received via express courier to—Chairman, Committee for the Implementation of Textile Agreements, Room 30003, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230. Any business confidential information upon which an interested entity wishes to rely must be included in the original signed submission only. Except for the inclusion of business confidential information and corresponding public summary, the two versions of a submission should be identical.

(3) Brackets must be placed around all business confidential information contained in submissions. Documents containing business confidential information must have a bolded heading stating ''Confidential Version.'' Attachments considered business confidential information must have a heading stating ''Business Confidential Information.'' Documents, including those submitted electronically, provided for public release, must have a bolded heading stating ''Public Version'' and all the business confidential information must be deleted and substituted with an adequate public summary.

(4) Generally, details such as quantities and lead times for providing the subject product can be treated as business confidential information. However, the names of US-Colombia TPA suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be included in public versions, which will be made available to the public.

(b) *Due Diligence Certification.* An interested entity must file a certification of due diligence as described in subsection (b)(1) with each submission, both electronic and original signed versions, containing factual information. If the interested entity has legal counsel or other representation, the legal counsel or other representative must also file a certification of due diligence as described in subsection (b)(2) with each submission, both electronic and original signed versions, containing factual information. Accurate representations of material facts submitted to CITA for the US-Colombia TPA commercial availability proceeding are vital to the integrity of this process and are necessary for CITA's effective administration of the statutory scheme. Each submission containing factual information for CITA's consideration must be accompanied by the appropriate certification regarding the accuracy of the factual information. Any submission that lacks the applicable certifications will be considered an incomplete submission that CITA will reject and return to the submitter. CITA may verify any factual information submitted by interested entities in a US-Colombia TPA commercial availability proceeding.

(1) For the person responsible for presentation of the factual information: I, (name and title), currently employed by (interested entity), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For the person's legal counsel or other representative: I, (name), of (law or other firm), counsel or representative to (interested entity), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

(c) *Official Receipt.* A submission will be considered officially submitted to CITA only when both the electronic version and the original signed submission have been received by CITA. For Requests, CITA will confirm to the requestor that both versions of the Request were received through an email confirmation. CITA's email confirmation shall be considered the ''official receipt'' of the Request, and also begins the statutory 30 U.S. business-day process for CITA consideration of Requests. CITA will confirm official receipt of any Response and Rebuttal by posting the submissions on the US-Colombia TPA commercial availability Web site.

4. Submitting a Request for Consideration in a Commercial Availability Proceeding

(a) *Commercial Availability Request.* An interested entity may submit a Request to CITA alleging that a fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a US-Colombia TPA supplier.

(b) *Contents of a Commercial Availability Request.*

(1) *Detailed Product Information.* The Request must provide a detailed description of the subject product, including, if applicable, fiber content, construction, yarn size, and finishing processes; and the classification of the product under the HTSUS. All measurements in the entire submission must be stated in metric units. If the English count system is used in any part, then a conversion to metric units must be provided. The description must include reasonable product specifications, including, if applicable, fiber content, construction, yarn size, and finishing processes, as well as timelines and quantities. Reasonable product specifications include the use of accepted terminology and standards, such as those used by the American Society for Testing and Materials (''ASTM'') or the American Association of Textile Chemists and Colorists (''AATCC'').

If any aspect of the Request is outside the normal course of business (e.g., tight deadline, higher standards of performance, requirements to match existing specifications), requestors must provide US-Colombia TPA suppliers with detailed explanations and measurable criteria for the specification or term at issue. In the course of its review of the Request, CITA will consider record evidence to determine whether such specifications and terms are reasonable.

The requestor must clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. In addition, the requestor must also explain why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product. However, all characteristics and specifications must be supported by measurable criteria.

(2) *Quantity.* The Request must provide the specific quantity of the product needed by the requestor, in standard units of quantity for production of the subject product in the United States or Colombia.

(3) *Due Diligence.* The Request must provide a complete description of the due diligence undertaken by the requestor to determine the subject product's availability in the United States or Colombia. Due diligence for the requestor means it has made reasonable efforts to obtain the subject product from US-Colombia TPA suppliers.

(i) *Generally:* The requestor must provide the names and addresses of suppliers contacted, who (by name and position) was specifically contacted, the exact request that was made, the dates of those contacts, whether a sample of the subject product was provided for review, and the exact response given for the supplier's inability to supply the subject product under the same conditions as contained in the Request submitted to CITA, in addition to any other information the requestor believes is relevant. The requestor must submit copies or notes of relevant correspondence, both inquiries and responses, with these suppliers. Relevant correspondence includes notes of telephone conversations.

(ii) *Identification of US-Colombia TPA Suppliers:* Requestors must make reasonable efforts to identify US-Colombia TPA suppliers in the United States or Colombia. Requestors should identify US-Colombia TPA suppliers through a number of means, including the requestor's knowledge of the industry, industry directories, and industry association memberships. However, an email from a requestor with a general inquiry to all manufacturers in the United States or Colombia may not constitute due diligence. Rather, reasonable efforts must be taken to identify US-Colombia TPA suppliers who are generally known to produce the class or type of product at issue. Requestors must provide an explanation in their Request as to why their efforts to identify US-Colombia TPA suppliers were reasonable given the product at issue.

(iii) *Use of Third Parties and Business-to-Business Contact:* Due diligence includes substantive and direct contact, indicating a legitimate intent to do business, between requestors and US-Colombia TPA suppliers. Third party communications are no substitute for meaningful dialogue between appropriate officials. Once interest is expressed between requestors and US-Colombia TPA suppliers, subsequent communications should be conducted by appropriate officials of the requestor and US-Colombia TPA supplier based on normal business practice. A lack of appropriate business-to-business contact may be deemed as insufficient due diligence.

(iv) *Description of the Subject Product:* In undertaking due diligence, requestors must provide a detailed description of the product to US-Colombia TPA suppliers. The description must include reasonable product specifications, including, if applicable, fiber content, construction, yarn size, and may include a finishing process or operation, as well as timelines and quantities. Reasonable product specifications include the use of accepted terminology and standards, such as those used by ASTM or AATCC. If any aspect of the Request is outside the normal course of business (e.g., tight deadline, higher standards of performance, requirements to match existing specifications), requestors must provide US-Colombia TPA suppliers with detailed explanations and measurable criteria for the specification or term at issue that would render such aspects as reasonable for the product in question. CITA will consider record evidence to determine whether such specifications and terms are reasonable.

(v) *Provision of Samples:* In undertaking its due diligence, a requestor must clearly communicate to US-Colombia TPA suppliers its standard business practice with respect to the provision of samples. While requestors may request a sample, a US-Colombia TPA supplier is not required to provide a sample under CITA's procedures. However, CITA notes that US-Colombia TPA suppliers must meet certain requirements with respect to the provision of samples and/or information demonstrating their ability to supply the subject product in commercial quantities in a timely manner. *See* Section 6(b)(3) and Section 6(b)(4).

(vi) *Substitutability of Products:* In undertaking its due diligence, a requestor must clearly communicate information regarding the substitutability of the product in question to US-Colombia TPA suppliers. In its inquiries to US-Colombia TPA suppliers, the requestor must clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. In addition, the requestor must provide US-Colombia TPA suppliers with information why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product. However, all characteristics and specifications must be supported by measurable criteria. If, in the course of due diligence, a US-Colombia TPA supplier proposes a substitutable product, the requestor must provide reasonable justifications to the US-Colombia TPA supplier for rejecting potentially substitutable products.

(vii) *Treatment of Business Confidential Information:* Specific details of correspondence with suppliers, such as quantities and lead times for providing the subject product, can be treated as business confidential information. However, the names of US-Colombia TPA suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. ''Lead times'' refers to supplying the subject product within normal business time frames for the subject product once an order is received. Specific delivery dates are not necessary. Required delivery dates that fall within the time needed to complete the commercial availability determination process are not acceptable.

(4) *Substitutable Products.* The Request must provide information on whether the requestor believes that other products supplied by the US-Colombia TPA supplier are not substitutable in commercial quantities in a timely manner for the product(s) that is (are) the subject of the Request for purposes of the intended use. Clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. Describe why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product available from a US-Colombia TPA supplier.

(5) *Additional Information.* The Request may provide any additional evidence or information believed to be relevant for CITA to determine whether a fiber, yarn, or fabric is not available in commercial quantities in

a timely manner from a supplier in the United States or Colombia.

5. Consideration and Acceptance of a Request

In considering whether to accept a Request, CITA will consider and determine whether the Request provides all the required information specified in Sections 3 and 4 of these Procedures. CITA will determine whether to accept the Request for consideration and investigation not later than two U.S. business days after the official receipt of a Request.

(a) *Request Rejected.* If CITA determines that the Request does not contain the required information, the requestor will be notified promptly by email that the Request has not been accepted and the reasons for the rejection. A Request may be resubmitted with additional information for the subject product and CITA will reevaluate it as a new Request.

(1) *Requests for Downstream Products With Inputs Not Commercially Available.* If, in its initial review of a Request, CITA determines that a subject product would be commercially available but for the commercial unavailability of a certain input of the subject product, CITA will reject the Request. The requestor may submit a Request for the input in question rather than the downstream product.

(2) *Requests for Products With Prohibited Inputs, Specifications, and/or Processes.* If, in its initial review of a Request, CITA determines that the subject product requires inputs, specifications, and/or processes that are prohibited under the laws and regulations of the United States, CITA will reject the Request if there is a substitute product that does not require such prohibited inputs, specifications, or processes.

(b) *Request Accepted.* If CITA determines that the Request contains the required information, CITA will notify interested parties by email that a Request has been accepted and filed and will assign a File Number. CITA will post the accepted Request on its Web site for public notice. The email notification and the Web site posting will indicate the calendar date deadlines for submitting Responses and Rebuttals.

6. Submitting a Response With an Offer To Supply

Responses must meet the requirements outlined in Section 3 of these Procedures. General comments in support of or opposition to a Request do not meet the requirements of a Response. A Due Diligence Certification must accompany a Response.

(a) Response With an Offer to Supply Submission. An interested entity (a US-Colombia TPA supplier) may file a Response to a Request CITA accepted advising CITA of its objection to the Request and its ability to supply the subject product by providing an offer to supply the subject product as described in the Request. An interested entity will have 10 U.S. business days after official receipt of a Request to respond to a Request. If good cause is shown, CITA may extend this deadline.

(b) *Contents of a Response With an Offer To Supply.*

(1) *File Number.* The Response must reference the CITA File Number assigned to the particular Request being addressed.

(2) *Quantity.* The Response must supply the quantity of the subject product that the respondent is capable of currently supplying, in standard units of quantity. All measurements must be in metric units. If the English count system is used in any part, then a conversion to metric units must be provided.

(3) *Production Capability/Demonstration of Ability To Supply.* A Response must contain information supporting the claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.

(i) The Response must report the quantity, in metric units, that the US-Colombia TPA supplier produced of the subject product, or a substitutable product, in the preceding 24-month period.

(ii) For products that have experienced cyclical demand or are not currently produced, the US-Colombia TPA supplier must indicate the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or offered.

(iii) If the subject product involves a new style, weight, or other variation that is new to the market or new to the US-Colombia TPA supplier, then the supplier must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner. Such information could include current production capacity, current loom availability, and standard timetables to produce.

(iv) A US-Colombia TPA supplier may support its claim to be able to produce the subject product through provision of a sample meeting exactly the specifications as presented in the Request. However, the provision of a sample is not required. Regardless of whether a sample is provided, a respondent must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding their production capability. Such information could include past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product. If some operations, such as finishing, will be completed by other entities, the name of the facility and contact information must be provided.

(v) The Response may provide, if relevant, the basis for the US-Colombia TPA supplier's rationale that other products that are supplied by the US-Colombia TPA supplier in commercial quantities in a timely manner are substitutable for the subject product(s) for purposes of the intended use, supported by measurable criteria.

(vi) In its review of a Response, CITA will consider whether the US-Colombia TPA supplier was responsive to the efforts employed by the requestor to obtain the subject product in the course of due diligence. In the event that a US-Colombia TPA supplier was not responsive, a US-Colombia TPA supplier must provide a reasonable explanation in its Response as to why it did not respond to earlier inquiries by the requestor in the course of due diligence. CITA will reject a Response if it does not include such explanation.

(4) *Due Diligence.* The Response must provide a complete description of the due diligence undertaken by the US-Colombia TPA supplier to substantiate the ability to supply the subject product. If a US-Colombia TPA supplier has participated in the requestor's undertaking of due diligence, the supplier must provide certain information in response to the requestor's inquiries.

(i) If a US-Colombia TPA supplier has been responsive to a requestor in the undertaking of due diligence, the US-Colombia TPA supplier must have stated its ability to supply or not supply the subject product. If the product can be supplied, the response to the inquiry must contain information supporting the US-Colombia TPA supplier's claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.

(ii) If a US-Colombia TPA supplier offers to supply the subject product, the supplier may support its offer by reporting the quantity, in metric units, that it has produced of the subject product, or a substitutable product, in the preceding 24-month period. If the US-Colombia TPA supplier does not provide such information, it must, subject to section 6(b)(4)(vii), explain why the information it has provided sufficiently supports its offer to supply.

(iii) In response to a requestor's inquiry, for products that have experienced cyclical demand or are not currently produced, the US-Colombia TPA supplier must provide the requestor the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or offered.

(iv) If the subject product involves a new style, weight, or other variation that is new to the market or new to the US-Colombia TPA supplier, then the supplier must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner. Such information could include current production capacity, current loom availability, and standard timetables to produce the subject product.

(v) A US-Colombia TPA supplier may support its claim to be able to produce the subject product through provision of a sample meeting the specifications as presented in an inquiry. However, the provision of a sample is not required. Regardless of whether a sample is provided, the US-Colombia TPA supplier must demonstrate its ability to produce the subject

product by providing sufficient relevant information regarding their production capability. Such information could include past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product. If some operations, such as finishing, will be completed by other entities, the name of the facility and contact information must be provided.

(vi) A response to a requestor's inquiry must provide, as applicable, the basis for the US-Colombia TPA supplier's rationale that other products that are supplied by the US-Colombia TPA supplier in commercial quantities in a timely manner are substitutable for the subject product for purposes of the intended use, supported by measurable criteria.

(vii) Nothing in these procedures shall require any US-Colombia TPA supplier to provide business confidential or other commercially sensitive information to a requestor. However, a US-Colombia TPA supplier must provide the requestor a reasonable explanation why such information was not provided and why the information it has provided sufficiently supports its offer to supply.

(5) *Location of the US-Colombia TPA supplier.* The Response must provide the name, address, phone number, and email address of a contact person at the facility claimed to be able to supply the subject product.

7. Submitting a Rebuttal Comment

A Rebuttal must meet the requirements outlined in Section 3 of these procedures. General comments in support of or opposition to a Request or a Response do not meet the requirements of a Rebuttal. A Due Diligence Certification must accompany a Rebuttal.

(a) *Rebuttal Comment.* Any interested entity may submit a Rebuttal to a Response. An interested entity must submit its Rebuttal not later than 4 U.S. business-days after the deadline for Response. If good cause is shown, CITA may extend the time limit.

(b) *Contents of a Rebuttal.* The Rebuttal Comment may respond only to evidence or arguments raised in the Response and must identify the Response, evidence and/or arguments to which it is responding. The Rebuttal must reference the CITA File Number assigned to the particular Request being addressed.

8. Determination Process

(a) Not later than 30 U.S. business days after official receipt of a Request (or not later than 44 U.S. business days where an extension is provided), CITA will notify interested entities by email and will post a notice on its Web site whether the subject product is available in commercial quantities in a timely manner in the United States or Colombia and whether an interested entity has objected to the Request.

(b) CITA will notify the public of the determination by publication in the **Federal Register** when the determination results in a change to the Commercial Availability List in Annex 3–B of the US-Colombia TPA.

(c) *Types of Determinations.*

(1) *Denial.* A denial means that CITA has determined that the subject product is available in commercial quantities in a timely manner in the United States or Colombia. If a Request is denied, notice of the denial will be posted on the US-Colombia TPA Commercial Availability Web site.

(i) *Denial of Requests for Downstream Products With Inputs Not Commercially Available:* If, during the course of its review of a Request, CITA determines that the subject product is commercially available but for the commercial unavailability of a certain input of the subject product, CITA will deny the Request. The requestor may submit a Request for the input in question rather than the downstream product.

(ii) *Denial of Requests for Products With Prohibited Inputs, Specifications, and/or Processes:* If, during the course of its review of a Request, CITA determines that the subject product requires inputs, specifications, and/or processes that are prohibited under the laws and regulations of the United States, CITA will deny the Request if there is a substitute product that does not require such prohibited inputs, specifications, or processes.

(2) *Approval in Unrestricted Quantity.* An approval in unrestricted quantities means that CITA has determined that the subject product is not available in commercial quantities in a timely manner in the United States or Colombia or that no interested entity has objected to the Request.

If a Request is approved without restriction, a notice will be published in the U.S. **Federal Register** not later than 30 U.S. business days (or not more than 44 U.S. business days where an extension is provided) after the official receipt of a Request, adding the subject product to the Commercial Availability List in Annex 3–B of the US-Colombia TPA. The effective date of the determination is the date of publication of the notice in the U.S. **Federal Register**.

(3) *Approval in a Restricted Quantity.*

(i) *Approval in a Restricted Quantity:* An Approval in a Restricted Quantity means that CITA has determined to add the subject product to the Commercial Availability List in Annex 3–B of the US-Colombia TPA with a specified restricted quantity. CITA may approve the Request in a restricted quantity if CITA determines that a US-Colombia TPA supplier(s) can partially fulfill the Request for the subject product. The restricted quantity specifies the amount of the subject product that can be provided by a US-Colombia TPA supplier(s).

(A) If a Request is approved in a restricted quantity, a notice will be published in the **Federal Register** not later than 30 U.S. business days (or not more the 44 U.S. business days where an extension is provided) after official receipt of the Request, adding the subject product to the Commercial Availability List in Annex 3–B of the US-Colombia TPA with a specified restricted quantity. The restricted quantity specifies the amount of the subject product that can be provided by a US-Colombia TPA supplier(s).

(B) The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(ii) *Elimination of a restricted quantity:* Not later than six months after adding a product to the Commercial Availability List in Annex 3–B of the US-Colombia TPA in a restricted quantity, CITA may eliminate the restriction if it determines that the subject product is not available in commercial quantities in a timely manner in the United States or Colombia. *See* Section 203(o)(4)(C)(vi) of the Implementation Act.

(A) The determination that the subject product is not available in commercial quantities in a timely manner will be based upon whether the restricted quantity has been provided by a US-Colombia TPA supplier(s). CITA will solicit comments and information from the US-Colombia TPA supplier(s) and the requestor.

(B) If the US-Colombia TPA supplier(s) are still capable of providing the restricted quantity, the restriction will remain.

(C) If the US-Colombia TPA supplier(s) are unable to provide the restricted quantity, CITA will eliminate the quantity restriction. CITA will publish a notice in the U.S. **Federal Register**, and post on the Web site, that the quantity restriction is eliminated and the subject product is added to the Commercial Availability List in Annex 3–B of the US-Colombia TPA in an unrestricted quantity. The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(4) *Insufficient Information To Determine.* CITA will extend its time period for consideration of the Request by an additional 14 U.S. business days in the event that CITA determines, not later than 30 U.S. business days after official receipt of a Request, that it has insufficient information to make a determination regarding the ability of a US-Colombia TPA supplier to supply the subject products of the Request based on the submitted information. CITA will normally determine that it does not have sufficient information to make a determination on a Request when CITA finds there is inconsistency in material information contained in the Request, one or more Responses, and/or the Rebuttal(s). CITA will notify interested parties via email that it has extended the time period for CITA's consideration by 14 U.S. business-days. CITA also will announce the extension

on the Web site for US-Colombia TPA commercial availability proceedings.

(i) *Process During Extension Period:* During the extended time period, CITA will request that interested entities provide additional evidence to substantiate the information provided, and may initiate a meeting with interested entities. Such evidence may include, *inter alia,* product samples, lab tests, detailed descriptions of product facilities, and comparisons of product performance in the intended end-use of the subject product. Any samples, if requested, of fibers, yarns, or fabrics, that are provided to CITA will be made available for public inspection at the Office of Textiles and Apparel, Room 30003, U.S. Department of Commerce, 14th St. and Constitution Ave. NW., Washington, DC 20230. All written submissions must follow instructions described in Section 3 of these procedures. Samples should be identified with a cover sheet that describes the specifications of the sample and be identical to the specifications of the Request. If CITA conducts a meeting, it will comply with requirements to conduct proceedings in an open manner.

(ii) CITA also will consider evidence in support of claims that US-Colombia TPA supplier(s) can supply a substantially similar product to that specified in the Request.

(ii) CITA will make a determination, not later than 44 U.S. business days after the official receipt of a Request whether to approve, approve with restriction, or deny the Request and will follow the notification process accordingly.

(5) *Deemed Approval.* In the event that CITA does not make a determination in response to a Request to add a product to the Commercial Availability List in Annex 3–B of the US-Colombia TPA within the statutory deadlines provided, not later than 45 U.S. business-days after the official receipt of the Request or not later than 60 U.S. business-days after the official receipt of the Request that was determined to lack sufficient information pursuant to Section 8(c)(4) of these Procedures, the requested subject product shall be added to the Commercial Availability List in Annex 3–B of the US-Colombia TPA, in an unrestricted quantity, in accordance with the requirements of section 203(o)(4)(D) of the Implementation Act. CITA will notify the public of the deemed approval by publication in the **Federal Register** and posting on OTEXA's Web site.

9. Submitting a Request To Remove or Restrict

(a) *Request To Remove or Restrict.* No earlier than six months after a product has been added to the Commercial Availability List in Annex 3–B of the US-Colombia TPA in an unrestricted quantity pursuant to Sections 203(o)(2), 203(o)(4)(C)(iii) or (vi), or 203(o)(4)(D) of the Implementation Act, an interested entity may submit a request to CITA requesting that a product be either removed from the List in Annex 3–B or that a quantity restriction be introduced. *See* Section 203(o)(4)(E)(i) of the Implementation Act.

(b) *Content of a Request To Remove or Restrict.* The Request to Remove or Restrict must provide the substantive information set forth in Section 6(b) (Contents of a Response with an Offer to Supply) of these procedures.

(c) *Procedures.*

(1) In considering whether to accept a Request to Remove or Restrict, CITA will follow procedures set forth in Section 5 (Consideration and Acceptance of a Request) of these procedures.

(2) If CITA determines to accept the Request to Remove or Restrict, CITA and any responding interested entity shall follow applicable procedures and contents set forth in subsection 6(a) (Response with an Offer to Supply) and Section 7 (Submitting a Rebuttal Comment) of these procedures.

(3) As set forth in subsections 8(a) and (b) (Determination Process) of these procedures, CITA will determine whether the subject product of the Request to Remove or Restrict is available in commercial quantities in a timely manner from a US-Colombia TPA supplier not later than 30 U.S. business days after the official receipt of the Request to Remove or Restrict.

(i) If CITA determines that the product is available in commercial quantities in a timely manner in the United States or Colombia, then that product will be removed from the Commercial Availability List in Annex 3–B of the US-Colombia TPA.

(ii) If CITA determines that the product is available in restricted quantities in a timely manner in the United States or Colombia, then a restricted quantity will be introduced for that product.

(iii) If the Commercial Availability List in Annex 3–B of the US-Colombia TPA changes as a result of CITA's determination for the Request to Remove or Restrict, CITA will notify interested parties by email of its determination and will publish a notice of its determination for the Request to Remove or Restrict in the U.S. **Federal Register**.

(A) For removal, the notice of determination will state that textile and apparel good containing the subject product are not to be treated as originating in either the United States or Colombia if the subject product is obtained from sources outside the United States or Colombia, effective for goods entered into the United States on or after six months (i.e., 180 calendar days) after the date of publication of the notice. *See* Section 203(o)(4)(E)(iv) of the Implementation Act.

(B) For restriction, the notice of determination will specify the restricted quantity for the subject product that is to be effective on or after six months (i.e., 180 calendar days) after the publication date of the notice. *See* Section 203(o)(4)(E)(iv) of the Implementation Act.

Request for Comments on the Interim Procedures

Comments must be received no later than December 6, 2012, and in the following format:

(1) Comments must be in English.

(2) Comments must be submitted electronically or in hard copy, with original signatures.

(3) Comments submitted electronically must be either in PDF, Word, or Word-Perfect format, and sent to the following email address: *OTEXA_COLOMBIA@trade.gov*. Comments submitted electronically will be posted for public review on the Web site dedicated to US-Colombia TPA commercial availability proceedings.

(4) Comments submitted in hard copy must be original signed documents and must be mailed to the Chairman, Committee for the Implementation of Textile Agreements, Room 30003, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. Comments submitted in hard copy will be made available for public inspection at the Office of Textiles and Apparel, Room 30003, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m. on business days. In addition, comments submitted in hard copy will also be posted for public review on the Web site dedicated to U.S.-Colombia TPA commercial availability proceedings.

Janet E. Heinzen,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2012–27090 Filed 11–5–12; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0134]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Personnel and Readiness announces a proposed public information collection and seeks public comment on the provisions thereof. 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 information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 7, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Personnel and Readiness (OUSD), Military Community and Family Policy (MCFP), State Liaison and Educational Opportunities Division, ATTN: Ms. Kerrie Tucker, 4800 Mark Center Drive, Suite 14E08, Alexandria, VA 22350–2300 or send email to project officer at: *kerrie.tucker@osd.mil.*

Title; Associated Form; and OMB Number: Pilot for Centralized Student Complaint Process, DoD Postsecondary Student Complaint Intake Form for Service Members and Their Families; DoD Form x640, ''Student Complaint Intake Form''; OMB Control Number 0704–TBD.

Needs and Uses: The information collection requirement is necessary to obtain, document, and respond to complaints, questions, and other information concerning post-secondary education and services provided to military students, veterans, and their family members. The form is included to help document information such as the level of study of the student, school the student is attending, type of education benefits being used, branch of the military service, substance of the complaint, and preferred contact information for the person making the contact.

Affected Public: Individuals or households, business or other for profit; Not-for-profit institutions, Federal Government, and State, local, or Tribal government.

Annual Burden Hours: 100.

Number of Respondents: 600.

Responses per Respondent: 1.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

President Barack Obama signed Executive Order 13607 on April 27, 2012 to address the problem of aggressive and deceptive targeting of Service members, veterans, and their families by some educational institutions. Section 4 of the Executive Order specifically calls for the creation of a robust, centralized complaint process for students receiving Federal military and veterans' educational benefits.

DoD, along with the participating Federal agencies identified in the Executive Order have determined that this complaint process, in addition to taking in complaints about abusive or deceptive practices by schools, must create an opportunity for schools to resolve those complaints, and must ensure that complaint data is accessible both to the relevant components at the Departments of Defense, Veterans Affairs, and Education that review schools for compliance and program eligibility, as well as the relevant law enforcement agencies that will prosecute any illegal practices. Beyond creation of this complaint process, the agencies seek to prevent abusive, deceptive, and fraudulent practices through the following mechanisms: establishment of risk-based program reviews; limits on access to military installations by educational institutions; and the use of intellectual property and other legal protections to ensure Web sites and programs are not deceptively suggesting military affiliation or endorsement.

A centralized complaint system will provide a resource for students receiving military and veteran educational benefits to effectively submit complaints against institutions they feel have acted deceptively or fraudulently. The first step is to make it easier for prospective and current military students to raise these concerns.

Dated: October 31, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–26984 Filed 11–5–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

U.S. Air Force Broadcast of Consent Order, and Determination of Interest Level for a United Launch Alliance (ULA) Consent Order Industry Day

AGENCY: Headquarters Air Force, Deputy Under Secretary of the Air Force (Space).

ACTION: Publicize Consent Order, and Determine Level of Interest for a ULA Consent Order Industry Day.

SUMMARY: This is not a notice of solicitation issuance. The Deputy Under Secretary of the Air Force (Space), as the Compliance Officer under the Federal Trade Commission (FTC) Decision and Order (hereinafter referred to as the ''Consent Order''), in the Matter of Lockheed Martin Corporation, the Boeing Company, and United Launch Alliance (ULA), L.L.C. (hereinafter referred to as the ''Respondents''), Docket No. C–4188, dated May 1, 2007, is posting this announcement to publicize the Consent Order, and determine level of interest for a ULA Consent Order Industry Day.

The Consent Order: The Consent Order requires that with regard to covered Government programs, (1) ULA afford all space vehicle manufacturers

non-discriminatory treatment for launch services that ULA may provide, and that (2) Lockheed Martin and Boeing, as space vehicle manufacturers, consider all qualified launch service providers on a non-discriminatory basis. The Consent Order also requires firewalls to prevent information from a space vehicle provider being shared by ULA with its Boeing or Lockheed Martin parent company. Similarly, Boeing and Lockheed Martin must have firewalls to ensure that other launch service information is not shared with ULA. The Consent Order also requires that the Department of Defense appoint a Compliance Officer to oversee compliance with the Consent Order by all three Respondents. The current Compliance Officer is the Deputy Under Secretary of the Air Force (Space), Mr. Richard McKinney. The FTC Consent Order states that the Compliance Officer ''shall oversee compliance by the Respondents with the terms of this Order, and shall have the power and authority to oversee such compliance.''

Industry Day Interest: The purpose of the proposed ULA Industry Day is to inform industry of the Consent Order and its requirements, the ULA, Boeing, and Lockheed Martin compliance with the Consent Order, and the role of the Compliance Officer to oversee the Respondents' compliance with the Consent Order. During the proposed Industry Day, each of the Respondents plans to present information on its specific compliance with the Consent Order requirements. Separate discussion sessions will be available to attendees, at their discretion and request, to meet with the Compliance Officer and his Government team in private to address any questions or comments relating to the Consent Order.

DATES: If sufficient interest exists, the ULA Industry Day will be held the first quarter of 2013.

ADDRESSES: The meeting location is TBD.

Who Can Attend: Members of the aerospace industry who may do business with the Respondents and may be affected by the Consent Order, and the general public, are welcome to attend Industry Day. However for security reasons, all attendees must be United States citizens with valid government issued photo identification for admission into the facility where Industry Day will be held. Attendance at the ULA Industry Day is limited to a maximum of four representatives per organization. It is required that all persons interested in attending register online at (*http://2013industryday.org/*) by December 7, 2012. If you are unable to access the link you can send your contact information to *alan.l.adams@aero.org,* or call Mr. Adams at (310) 336–7476. You can also mail your contact information to Alan L. Adams, The Aerospace Corporation, P.O. Box 92957–M1/013, Los Angeles, CA 90009–2957.

FOR FURTHER INFORMATION CONTACT: Sarah Beth Cliatt (Compliance Division Chief), Tel: 719–556–2042; or Colonel Marc Berkstresser (Deputy Compliance Division Chief), Tel: 703–614–7842.

SUPPLEMENTARY INFORMATION: After the FTC initiated an investigation of the proposed formation of ULA by Boeing and Lockheed Martin, the FTC's Bureau of Competition issued a draft Complaint that it intended to present to the FTC for its consideration. The Complaint would have charged the Respondents with violations of Section 7 of the Clayton Act, as amended, 15 United States Code (U.S.C.) Section 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. Section 45. The Respondents and the FTC executed an agreement containing an admission by the Respondents of the jurisdictional facts set forth in the draft complaint, and including a statement that the Respondents' signing of the Consent Agreement (1) was for settlement purposes only, (2) did not constitute an admission by the Respondents that (a) the law had been violated as alleged in the Complaint, or (b) the facts alleged in the Complaint, other than jurisdictional facts, were true. The Aerospace Corporation provides, under contract, much of the technical and cost oversight support for the Compliance Officer as specified in the Consent Order.

Henry Williams, Jr.,

Acting Air Force Federal Register Liasion Officer.

[FR Doc. 2012–27061 Filed 11–5–12; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2012–ICCD–0047]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Needs Sensing Survey Under the Regional Educational Laboratory Program (REL)

AGENCY: Department of Education (ED), Institute of Education Sciences (IES)

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before December 6, 2012.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0047 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Needs Sensing Survey under the Regional Educational Laboratory Program (REL).

OMB Control Number: Pending.

Type of Review: New collection, request for a new OMB Control Number.

Respondents/Affected Public: State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 2,240.

Total Estimated Number of Annual Burden Hours: 983.

Abstract: The needs assessment consists of an online survey of a sample of school board members, district administrators, principals, and teachers in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, and Wisconsin. The purpose of the sample survey is to assess: the importance these populations attach to the four issues identified in advance by REL Midwest as priorities for the region; for each issue, the types of data and analysis supports, and research and evaluation needs which respondents anticipate would be of particular value; and what factors would increase the likelihood respondents and the populations they represent would turn to the REL for data and analysis supports, or research and evaluation needs in the future. The results of the survey will be used to prioritize the assistance that REL Midwest provides to educators in the region for utilizing their longitudinal data systems, conducting high quality research and evaluation; learning about the best education research; and incorporating data into policy and practice.

Dated: November 1, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–27072 Filed 11–5–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Membership of the Performance Review Board

AGENCY: Office of Management, Department of Education.

ACTION: Notice; correction.

SUMMARY: On August 30, 2012, the Office of Management in the U.S. Department of Education published in the **Federal Register** (77 FR 52707) a notice announcing the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES) (August PRB notice). Under 5 U.S.C. 4314(c)(1) through (c)(5), each agency is required to establish one or more PRBs. This notice corrects the list of members included in the August PRB notice.

DATES: Effective November 6, 2012.

SUPPLEMENTARY INFORMATION: On page 52707 of the PRB notice, in the third column, we correct the paragraph under the heading Membership to read:

The Secretary has selected the following executives of the Department of Education for the specified SES performance cycle: Sue Betka, Danny Harris, Larry Kean, Teresa Garland, Brenda Dann-Messier, John (Jay) Hurt, Kathleen Styles, and Gabriella Gomez.

FOR FURTHER INFORMATION CONTACT: Andrea Burckman, Director, Executive Resources Division, Human Capital and Client Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue SW., Room 2C150, LBJ, Washington, DC 20202–4573. Telephone: (202) 401–0853.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under For Further Information Contact.

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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: October 31, 2012.

Arne Duncan,

Secretary of Education.

[FR Doc. 2012–26983 Filed 11–5–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 12–113–LNG]

Chevron U.S.A. Inc.; Application for Blanket Authorization To Export Previously Imported Liquefied Natural Gas on a Short-Term Basis

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application), filed on September 10, 2012, by Chevron U.S.A. Inc. (Chevron), requesting blanket authorization to export liquefied natural gas (LNG) that previously had been imported into the United States from foreign sources in an amount up to the equivalent of 72 billion cubic feet (Bcf) of natural gas on a short-term or spot market basis for a two-year period commencing on December 8, 2012.[1] The LNG would be exported from the Sabine Pass LNG Terminal owned by Sabine Pass LNG, L.P., in Cameron Parish, Louisiana to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, December 6, 2012.

ADDRESSES: U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Beverly Howard, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–9387;

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence

[1] *Chevron U.S.A. Inc.'s,* current blanket authorization to export previously imported LNG granted in DOE/FE Order No. 2888 (December 8, 2010) extends through December 7, 2012.

Ave. SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Chevron is a Pennsylvania corporation with its principal place of business in San Ramon, California. Chevron Global Gas is a division of Chevron that engages in the global business of marketing and trading LNG. Chevron has contracted for 1.0 Bcf/day of terminal capacity from Sabine Pass LNG L.P. for an initial term of twenty years that commenced in November 2004 with the option to extend the term for a period of twenty years. On June 22, 2012, DOE/FE Order No. 3113 granted Chevron blanket authorization to import LNG up to the equivalent of 800 Bcf of natural gas from various international sources for a two-year period beginning on August 1, 2012. Under the terms of the blanket authorization, LNG may be imported at any LNG receiving facility in the United States and its territories.

Current Application

In the instant Application, Chevron requests blanket authorization to export previously imported LNG to which Chevron holds title on a short-term or spot market basis in an amount up to the equivalent of 72 Bcf of natural gas, on a cumulative basis, over a two-year period beginning on December 8, 2012. Chevron is seeking such authorization to export previously imported LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by Federal law or policy. Chevron states that it does not seek authorization to export domestically-produced natural gas or LNG.

The blanket export authorization requested by Chevron would be applicable to exports from the Sabine Pass LNG Terminal, owned by Sabine Pass LNG, L.P. in Cameron Parish, Louisiana. Chevron states that DOE/FE has issued a number of blanket authorizations to export previously-imported LNG, including the recently granted authorization for such re-exports from this terminal to Cheniere Marketing LLC in DOE/FE Order No. 3102 granted on June 7, 2012. Chevron states that there are no other proceedings related to this Application currently pending before the DOE or any other federal agency.

Chevron states that the request to export previously imported LNG is based on its desire to optimize the long-term capacity it has contracted for at the Sabine Pass LNG Terminal by responding effectively to periodic changes in domestic and world markets for natural gas and LNG. More specifically, Chevron asserts it desires the option to either export previously imported LNG to other world markets, or regasify the imported LNG for sale in domestic markets. Chevron states that it would base any decision related to the sale of imported LNG on prevailing market conditions. Chevron asserts that it does not intend to export any LNG when market conditions dictate that the LNG be used to meet domestic needs.

Public Interest Considerations

In support of its Application, Chevron states that pursuant to section 3 of the NGA, DOE/FE must authorize natural gas exports to a foreign country unless there is a finding that such exports ''will not be consistent with the public interest.'' [2] Chevron states that section 3 thus creates a statutory presumption in favor of a properly framed export application.[3] Chevron states further that the public interest determination is guided by DOE Delegation Order No. 0204–111, which ''focuses primarily on domestic need for the gas to be exported, as described in the Secretary's natural gas policy guidelines''.[4]

As detailed in the Application, Chevron states the blanket export authorization requested by Chevron satisfies the public interest standard for the following reasons. Chevron states that there is no domestic reliance on the imported LNG that Chevron would export pursuant to the blanket authorization requested in the Application. Specifically, Chevron states that in the DOE/FE Order No. 3102 [5] DOE/FE took administrative notice that recent data and analysis shows domestic natural gas production has increased significantly over the last several years, due to improved drilling technologies, and the ability to produce natural gas trapped in shale gas geologic formations. Chevron asserts that granting the blanket export authorization would encourage the importation of LNG into the United States by providing Chevron the option, based on prevailing market conditions, to either export previously imported LNG to other world markets or regassify the LNG for sale in domestic markets. Chevron asserts that the authorization would encourage Chevron to purchase spot market LNG cargoes for import into the United States, and would make more gas available to the domestic market if it were needed. Finally, Chevron states that granting the blanket export authorization would not reduce domestically-produced natural gas supplies because it is not seeking to export domestically-produced natural gas supplies.

Environmental Impact

Chevron states that no modifications to the Sabine Pass LNG Terminal are required to enable the proposed exports of LNG. Chevron asserts that consequently, granting this Application would not be a federal action significantly affecting the human environment under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*

DOE/FE Evaluation

This export Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider domestic need for the gas, as well as any other issues determined to be appropriate, including whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues.

The National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its NEPA responsibilities.

Public Comment Procedures

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in

[2] 15 U.S.C. 717b.(a). Natural gas is defined to include LNG in 10 CFR 590.102(i).

[3] *Phillips Alaska Natural Gas Corp. and Marathon Oil Co.,* DOE/FE Order No. 1473 (2 FE ¶ 70,317) at 13 (April 2, 1999), citing *Panhandle Producers and Royalty Owners Association* v. *ERA,* 822 F.2d 1105, 1111 (D.C. Cir. 1987).

[4] *Cheniere Marketing, LLC,* Order Granting Blanket Authorization to Export Previously Imported Liquefied Natural Gas by Vessel, DOE/FE Order No. 3102 (FE Docket No. 12–36–LNG) at 5 (June 7, 2012).

[5] Id.

determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov,* with FE Docket No. 12–113–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by Chevron is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on October 31, 2012.

Robert F. Corbin,

Director, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.

[FR Doc. 2012–27032 Filed 11–5–12; 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, November 28, 2012 1:00 p.m.–7:00 p.m.

ADDRESSES: Cities of Gold Conference Center, 10–A Cities of Gold Road, Pojoaque, NM 87506.

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: *Menice.Santistevan@nnsa.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

1:00 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Ed Worth Establishment of a Quorum: Roll Call and Excused Absences, Staff Welcome and Introductions, Carlos Valdez, Chair
Approval of Agenda and September 26, 2012 Meeting Minutes
1:15 p.m. Public Comment Period
1:30 p.m. Old Business
- Written Reports
- Report on EM SSAB Chairs' Meeting, Carlos Valdez and Manuel Pacheco, Vice-Chair
- Consideration and Action on Four Draft Recommendations from EM SSAB Chairs' Meeting
- Other Items

2:00 p.m. New Business
- Consideration and Action on 2012 Self Evaluation (Section X. Bylaws), Carlos Valdez
- Other Items

2:15 p.m. Update from Liaison Members
- New Mexico Environment Department, John Keiling
- Los Alamos National Security, Jeffrey Mousseau
- DOE, Peter Maggiore
- Environmental Protection Agency, Ed Worth for Rich Mayer

3:00 p.m. Break
3:15 p.m. Update on Framework Agreement
5:00 p.m. Dinner Break
6:00 p.m. Public Comment Period, Carlos Valdez
6:15 p.m. Consideration and Action on Draft Recommendation(s) to DOE
6:45 p.m. Wrap-Up and Comments from Board Members
7:00 p.m. Adjourn, Ed Worth, DDFO

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 October 26, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–27034 Filed 11–5–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–15–000]

Southwestern Public Service Company v. Southwest Power Pool, Inc.; Notice of Complaint

Take notice that on October 26, 2012, pursuant to sections 206 and 309 of the Federal Power Act, 16 U.S.C. 824(e) and 825(h) (2006); and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 206 (2012), Xcel Energy Services Inc. on behalf of Southwestern Public Service Company (Complainant) filed a formal complaint against Southwest Power Pool, Inc. (SPP or Respondent), alleging that (1) the transmission rates for SPP Zone 11 are unjust and unreasonable due to the inclusion of the costs of Tri-County Electric Cooperative, Inc.'s (Tri-County) facilities that are not transmission facilities under the SPP Open Access Transmission Tariff (OATT); and (2) SPP's filing of transmission rates that included the costs of the Tri-County facilities violated the express terms and conditions of Attachment AI of the SPP OATT and the SPP Member Agreement. The Complainant requests a refund effective date of April 1, 2012.

The Complainant certifies that copies of the complaint were served on the contacts for SPP as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of 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 14 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: 5:00 p.m. Eastern Time on November 15, 2012.

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27011 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP12–945–000; RP12–945–001]

High Point Gas Transmission, LLC; Notice Establishing Deadline for Comments

On October 26, 2012, High Point Gas Transmission, LLC (High Point) filed a response to the Commission's October 16, 2012 Data Request in the captioned proceedings.

Notice is hereby given that participants in the captioned proceedings may file comments to High Point's Data Response on or before 5:00 p.m. Eastern time on Tuesday, November 6, 2012.

Dated: October 31, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27005 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI13–1–000]

DR6275 LLC; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI13–1–000.

c. *Date Filed:* October 22, 2012.

d. *Applicant:* DR6275 LLC.

e. *Name of Project:* Yagel Creek Micro Hydro Project.

f. *Location:* The proposed Yagel Creek Micro Hydro Project will be located on Yagel Creek, near the town of Lava Hot Springs, Bannock County, Idaho, affecting T. 10 S., R. 38 E., sec. 33, Boise Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Roland Evans, 4664 NE Beaumead Lane, Portland, Oregon 97124; telephone: (503) 292–3295; email: *www.therevans @comcast.net.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or email address: *henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions is:* 30 days from the issuance of this notice by the Commission.

Comments, Motions to Intervene, and Protests may be filed electronically via the Internet. See 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. For more information on how to submit these types of filings, please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

Please include the docket number (DI13–1–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed run-of-river Yagel Creek Micro Hydro Project will consist of: (1) A rock diversion into a screened intake; (2) a buried 4-inch-diameter, 2,100-foot-long penstock; (3) a powerhouse containing an 1,800-watt turbine/generator; (4) an 1,800-foot-long transmission line; (5) a short tailrace directing the water back into the creek; and (6) appurtenant facilities. The power generated will be used in a local cabin.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy

or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the Docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOlineSupport@ferc.gov* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—All filings must bear in all capital letters the title ''COMMENTS'', ''PROTESTS'', AND/OR ''MOTIONS TO INTERVENE'', as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any Motion to Intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27016 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM01–5–000]

Electronic Tariff Filings; Notice of Change to eTariff Type of Filing Codes

Take notice that, effective November 18, 2012, the list of available eTariff Type of Filing Codes (TOFC) will be modified to include a new TOFC for the Federal Power Marketing Administrations (PMAs): TOFC 1220: ''Rate Extensions''. This code will permit PMAs to file for extensions of rates consistent with 10 CFR 903.23 (2012) of the Department of Energy's regulations. Tariff records included in such filings will be automatically accepted to be effective on the proposed effective date without further Commission action.

For more information, contact Peter Radway, Office of Energy Market Regulation at (202) 502–8782 or send an email to *ETariff@ferc.gov*.

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27006 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–469–000]

Northern Natural Gas Company; Notice of Availability of the Environmental Assessment for the Proposed A-Line Abandonment Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an Environmental Assessment (EA) for the A-Line Abandonment Project proposed by Northern Natural Gas Company (Northern) in the above-referenced docket. Northern requests authorization to abandon by sale to DKM Enterprises, LLC (DKM) for salvage certain facilities known as the A-Line. These facilities are located in Ochiltree, Hansford, Hutchinson, and Carson Counties, Texas; Beaver County, Oklahoma; and Kiowa and Clark Counties, Kansas. They consist of about 126 miles of 24-inch-diameter pipeline and appurtenant facilities. Northern would separate the abandoned A-Line at valve settings or compressor stations at eight locations.

The EA assesses the potential environmental effects of the abandonment of the A-Line Abandonment Project in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The proposed A-Line Abandonment Project includes the separation of the abandoned A-Line by Northern at valve settings or compressor stations at these locations:

- Cabot Carbon Interconnect, Carson County, Texas, milepost (MP) 7.75;
- A-Line Block Valve 5, Hutchinson County, Texas, MP 29.75;
- Spearman Compressor Station, Ochiltree County, Texas, MP 38.47;
- Beaver Compressor Station, Beaver County, Oklahoma, MP 0.00;
- Northern/CNG Interconnect, Beaver County, Oklahoma, MP 10.35;
- Englewood Branch Line, Clark County, Kansas, MP 37.91;
- McCaustland Gathering System, Clark County, Kansas, MP 71.10; and
- Mullinville Compressor Station, Kiowa County, Kansas, MP 87.98.

Northern would abandon by sale to DKM for salvage two segments of its A-Line. The Skellytown to Spearman A-Line is about 38 miles long and extends from Northern's abandoned Skellytown Station near Skellytown, Carson County, Texas, to its Spearman Compressor Station in Spearman, Ochiltree County, Texas. The second segment, the Beaver to Mullinville A-Line, is about 88 miles long and extends from Northern's Beaver Compressor Station near Beaver, Oklahoma, to it's Mullinville Compressor Station near Mullinville, Kansas. It also includes abandonment of four lateral pipelines that are 4 or 8 inches in diameter: Compressed Natural Gas Lateral, line number OKB57701; Wilson Lateral, line number KSG74401; McColm Lateral, line number KSG66601; and Huck Lateral, line number KSG68801. The salvage activities conducted by DKM would be nonjurisdicational.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site

at *www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local government representatives and agencies; elected officials; Native American tribes; potentially affected landowners and other interested individuals and groups; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before November 30, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP12–469–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP12–469). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27014 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14154–001–Idaho]

Mr. William Arkoosh; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47,897), the Office of Energy Projects has reviewed the application for an original license to construct the Little Wood River Ranch II Hydropower Project, and has prepared an Environmental Assessment (EA). The proposed 1.23-megawatt project would be located on the Little Wood River, six miles west of the Town of Shoshone, in Lincoln County, Idaho. The project would be located on 119.1 acres of private land and would occupy 3.3 acres of federal lands managed by the U.S. Bureau of Land Management.

The EA includes staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site 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 Online Support at *FERCOnlineSupport@ferc.gov,* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. Please contact Jennifer Harper by telephone at (202) 502–6136, or by email at *Jennifer.Harper@FERC.gov*, if you have any questions.

Dated: October 25, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27017 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–491–000]

Trunkline Gas Company, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed Trunkline Mainline Abandonment Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Trunkline Mainline Abandonment Project involving abandonment of facilities by Trunkline Gas Company, LLC (Trunkline) located in numerous counties in Illinois, Kentucky, Tennessee, Mississippi, Arkansas, Louisiana, and Texas. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on November 26, 2012.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

Trunkline provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Trunkline proposes to abandon by transfer to a corporate affiliate portions of its existing 100–1 and 100–2 looped [1] pipeline systems and portions of compressor stations (CS) located in numerous counties in Illinois, Kentucky, Tennessee, Mississippi, Arkansas, Louisiana, and Texas, so that they may be converted to the transmission of crude oil. Trunkline also proposes to abandon in-place 12 compressor units totaling 15,850 horsepower (hp) that are no longer needed. Trunkline states that the abandonment would result in the reduction of its certificated winter mainline capacity through the Independence CS from 1,555 thousand dekatherms per day (MDt/d) to 958 MDt/d, and the certificated capacity out of its Texas portion of its system through the Longville CS would be reduced from 1,109 MDt/d to 920 MDt/d. After abandonment, these gas volumes would continue to be transported using the 100–2 pipeline between the Kountze CS and Longville CS, and the 100–3 pipeline between the Longville CS and the Tuscola CS.

The Trunkline Mainline Abandonment Project would consist of the following:

- Abandonment by transfer of 45.02 miles of the 24-inch-diameter 100–1 Loopline extending from Main Line Valve (MLV) 43–1 near Buna, Texas to the Longville CS near Longville, Louisiana;
- Abandonment by transfer of 725.46 miles of the 30-inch-diameter 100–2 Loopline pipeline extending from the Longville CS to the Tuscola CS near Tuscola, Illinois;
- Abandonment in-place of a 3,000-hp compressor unit from the Pollock CS (Louisiana); a 1,050-hp compressor unit from the Epps CS (Louisiana); four compressor units totaling 4,200 hp from the Shaw CS (Mississippi); five compressor units totaling 5,250 hp from the Independence CS (Mississippi); and a 2,350-hp compressor unit from the Joppa CS (Illinois); and
- Abandonment of minor facilities at 163 sites across the systems, 80 of which would require ground disturbing activities.

Trunkline states that upon the grant of abandonment authority for the above facilities, its Mainline pipeline and existing compressor stations would continue to operate in interstate transportation service.

The general location of the project facilities is shown in appendix 1.[2]

Non-Jurisdictional Facilities

Following transfer of the facilities, the future operator of the abandoned pipeline would perform activities that are not under the jurisdiction of the FERC (non-jurisdictional) including modification of the facilities to transport crude oil. The future operator would modify the facilities proposed for abandonment at 95 sites. These activities would include:

- Removal and/or change out of mostly MLVs at 84 sites that overlap the abandonment work sites;
- Construction of four new MLVs;
- Construction of three new relays totaling 4,400 feet to make the pipeline diameter consistent, in order to enable inline inspection tools to be run through the crude oil pipeline; and
- Construction of replacement pipelines across the Sabine, Red, Mississippi, and Ouachita Rivers using the horizontal directional drilling method.

The scope of the non-jurisdictional pipeline construction activities is still being developed. However, the current scope includes:

- Construction of about 33.6 miles of 30-inch-diameter pipeline from the vicinity of the tank farms in Patoka, Illinois to Trunkline's existing Johnsonville CS; and
- Construction of about 154 miles of 30-inch-diameter pipeline from about milepost 62.7 near Alexandria, Louisiana to a possible delivery point in St. James, Louisiana.

These related non-jurisdictional facilities are not subject to the FERC's environmental review procedures. In the EA, we [3] will provide available descriptions of the non-jurisdictional facilities and include them under our analysis of cumulative impacts.

Land Requirements for Construction

Trunkline's abandonment activities would require ground disturbance of approximately 10.1 acres at 80 sites and would involve the following: excavation of cross-over pipeline segments for isolation of tap valve meter and regulators, installation of hot taps on the Mainline pipeline, excavation and removal of two drip lines on Loopline 100–2, removal of a small segment of pipeline from Loopline 100–1 downstream of Mainline Valve 43–1, and capping the ends of the pipe. Upon conclusion of the abandonment activities, the disturbed acreage would be restored. In addition, Trunkline would use other areas at existing mainline valve and compressor stations to disconnect above ground piping, welding caps on the pipeline ends, or

[1] A pipeline loop is a segment of pipe constructed parallel to an existing pipeline to increase capacity.

[2] The appendices referenced in this notice will not appear in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[3] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

installing blind flanges. These activities would involve no ground disturbance.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the abandonment of the proposed project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety; and
- Cumulative impacts.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section below.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[4] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Offices (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[5] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPOs as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before November 26, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project Docket Number CP12–491–000 with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are existing right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in

[4] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[5] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP12–491–000. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: October 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27015 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7590–007]

Nashua Hydro Associates; Notice of Application for Amendment of Exemption and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Exemption.

b. *Project No.:* 7590–007.

c. *Date Filed:* September 20, 2012.

d. *Applicant:* Nashua Hydro Associates.

e. *Name of Project:* Jackson Mills Project.

f. *Location:* The project is located on the Nashua River in Hillsborough County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a–825(r).

h. *Applicant Contact:* Mr. Andrew Locke, Essex Hydro Associates, LLC, 55 Union Street, 4th Floor, Boston, MA 02108, (617) 367–0032, *al@essexhydro.com,* and Ms. Elizabeth W. Whittle, Nixon Peabody, LLP, 401 9th Street NW., Suite 900, Washington, DC 20004, (202) 585–8338, *ewhittle@nixonpeabody.com.*

i. *FERC Contact:* Kelly Houff, (202) 502–6393, *Kelly.Houff@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* December 3, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The exemptee proposes to install a pneumatic crest gate system on 140 feet of the existing 178-foot-long spillway at the Jackson Mills Project to alleviate upstream flooding. The pneumatic crest gate system will consist of 6-foot-high, 20-foot-long, hinged steel panel sections, supported on the downstream side of the dam by tubular, air-filled, rubber bladders. In order to install the pneumatic crest gates, the exemptee will need to modify the existing Jackson Mills Dam by reducing 140 feet of the existing spillway by approximately 6 feet to allow for the installation of the 6-foot-high pneumatic crest gates. Additionally, the exemptee proposes to remove the 38-foot-long section of temporary flashboards located near the fishway.

The proposed pneumatic crest gate system would be designed for flood control purposes, and will not operate at flows below 7,500 to 9,000 cubic feet per second (cfs). The exemptee is not proposing to modify the height of the dam, therefore normal water levels would be maintained at their current elevation, and normal flows upstream and downstream of the project will not be altered upon installation of the crest gate system. The crest gate system would be designed to withstand overtopping in the raised position, and will be capable of operation in both a fully raised and partially raised position.

During construction of the of the pneumatic crest gate system, the exemptee proposes to perform the construction in ''dry conditions'' by eliminating flows at or over the Jackson Mills Dam by using an existing submerged cofferdam located about 300 feet upstream of the dam to divert all flows through the existing powerhouse, and setting the existing turbine units to sluice mode. Where feasible, the exemptee proposes to relocate fish and amphibian species to avoid possible fish stranding.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–7590–007) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the

requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27009 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–183–000]

Clear Choice Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Clear Choice Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 14, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: October 25, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27019 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2769–041]

Allegheny Electric Cooperative, Inc. and the Connecticut Bank and Trust Company, National Association; Notice of Application for Partial Transfer of License, and Soliciting Comments and Motions To Intervene

On June 22, 2012, Allegheny Electric Cooperative, Inc. (AECI) and The U.S. Bank National Association, (as successor in interest to The Connecticut Bank and Trust Company, National Association) (co-licensee) filed an application for partial transfer of license for the Raystown Lake Hydro Station Project No. 2769, located on the Raystown Branch of the Juniata River in Huntingdon County, Pennsylvania.

Applicants seek Commission approval to transfer the license for the Raystown Lake Hydro Station from AECI and the U.S. Bank National Association, (as successor in interest to The Connecticut Bank and Trust Company, National Association) co-licensee to AECI as sole licensee.

Applicants' Contact: Mr. David Dulick, General Counsel, Allegheny Electric Cooperative, Inc., 212 Locust Street, Harrisburg, PA 17101, phone (717) 233–5704. Mr. Robert Weinberg and Joshua Adrian, Ducan, Weinberg, Genzer & Pembroke, P.C., 1615 M Street NE., Washington, DC 20036, phone (202) 467–6370.

FERC Contact: Patricia W. Gillis (202) 502–8735, *patricia.gillis@ferc.gov.*

Deadline for filing comments and motions to intervene: November 21, 2012. Comments and motions to intervene may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1) and the instructions on the Commission's Web site under *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original plus seven copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. More information about this project can be viewed or printed on the eLibrary link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–2769) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27008 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–14–000]

Sierra Pacific Power Company, Nevada Power Company; Notice of Petition for Declaratory Order

Take notice that on October 25, 2012, pursuant to section 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure 18 CFR 385.207(a)(2), Sierra Pacific Power Company and Nevada Power Company (Applicants) filed a petition for declaratory order, requesting the Commission confirm and approve the Applicants' interim processes and procedures for managing customers' requests for transmission service within the Applicants' anticipated consolidated Balancing Authority Areas (expected effective date of January 2014).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of 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 14 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: 5:00 p.m. Eastern Time on November 26, 2012.

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27012 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2079–072]

Placer County Water Agency; Notice of Application for Approval of Contract for the Sale of Power for a Period Extending Beyond the Term of the License

Take notice that on July 17, 2012, Placer County Water Agency filed with the Commission an application for approval of: (a) The continuation of its existing power purchase contract with Pacific Gas and Electric Company (PG&E) for two months beyond the expiration of the current license term of the Middle Fork American River Project No. 2079 (Middle Fork Project); and (b) a new power purchase agreement for the sale of output of the Middle Fork Project from the licensee to PG&E beginning on May 1, 2013, which is beyond the term of Middle Fork Project's current license. The Project consists of two major storage reservoirs, five smaller reservoirs and diversion pools, and five powerhouses, and is located in the Sierra Nevada range in Placer and El Dorado Counties, California.

Section 22 of the Federal Power Act, 16 U.S.C. 815, provides that contracts for the sale and delivery of power for periods extending beyond the termination date of a license may be entered into upon the joint approval of the Commission and the appropriate state public service commission or other similar authority in the state in which the sale or delivery of power is made. The licensee asserts that approval of the submitted contract is in the public interest.

Comments on the request for approval of the continuation of the original power purchase contract and for the new power purchase agreement, or motions to intervene may be filed with the Commission no later than December 10, 2012. Section 385.2010 of the Commission's regulations requires all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

All documents (an original and eight copies) must be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please put the name Middle Fork Project No. 2079–072 on the first page of all documents.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site, *www.ferc.gov*, under the ''e-Filing'' link.

A copy of the application is available for review in the Commission's Public Reference Room or may be viewed on the Commission's Web site, *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 Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to these projects or other pending projects. For assistance, contact FERC Online Support.

Dated: October 25, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27020 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14397–000]

Northern Wasco County People's Utility District; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On April 27, 2012, the Northern Wasco County People's Utility District (Northern Wasco) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Freedom Hydroelectric Project (Freedom Project or project) to be located on the Columbia River, near Dallesport, Klickitat County, Washington. The project would affect lands administered by the Army Corps of Engineers (Corps). The sole purpose

of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would utilize the existing auxiliary water supply system for the north fishway fish ladder on the Corps' The Dalles Dam and would consist of the following: (1) A 150-foot-long and 25-foot-wide concrete intake channel structure; (2) two five-foot by five-foot sluice gates connecting the new intake channel structure to the existing intake channel structure; (3) a 20-foot-high, 120-foot-long, ⅛-inch bar by ⅛-inch opening fish screen; (4) a generation facility; (5) a new tailrace that would discharge to the existing discharge pool; and (6) a 9,000-foot-long 12.5-kilovolt radial transmission line. The estimated annual generation of the Freedom Project would be 39,000 megawatthours.

Applicant Contact: Dwight D. Langer, General Manager, Northern Wasco County People's Utility District, 2345 River Road, The Dalles, Oregon 97058; phone: (541) 298–3300.

FERC Contact: James Hastreiter; phone: (202) 552–2760.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14397) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27010 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14460–000]

New England Hydropower Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 15, 2012, New England Hydropower Company, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Hemlock Gorge Spillway Dike Project to be located on the Charles River, in the City of Newton, in Middlesex County, Massachusetts. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of: (1) The existing 31-foot-high, 69-foot-long Hemlock Gorge Spillway Dike with an 8-foot-long stop-log slot; (2) an existing 31-foot-long, 42-inch-diameter low level penstock; (3) an existing 0.13 acre impoundment with a normal maximum water surface elevation of 66.3 feet National Geodetic Vertical Datum; (4) a proposed 6-foot-high, 8-foot-wide head box structure equipped with a 15-foot-high, 8.5-foot-wide trashrack with 4-inch bar spacing, and a 5.9-foot-high, 7.9-foot-wide sluice gate; (5) a proposed 8-foot-long, 8-foot-wide powerhouse equipped with a 36-foot-long, 8-foot-wide Archimedes screw generator unit with an installed capacity of 30 kilowatts; (6) an existing 90-foot-long, 8-foot-wide, 4-foot-deep tailrace; and (7) a proposed 35 kilovolt, 170-foot-long transmission line connected to the NSTAR regional grid. The project would have an estimated average annual generation of 211 megawatt-hours.

Applicant Contact: Carol Wasserman, New England Hydropower Company, LLC, P.O. Box 5524, Beverly Farms, Massachusetts 01915; (978) 922–5824.

FERC Contact: Tom Dean; (202) 502–6041 or *thomas.dean@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance date of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact *FERC Online Support at FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14460) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: October 25, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27018 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance

October 31, 2012.

	Docket No.
PacifiCorp	ER13–64–000
Deseret Generation & Transmission Cooperative, Inc.	ER13–65–000
Northwestern Corporation (Montana).	ER13–67–000
Portland General Electric Company.	ER13–68–000
Idaho Power Company	ER13–127–000
Public Service Company of Colorado.	ER13–75–000
Terra-Gen Dixie Valley, LLC.	ER13–76–000
Tucson Electric Power Company.	ER13–77–000
UNS Electric, Inc	ER13–78–000
Public Service Company of New Mexico.	ER13–79–000
Arizona Public Service Company.	ER13–82–000
El Paso Electric Company	ER13–91–000
Black Hills Power, Inc., et al..	ER13–96–000
Black Hills Colorado Electric Utility Company.	ER13–97–000
NV Energy, Inc	ER13–105–000
Cheyenne Light, Fuel and Power Company.	ER13–120–000
Avista Corporation	ER13–93–000
Avista Corporation	ER13–94–000
Puget Sound Energy	ER13–98–000
Puget Sound Energy	ER13–99–000
Bonneville Power Administration.	NJ13–1–000
California Independent System Operator Corporation.	ER13–103–000

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on November 7, 2012, members of its staff will attend a meeting conducted by representatives of WestConnect, ColumbiaGrid, Northern Tier Transmission Group, and the California Independent System Operator regarding the interregional coordination requirements established by Order No. 1000. The agenda and other documents for the meeting are available at *www.westconnect.com.*

The meeting is open to all stakeholders and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov.*

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27007 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–64–000, et al.]

Notice of FERC Staff Attendance; PacifiCorp, et al.

	Docket No.
Deseret Generation & Transmission Cooperative, Inc.	ER13–65–000
Northwestern Corporation (Montana).	ER13–67–000
Portland General Electric Company.	ER13–68–000
Idaho Power Company	ER13–127–000
Public Service Company of Colorado.	ER13–75–000
Terra-Gen Dixie Valley, LLC.	ER13–76–000
Tucson Electric Power Company.	ER13–77–000
UNS Electric, Inc	ER13–78–000
Public Service Company of New Mexico.	ER13–79–000
Arizona Public Service Company.	ER13–82–000
El Paso Electric Company	ER13–91–000
Black Hills Power, Inc., et al.	ER13–96–000
Black Hills Colorado Electric Utility Company.	ER13–97–000
NV Energy, Inc	ER13–105–000
Cheyenne Light, Fuel and Power Company.	ER13–120–000
Avista Corporation	ER13–93–000
Avista Corporation	ER13–94–000
Puget Sound Energy	ER13–98–000
Puget Sound Energy	ER13–99–000
Bonneville Power Administration.	NJ13–1–000
California Independent System Operator Corporation.	ER13–103–000

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on November 5, 2012, members of its staff will attend a meeting conducted by the California Independent System Operator regarding the interregional coordination requirements established by Order No. 1000. The agenda and other documents for the meeting are available at *www.caiso.com.*

The meeting is open to all stakeholders and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov.*

Dated: October 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27013 Filed 11–5–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9749–3]

Twenty-Fifth Update of the Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Since 1988, the Environmental Protection Agency (EPA) has maintained a Federal Agency Hazardous Waste Compliance Docket (''Docket'') under Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Section 120(c) requires EPA to establish a Docket that contains certain information reported to EPA by Federal facilities that manage hazardous waste or from which a reportable quantity of hazardous substances has been released. As explained further below, the Docket is used to identify Federal facilities that should be evaluated to determine if they pose a threat to public health or welfare and the environment and to provide a mechanism to make this information available to the public.

Today's notice identifies the Federal facilities not previously listed on the Docket and reported to EPA since the last update of the Docket on October 13, 2010. In addition to the list of additions to the Docket, this notice includes a section with revisions of the previous Docket list. Thus, the revisions in this update include 52 additions and 17 deletions, as well as 19 corrections to the Docket since the previous update. At the time of publication of this notice, the new total number of Federal facilities listed on the Docket is 2334.

DATES: This list is current as of September 12, 2012.

FOR FURTHER INFORMATION CONTACT: Electronic versions of the Docket and more information on its implementation can be obtained at *http://www.epa.gov/fedfac/documents/docket.htm* by clicking on the link for *Update #25 to the Federal Agency Hazardous Waste Compliance Docket* or by contacting

Tim Mott, Federal Agency Hazardous Waste Compliance Docket Coordinator, Federal Facilities Restoration and Reuse Office (Mail Code 5106P), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

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1.0 Introduction

Section 120(c) of CERCLA, 42 United States Code (U.S.C.) 9620(c), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires EPA to establish the Federal Agency Hazardous Waste Compliance Docket. The Docket contains information on Federal facilities that is submitted by Federal agencies to EPA under Sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937, and under Section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA Section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA Section 3010 requires waste generators, transporters and TSD facilities to notify EPA of their hazardous waste activities; and RCRA Section 3016 requires Federal agencies to submit biennially to EPA an inventory of their Federal hazardous waste facilities. CERCLA Section 103(a) requires the owner or operator of a vessel or onshore or offshore facility to notify the National Response Center (NRC) of any spill or other release of a hazardous substance that equals or exceeds a reportable quantity (RQ), as defined by CERCLA Section 101. Additionally, CERCLA Section 103(c) requires facilities that have ''stored, treated, or disposed of'' hazardous wastes and where there is ''known, suspected, or likely releases'' of hazardous substances to report their activities to EPA.

CERCLA Section 120(d) requires EPA to take steps to assure that a Preliminary Assessment (PA) be completed for those sites identified in the Docket and that the evaluation and listing of sites with a PA be completed within a reasonable time frame. The PA is designed to provide information for EPA to consider when evaluating the site for potential response action or inclusion on the National Priorities List (NPL).

The Docket serves three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the National Priorities List (NPL); (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in Section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the Docket was published in the **Federal Register** on February 12, 1988 (53 FR 4280). Since then, updates to the Docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); February 5, 1993 (58 FR 7298); November 10, 1993 (58 FR 59790); April 11, 1995 (60 FR 18474); June 27, 1997 (62 FR 34779); November 23, 1998 (63 FR 64806); June 12, 2000 (65 FR 36994); December 29, 2000 (65 FR 83222); October 2, 2001 (66 FR 50185); July 1, 2002 (67 FR 44200); January 2, 2003 (68 FR 107); July 11, 2003 (68 FR 41353); December 15, 2003 (68 FR 240); July 19, 2004 (69 FR 42989); December 20, 2004 (69 FR 75951); October 25, 2005 (70 FR 61616); August 17, 2007 (72 FR 46218); November 25, 2008 (73 FR 71644), and October 13, 2010 (75 FR 62810). This notice constitutes the twenty-fifth update of the Docket.

Today's notice provides some background information on the Docket. Additional information on the Docket requirements and implementation are found in the Docket Reference Manual, Federal Agency Hazardous Waste Compliance Docket found at *http://www.epa.gov/fedfac/documents/docket.htm* or obtained by calling the Regional Docket Coordinators listed below. Today's notice also provides changes to the list of sites included on the Docket in three areas: (1) Additions, (2) Deletions, and (3) Corrections. Specifically, additions are newly identified Federal facilities that have been reported to EPA since the last update and now are included on the Docket; the deletions section lists Federal facilities that EPA is deleting from the Docket; and the corrections section lists changes in the information about the Federal facilities already listed on the Docket.[1] The information submitted to EPA on each Federal facility is maintained in the Docket repository located in the EPA Regional office of the Region in which the facility is located; for a description of the information required under those provisions, *see* 53 FR 4280 (February 12, 1988). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility.

In prior updates, information was also provided regarding No Further Remedial Action Planned (NFRAP) status changes. However, information on NFRAP and NPL status is no longer being provided separately in the Docket update as it is now available at: *http://www.epa.gov/fedfac/documents/docket.htm* or by contacting to the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

2.0 Regional Docket Coordinators

Contact the following Docket Coordinators for information on Regional Docket repositories:

Martha Bosworth (HBS), US EPA Region 1, 5 Post Office Square, Suite 100, Mail Code: OSRR07–2, Boston MA 02109–3912, (617) 918–1407.

Helen Shannon (ERRD), US EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007–1866, (212) 637–4260 or Alida Karas (ERRD), US EPA Region 2, 290 Broadway, New York, NY 10007– 1866, (212) 637–4276.

Joseph Vitello (3HS12), US EPA Region 3, 1650 Arch Street, Philadelphia, PA 19107, (215) 814–3354.

Dawn Taylor (4SF–SRSEB), US EPA Region 4, 61 Forsyth St. SW., Atlanta, GA 30303, (404) 562–8575.

Michael Chrystof (SR–6J), US EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–3705.

Philip Ofosu (6SF–RA), US EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–3178.

Todd H. Davis (ERNB), US EPA Region 7, 901 N. Fifth Street, Kansas City, KS 66101, (913) 551–7749.

Ryan Dunham (EPR–F), US EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202, (303) 312–6627.

Debbie Schechter (SFD–6–1), US EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3093.

Monica Lindeman (ECL, ABU # 1), US EPA Region 10, 1200 Sixth Avenue, Suite 900, ECL–112, Seattle, WA 98101,

[1] See Section 3.2 for the criteria for being deleted from the Docket.

(206) 553–5113 or Ken Marcy (ECL, ABU # 1), US EPA Region 10, 1200 Sixth Avenue, Suite 900, ECL–112, Seattle, WA 98101, (206) 463–1349.

3.0 Revisions of the Previous Docket

This section includes a discussion of the additions, deletions, and corrections to the list of Docket facilities since the previous Docket update.

3.1 Additions

Today, 52 Federal facilities are being added to the Docket, primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA Sections 3005, 3010, or 3016 or CERCLA Section 103). CERCLA Section 120, as amended by the Defense Authorization Act of 1997, specifies that EPA take steps to assure that a Preliminary Assessment (PA) be completed within a reasonable timeframe for those Federal facilities that are included on the Docket. Among other things, the PA is designed to provide information for EPA to consider when evaluating the site for potential response action or listing on the NPL.

3.2 Deletions

Today, 17 Federal facilities are being deleted from the Docket. There are no statutory or regulatory provisions that address deletion of a facility from the Docket. However, if a facility is incorrectly included on the Docket, it may be deleted from the Docket; this may be appropriate for a facility for which there was an incorrect report submitted for hazardous waste activity under RCRA (*e.g.,* 40 CFR § 262.44); a facility that was not Federally-owned or operated at the time of the listing; facilities included more than once (*i.e.,* redundant listings); or when multiple facilities are combined under one listing. Facilities being deleted no longer will be subject to the requirements of CERCLA Section 120(d).

3.3 Corrections

Changes necessary to correct the previous Docket are identified by both EPA and Federal agencies. The corrections section may include changes in addresses or spelling, and corrections of the recorded name and ownership of a Federal facility. In addition, changes in the names of Federal facilities may be made to establish consistency in the Docket or between CERCLIS and the Docket. For the Federal facility for which a correction is entered, the original entry (designated by an ''o''), as it appeared in previous Docket updates, is shown directly below the corrected entry (designated by a ''c'') for easy comparison. Today, information is being corrected for 19 facilities.

4.0 Process for Compiling the Updated Docket

In compiling the newly reported Federal facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA databases—the Emergency Response Notification System (ERNS), the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRAInfo), and CERCLIS—that contain information about Federal facilities submitted under the four provisions listed in CERCLA Section 120(c).

EPA assures the quality of the information on the Docket by conducting extensive evaluation of the current Docket list with the information obtained from the databases identified above to determine which Federal facilities were, in fact, newly reported and qualified for inclusion on the update. EPA is also striving to correct errors for Federal facilities that were previously reported. For example, state-owned or privately-owned facilities that are not operated by the Federal government may have been included. Such problems are sometimes caused by procedures historically used to report and track Federal facilities data. Representatives of Federal agencies are asked to write to the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice if revisions of this update information are necessary.

5.0 Facilities Not Included

Certain categories of facilities may not be included on the Docket, such as: (1) Federal facilities formerly owned by a Federal agency that at the time of consideration was not federally-owned or operated; (2) Federal facilities that are small quantity generators (SQGs) that have never generated more than 1,000 kg of hazardous waste in any month; (3) Federal facilities that are solely hazardous waste transportation facilities, as reported under RCRA Section 3010; and (4) Federal facilities that have mixed mine or mill site ownership. An EPA policy issued in June 2003 provided guidance for a site-by-site evaluation as to whether ''mixed ownership'' mine or mill sites, typically created as a result of activities conducted pursuant to the General Mining Law of 1872 and never reported under Section 103(a), should be included on the Docket. For purposes of that policy, mixed ownership mine or mill sites are those located partially on private land and partially on public land. This policy is found at *http://www.epa.gov/fedfac/pdf/mixownrshpmine.pdf.* The policy for not including these facilities may change; facilities now not included may be added at some point if EPA determines that they should be included.

6.0 Facility NPL Status Reporting, Including NFRAP Status

EPA typically tracks the NPL status of Federal facilities listed on the Docket. An updated list of the NPL status of all Docket facilities, as well as their NFRAP status, is available at *http://www.epa.gov/fedfac/documents/docket.htm* or by contacting to the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. In prior updates, information regarding NFRAP status changes was provided separately.

7.0 Information Contained on Docket Listing

The updated information is provided in three tables. The first table is a list of new Federal facilities that are being added to the Docket; the second table is a list of Federal facilities that are being deleted from the Docket and the third table contains corrections of information included on the Docket.

The facilities listed in each table are organized by state and then grouped alphabetically within each state by the Federal agency responsible for the facility. Under each state heading is listed the name and address of the facility, the Federal agency responsible for the facility, the statutory provision(s) under which the facility was reported to EPA, and a code.[2] The code key precedes the lists.

The statutory provisions under which a facility is reported are listed in a column titled ''Reporting Mechanism.'' Applicable mechanisms are listed for each facility: For example, Sections 3005, 3010, 3016, 103(c), or Other. ''Other'' has been added as a reporting mechanism to indicate those Federal facilities that otherwise have been identified to have releases or threat of releases of hazardous substances. The National Contingency Plan 40 CFR 300.405 addresses discovery or notification, outlines what constitutes discovery of a hazardous substance release, and states that a release may be discovered in several ways, including:

[2] Each Federal facility listed in the update has been assigned a code that indicates a specific reason for the addition or deletion. The code precedes this list.

(1) A report submitted in accordance with Section 103(a) of CERCLA, *i.e.,* reportable quantities codified at 40 CFR part 302; (2) a report submitted to EPA in accordance with Section 103(c) of CERCLA; (3) investigation by government authorities conducted in accordance with Section 104(e) of CERCLA or other statutory authority; (4) notification of a release by a Federal or state permit holder when required by its permit; (5) inventory or survey efforts or random or incidental observation reported by government agencies or the public; (6) submission of a citizen petition to EPA or the appropriate Federal facility requesting a preliminary assessment, in accordance with Section 105(d) of CERCLA; (7) a report submitted in accordance with Section 311(b)(5) of the CWA; and (8) other sources. As a policy matter, EPA generally believes it is appropriate for Federal facilities identified through the CERCLA discovery and notification process to be included on the Docket.

The complete list of Federal facilities that now make up the Docket and the NPL and NFRAP status are available to interested parties and can be obtained at *http://www.epa.gov/fedfac/documents/docket.htm* by clicking on the link for *Federal Agency Hazardous Waste Compliance Docket Update #25* or by contacting the EPA HQ Docket Coordinator at the address provided in the **FOR FURTHER INFORMATION CONTACT** section of this notice. As of today, the total number of Federal facilities that appear on the Docket is 2334.

Dated: October 17, 2012.

Reggie Cheatham,

Director, Federal Facilities Restoration and Reuse Office, Office of Solid Waste and Emergency Response.

Docket Codes

Categories for Deletion of Facilities

(1) Small-Quantity Generator.

(2) Never Federally Owned and/or Operated.

(3) Formerly Federally Owned and/or Operated but not at time of listing.

(4) No Hazardous Waste Generated.

(5) (This code is no longer used.)

(6) Redundant Listing/Site on Facility.

(7) Combining Sites Into One Facility/Entries Combined.

(8) Does Not Fit Facility Definition.

Categories for Addition of Facilities

(15) Small-Quantity Generator with either a RCRA 3016 or CERCLA 103 Reporting Mechanism.

(16) One Entry Being Split Into Two (or more)/Federal Agency Responsibility Being Split.

(17) New Information Obtained Showing That Facility Should Be Included.

(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility.

(19) Sites Were Combined Into One Facility.

(19A) New currently Federally owned and/or operated Facility site.

Categories for Corrections of Information About Facilities

(20) Reporting Provisions Change.

(20A) Typo Correction/Name Change/Address Change.

(21) Changing Responsible Federal Agency. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)

(22) Changing Responsible Federal Agency and Facility Name. (If applicable, new responsible Federal agency submits proof of previously performed PA, which is subject to approval by EPA.)

(24) Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files.

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—ADDITIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
USDOI BLM Red Top Mine.	T10S R55W S29, Seward Meridian.	Alegnagik	AK	99555	Interior	Other	19A
Federal Correctional Complex Victorville.	1377 Air Expressway Blvd,.	Victorville	CA	92394	Justice	3010	19A
Naval WPNS Station Seal Beach Det. Coron.	2300 5th St	Norco	CA	92860	Navy	3010	19A
United States Mint	155 Herman Street	San Francisco	CA	94102	Dept of State	3010	19A
USCG Ballast Point Moorings.	Navsubbase Ballast Point Drive.	San Diego	CA	92106	Homeland Security	3010	19A
U.S. Appraisers Building/GSA.	630 Sansome Street	San Francisco	CA	94111	General Services Administration.	3010	19A
U.S. Geological Survey-Marine Facility (MARFAC).	599 Seaport Blvd	Redwood City	CA	94063	USGS	3010	19A
VACHS Veterans Admin Ct Healthcare System.	950 Campbell Ave Bldg 15.	West Haven	CT	06516	Veterans Affairs	3010	19A
Smithsonian Inst—Natural History Bldg.	10th & Constitution Avenue NW.	Washington	DC	20560		3010	19A
GSA—St Elizabeth's West Campus.	2701 Martin Luther King Ave SE.	Washington	DC	20032	GSA	3010	19A
Miami VA Healthcare System.	1201 NW 16th St	Miami	FL	33125	Veterans Affairs	3010	19A
DRMO Kalaeloa	Midway Street	Kapolei	HI	96707	Navy	3010	19A
Transportation Security Administration.	300 Rogers Blvd	Honolulu	HI	96819	TSA	3010	19A
182nd Airlift Wing Air Natl Guard.	6915 W Smithville Rd	Peoria	IL	61607	Air Force	3010	19A
Port Allen Lock	2101 Ernest Wilson Dr.	Port Allen	LA	70767	Army	3010	19A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—ADDITIONS—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
Fort Howard Veterans Affairs Medical Center.	9600 Northpoint Rd ..	Fort Howard	MD	21052	Veterans Affairs	Other	19A
James T Rowley Training Center.	9200 Powder Mill Rd	Laurel	MD	20708	Homeland Security ...	3010	19A
Oxon Cove Landfill	Oxon Hill Road	Oxon Hill	MD	20745	Interior	103c	19A
Uniformed Services Univ/Health Sciences.	4301 Jones Bridge Rd.	Bethesda	MD	20814	Navy	3010	19A
Department Of Veterans Affairs.	1 V A Center	Augusta	ME	04330	Veterans Affairs	3010	19A
Beaver Island High Level Site.	South End Road	Peaine Township	MI	49782	Homeland Security ...	Other	17
Cheboygan Housing Vacant Lot.	900 S. Western Avenue.	Cheboygan	MI	49721	Homeland Security ...	Other	19A
Cheboygan River Range Front Light.	606 Water Street	Cheboygan	MI	49721	Homeland Security ...	Other	17
Detroit Atwater Property.	2660 E. Atwater Street.	Detroit	MI	48207	Homeland Security ...	Other	19A
Menagerie Island Light Station.	Isle Royale National Park.	(unincorporated)	MI	49930	Homeland Security ...	Other	19A
Middle Island Light Station.	Middle Island	Alpena Township	MI	49707	Homeland Security ...	Other	17
Old Station Ludington	101 S. Lakeshore Drive.	Ludington	MI	49431	Homeland Security ...	Other	17
Old Station Marquette	N. Lakeshore Blvd. & E. Ridge Street.	Marquette	MI	49855	Homeland Security ...	Other	19A
Old Station Portage ...	Coast Guard Road	Hancock Township ...	MI	49930	Homeland Security ...	Other	19A
Old Station Pt. Huron/ Ft Gratiot Light.	Conger & Omar Streets.	Port Huron	MI	48060	Homeland Security ...	Other	17
Passage Island Light Station.	Isle Royale National Park.	(unincorporated)	MI	49930	Homeland Security ...	Other	19A
Sturgeon Point Light ..	Sturgeon Point Scenic Road.	Haynes Township	MI	48740	Homeland Security ...	Other	17
Thunder Bay Island Light Station.	Michigan Islands Nat'l Wildlife Refuge.	Alpena Township	MI	49707	Homeland Security ...	Other	19A
VA Gulf Coast Veterans Health Care System.	400 Veterans Avenue	Biloxi	MS	39531	Veterans Affairs	3010	19A
Trans Security Administration (CLT).	5501 Josh Birmingham Pkwy Ste.	Charlotte	NC	28208	TSA	3010	19A
US Postal Service—GMF.	5640 E Taft Rd	Syracuse	NY	13220	USPS	3010	19A
Veterans Administration Medical Center N.	79 Middleville Road ..	Northport	NY	11768	Veterans Affairs	3010	19A
United States Merchant Marine Academy.	300 Steamboat Road	Kings Point	NY	11024	DOT	3010	19A
US VA Hudson Valley Health Care System.	2094 Albany Post Road.	Montrose	NY	10548	Veterans Affairs	3010	19A
Great Kills Landfill—Gateway National Recreation Area.	210 New York Avenue.	Staten Island	NY	10305–5019	DOI	103c	19A
Youngstown Naval Reserve Center.	315 E Laclede Ave ...	Youngstown	OH	44507	Navy	3010	19A
Mansfield Naval Reserve Center.	170 Ashland Rd	Mansfield	OH	44902	Navy	3010	19A
Potter Stewart US Courthouse.	100 E 5th St	Cincinnati	OH	45202	DOJ	3010	19A
Navy Remediation At Teledyne Turbine Eng.	1330 Laskey Rd	Toledo	OH	43612	Navy	3010	19A
Old Station Ashtabula	1 Front Street	Ashtabula	OH	44004	Homeland Security ...	OTHER	19A
COE-Civil McNary Project.	Columbia River Mile 292.	Umatilla	OR	97882	Corps of Engineers ...	3010	19A
USVA Portland Medical Center.	3710 SW US Veterans Hospital, R.	Portland	OR	97239	Veterans Affairs	3010	19A
USVA Roseburg Healthcare System.	913 NW Garden Valley Blvd.	Roseburg	OR	97471	Veterans Affairs	3010	19A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—ADDITIONS—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
Transportation Security Admin Phil Intl.	8500 Essington Ave ..	Philadelphia	PA	19153	TSA	3010	19A
VA Medical Center	1030 Jefferson Ave ...	Memphis	TN	38104	Veterans Affairs	3010	19A
Veterans Administration Medical Center.	1310 24th Ave S	Nashville	TN	37212	Veterans Affairs	3010	19A
Alvin C York VA Medical Center.	3400 Lebanon Rd	Murfreesboro	TN	37130	Veterans Affairs	3010	19A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—DELETIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
Atlas E Missile Site #11.	Six Miles North Of Nunn.	Nunn	CO	80648	Air Force	103c	3
Former Lowry AFB Titan Missile Site 1 Complex 2A.	5 Miles South Of East Quincy Av And Brick Center Road.	Aurora	CO	80137	Air Force	103c	6
AFSC-Buckley East 6th Ave Site.	Buckley AFB	Aurora	CO	80011	Air Force	103c	7
Aurora-Buckley	2 Miles SE	Aurora	CO	80011	Army	3016	6
Buckley ANG Former Warehouse Area.	660 S Aspen Dr. Stop 26.	Aurora	CO	80011	Defense	103c	7
US EPA Region 3 Chemical Metals Site.	2001 & 2103 Annapolis Road.	Baltimore	MD	21230	EPA	3010	2
Woodstock	2845 Hernwood Road	Woodstock	MD	21163	Army	3016	6
Cavalier Air Station ...	Po Box 22	Nekoma	ND	28355	Air Force	3016	6
Altoona Postal Service Vehicle Maintenance Facility.	1201 11th Ave	Altoona	PA	16603	USPS	3010	8
Warrendale Postal Center.	300 Commonwealth Ave.	Warrendale	PA	15086	USPS	3010	8
Pittsburgh Postal Service.	1136 Western Ave	Pittsburgh	PA	15233	USPS	3010	8
PA ANG 171St Air Refueling Wing.	300 Tanker Road	Moon Township	PA	15108	Air Force	3010	6
Greater Pittsburgh International Airport.	911 Tag/De	Pittsburgh	PA	15231	Air Force	3016, 103C	6
Fort Dix Tacony Warehouse.	5100 Princeton Ave ..	Philadelphia	PA	19135	Army	3010	6
Richmond Organizational Maintenance Shop #4.	3100 Alcott Rd	Richmond	VA	23237	Army	3016	6
USDOI Bureau of Reclamation Site.	39307 W Kelly Rd	Benton City	WA	99320	DOI	3010	2
Beckley Medical Center.	200 Veterans Ave	Beckley	WV	25801	Veterans Affairs	3010	8

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—CORRECTIONS

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c—Buckley Air Force Base.	18500 East 6th Ave ..	Aurora	CO	80011	Air Force	3016, 103c, 3010.	20A
o—AFSPC-Buckley Air National Guard Base.	Buckley Road And East 6th Ave.	Aurora	CO	80011	Air Force	3016, 103c, 3010.	20A
c—Air Force Plant PJKS.	12275 South Highway 75.	Littleton	CO	80127	Air Force	3016, 103c, 3010, 3005.	20A
o—Plant PJKS Property.	12250 S Hwy. 75	Waterton	CO	80120	Air Force	3016, 103c, 3010, 3005.	20A
c—Rock Flats Site (USDOE).	Hwy 93 Between Golden and Boulder.	Golden	CO	80007	Energy	3005, 3010, 3016, 103c, 103a.	20A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—CORRECTIONS—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
o—Rocky Flats Environmental Technology Site.	1808 Highway 93, Unit A.	Golden	CO	80403	Energy	3005, 3010, 3016, 103c, 103a.	20A
c—BLM-Maybell Dump.	6 mi East of Maybell	Maybell	CO	81640	Interior—Bureau of Land Management.	103c	20A
o—BLM-Maybell Dump.		Maybell	CO		Interior—Bureau of Land Management.	103c	20A
c—BLM-Montrose County Dump.	4 mi NE Montrose T48N R19W sec22.	Montrose	CO	81401	Interior—Bureau of Land Management.	103c	20A
o—BLM-Montrose County Dump.	T48Nr19Wsec22	Montrose	CO		Interior—Bureau of Land Management.	103c	20A
c—Elkhorn Mine And Mill.	610 N. Montana St.	Dillon	MT	59725	Agriculture	Other	20A
o—Beaverhead National Forest.	610 N. Montana St.	Dillon	MT	59725	Agriculture	Other	20A
c—Fort Detrick—Forest Glen Annex.	503 Orney Dr	Silver Spring	MD	20910	Army	None	20A
o—Walter Reed Army Medical Center—Forest Glenn Annex.	503 Orney Dr	Silver Spring	MD	20910	Army	None	20A
c—Granite-Control	2845 Hernwood Road	Woodstock	MD	21163	Army	103C, 3016	23
o—Granite-Control	2845 Hernwood Road	Woodstock	MD	21163	Army	103C	20A
c—Cavalier Air Force Station.	830 Patrol Road 26	Cavalier	ND	58220	Air Force	103c, 3010, 3005.	20A
o—Concrete Missile Early Warning Station.	Det 1 57 Ad/De	Concrete	ND	58221	Air Force	103c, 3010, 3006.	20A
c—PA ANG 171ST Air Refueling Wing.	300 Tanker Road	Pittsburgh	PA	15108	Air Force	3010	20A
o—Pittsburgh Air National Guard.	Greater Pittsburgh Intnl Arpt.	Pittsburgh	PA	15231	Air Force	3010	20A
c—911th Airlift Wing	Pittsburgh Intl Arprt ARS 2475 Defense Ave Ste 101.	Coraopolis	PA	15108	Air Force	3010	20A
o—911th Tactical Airlift Group.	Greater Pittsburgh Intl Airprt.	Pittsburgh	PA	15231	Air Force	3010	20A
c—Fort Dix Tacony Warehouse.	7071 Milnor St	Philadelphia	PA	19135	Army	3010, 103C	20A
o—Fort Dix Tacony Warehouse.	7071 Wissonoming St	Philadelphia	PA	19124	Army	3010, 103C	20A
c—Marietta Depot	1502 Depot Road	Marietta	PA	17547	Defense Logistics Agency.	103C	20A, 22
o—The Former Marietta Air Force Station.	Rt 441	Marietta	PA		General Services Administration.	103C	20A, 22
c—U.S. Forest Service Nemo Work Station Site.	Nemo T: 3N, R: 5E, Sec: 27.	Nemo	SD	57759	Agriculture	103c	20A
o—U.S. Forest Service Nemo Work Station Site.	Nemo	Nemo	SD	57754	Agriculture	103c	20A
c—Sioux Falls VA Medical Center.	2501 West 22nd Street.	Sioux Falls	SD	57105	Veterans Affairs	3010	20A
o—Sioux Falls VA Medical Center.	2501 West 22nd Street.	Sioux Falls	SD	57117	Veterans Affairs	3010	20A
c—American Fork Canyon/UINTA National.	American Fork Canyon.	Pleasant Grove	UT	84602	Interior	103c	20A
o—American Fork Canyon/UINTA National.		Pleasant Grove	UT	84602	Interior	103c	20A
c—South Dakota Air National Guard.	P.O. Box 5044	Sioux Falls	SD	57117	Air Force	103c, 3016	20A
o—Joe Foss Field	P.O. Box 5044	Sioux Falls	SD	57117	Air Force	103c, 3017	20A
c—USFS Santaquin Mudslide.	324 25th St	Santaquin	UT	84655	Agriculture	103c, 3016	20A
o—USFS Santaquin Mudslide.	324 25th St	Santaquin	UT	84401	Agriculture	103c, 3016	20A

FEDERAL AGENCY HAZARDOUS WASTE COMPLIANCE DOCKET UPDATE #25—CORRECTIONS—Continued

Facility name	Address	City	State	Zip code	Agency	Reporting mechanism	Code
c—Hill Air Force Base	7274 Wardleigh Rd ...	Hill AFB	UT	84056	Air Force	3005, 3010, 3016, 103c, 103a.	20A
o—Hill Air Force Base	7274 Wardleigh Rd ...	Ogden	UT	84056	Air Force	3006, 3010, 3016, 103c, 103a.	20A

[FR Doc. 2012–27041 Filed 11–5–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice: 2012–0537]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million; 25 Day Comment Period

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice of 25 day comment period regarding an application for final commitment for a long-term loan or financial guarantee in excess of $100 million.

Reason for Notice: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP085158XX.

Purpose and Use: Brief description of the purpose of the transaction:

To support the export of commercial aircraft to South Africa

Brief non-proprietary description of the anticipated use of the items being exported:

The aircraft will be used to provide short-haul passenger air service within South Africa and between South Africa and nearby African countries.

To the extent that Ex-Im Bank is reasonably aware, the items being exported are not expected to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Comair Limited.

Guarantors: N/A.

Description of Items Being Exported: Boeing 737 aircraft.

Information on Decision: Information on the final decision for this transaction will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute.*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before December 3, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through *WWW.REGULATIONS.GOV.*

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2012–27029 Filed 11–5–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Savings and Loan Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and the Board's Regulation LL (12 CFR Part 238) to acquire shares of a savings and loan 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 November 21, 2012.

A. Federal Reserve Bank of San Francisco (Kenneth Binning, Vice President, Applications and Enforcement) 101 Market Street, San Francisco, California 94105–1579:

1. *Barbara Marie Kershaw,* Newport Beach, California; to retain voting shares of Malaga Financial Corporation, and thereby indirectly retain voting shares of Malaga Bank, FSB, both in Palos Verdes Estates, California.

Board of Governors of the Federal Reserve System, November , 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–27028 Filed 11–5–12; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–MG–2012–06; Docket No. 2012–0002; Sequence 26]

Office of Federal High-Performance Green Buildings; Green Building Advisory Committee; Notification of Upcoming Public Advisory Committee Meeting

AGENCY: Office of Government-Wide Policy, General Services Administration (GSA).

ACTION: Meeting Notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App., 10(a)(2). This notice provides the schedule and agenda for the November 27, 2012, meeting of the Green Building Advisory Committee Meeting (the Committee). The meeting is open to the public and the site is

accessible to individuals with disabilities.

DATES: *Effective date:* November 6, 2012.

Meeting date: The meeting will be held on Tuesday, November 27, 2012, starting at 9:00 a.m. eastern standard time and ending no later than 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Ken Sandler, Designated Federal Officer, Office of Federal High-Performance Green Buildings, Office of Government-wide Policy, General Services Administration, 1275 First Street NE., Room 633D, Washington, DC 20417, telephone 202–219–1121 (note: this is not a toll-free number). Additional information about the Committee is available online at *http://www.gsa.gov/portal/content/121999*.

SUPPLEMENTARY INFORMATION:

Procedures for Providing Public Comments: Contact Ken Sandler at 202–219–1121 to register to attend and to comment during the meeting's public comment period. Registered speakers/organizations will be allowed a maximum of 5 minutes each and will need to provide written copies of their presentations. Requests to comment at the meeting must be received by 5:00 p.m. eastern standard time on Wednesday, November 21, 2012. Written comments may be provided to Mr. Sandler at *ken.sandler@gsa.gov* until Friday, November 23, 2012.

Availability of Materials for the Meeting: Please contact Mr. Sandler at the email address above to register to attend this meeting and obtain meeting materials. Materials may also be accessed online at *http://www.gsa.gov/portal/content/121999.* To attend this meeting, please submit your full name, organization, email address, and phone number to Ken Sandler by 5:00 p.m. eastern standard time on Wednesday, November 21, 2012.

Background: The Green Building Advisory Committee provides advice to GSA as specified in Public Law 110–140, as a mandatory Federal advisory committee. Under this authority, the Committee will advise GSA on the rapid transformation of the Federal building portfolio to sustainable technologies and practices. The Committee's focus is primarily on reviewing strategic plans, products and activities of the Office of Federal High-Performance Green Buildings and providing advice regarding how the Office can most effectively accomplish its mission.

Agenda:

- Introductions & plans for today's meeting.
- Green Building Certification System Review update.
- Facilities Management Institute (*www.FMI.gov*).
- Knowledge Network.
- 30 minute public comment period for individuals pre-registered per instructions above. Each individual will be able to speak for no more than 5 minutes.
- Lunch.
- Business Case for Federal Green Building.
- 15 minute public comment period for individuals pre-registered per instructions above. Each individual will be able to speak for no more than 5 minutes.
- Closing comments.

Meeting Access: The Committee will convene its meeting at: US Access Board Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004. Persons attending meetings in the Access Board's conference space are requested to refrain from using perfume, cologne, and other fragrances (see *http://www.access-board.gov/about/policies/fragrance.htm* for more information).

Dated: November 1, 2012.

Janet Dobbs,

Deputy Associate Administrator, Office of Asset and Transportation Management, General Services Administration.

[FR Doc. 2012–27103 Filed 11–5–12; 8:45 am]

BILLING CODE 6820–27–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HIT Policy and Standards Committees; Workgroup Application Database

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of New ONC HIT FACA Workgroup Application Database.

The Office of the National Coordinator (ONC) has launched a new Health Information Technology Federal Advisory Committee Workgroup Application Database.

Name of Committees: HIT Standards Committee and HIT Policy Committee.

General Function of the Committees: The HITSC is charged to provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee. The HITPC is charged to provide recommendations to the National Coordinator on a policy framework for the development and adoption of a nationwide health information technology infrastructure that permits the electronic exchange and use of health information as is consistent with the Federal Health IT Strategic Plan and that includes recommendations on the areas in which standards, implementation specifications, and certification criteria are needed.

Contact Person: MacKenzie Robertson, Office of the National Coordinator, HHS, 355 E Street SW., Washington, DC 20201, 202–205–8089, Fax: 202–260–1276, email: *mackenzie.robertson@hhs.gov.*

Background: As part of ongoing efforts to recruit highly qualified workgroup members, ONC has developed an online database system to allow anyone with an interest in contributing and expertise in the numerous aspects of HIT to submit their information for future consideration for HIT FACA workgroup membership. Whenever a new workgroup is formed, or as current workgroups experience turnover, ONC will turn to this resource first to fill out each group's membership.

How to Apply: If you wish to be considered for future workgroups, please register on ONC's Workgroup Application Database, *http://onc-faca.altaruminstitute.net/apply.* Thank you for your interest in the HIT Policy and HIT Standards Committees. For more information on the Committees and workgroups, please visit the ONC FACA Web site, *www.healthit.gov/faca.*

Dated: October 10, 2012.

MacKenzie Robertson,

FACA Program Lead, Office of Policy and Planning, Office of the National Coordinator for Health Information Technology.

[FR Doc. 2012–27084 Filed 11–5–12; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–13–0841]

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 or send comments to Ron Otten, 1600 Clifton Road, MS D–74, 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

Management Information System for Comprehensive Cancer Control Programs—Revision (OMB No. 0920–0841, exp. 1/31/2013)—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

From 2007–2012, the Centers for Disease Control and Prevention (CDC) provided funding to all 50 states, the District of Columbia, seven tribes/tribal organizations, and seven territories/U.S. Pacific Island jurisdictions through the National Cancer Prevention and Control Program (CDC Funding Opportunity Announcement (FOA) DP07–703). Since 2010, the 65 awardees have used an electronic management information system to submit semi-annual progress reports to CDC (''Management Information System for Comprehensive Cancer Control Programs,'' OMB No. 0920–0841, exp. 1/31/2013). The progress reports satisfied federal reporting requirements and allowed CDC to provide targeted technical assistance to awardees while monitoring their activities and progress. The electronic MIS also provided CDC with the capacity to respond in a timely manner to requests for information from the Department of Health and Human Services (HHS), Congress, and other sources.

In June 2012, CDC initiated a new five-year funding cycle (''Cancer Prevention and Control Program for State, Territorial and Tribal Organizations,'' CDC FOA DP12–1205). New cooperative agreements were established with all 65 states, territories, and jurisdictions. In addition to maintaining established core cancer prevention and control activities, the new cooperative agreements reflect increased emphasis on awardee-based policy and environmental approaches to improving health outcomes. New performance measures have been developed to monitor these outcomes and are being incorporated into the MIS. Each state- or territory-based program director will continue to submit semi-annual progress reports to CDC.

CDC issued a related but distinct funding opportunity for states and territories that are poised to accelerate the development of their policy and environmental approaches to cancer control (''Demonstrating the Capacity of Comprehensive Cancer Control Programs to Implement Policy and Environmental Cancer Control Interventions,'' FOA DP10–1017). Additional cooperative agreements, which are specific to demonstration program objectives, were awarded to 13 of the 65 states, jurisdictions and territories. Demonstration program activities will be aligned with the existing comprehensive cancer control program in a manner that minimizes duplication, capitalizes on existing activities, and fosters rapid implementation, and will be facilitated by a state- or territory-based policy task force coordinator. However, because demonstration program activities are funded under discrete cooperative agreements, CDC will require separate semi-annual progress reports to monitor the activities and resources which are specific to demonstration program objectives.

CDC plans to request OMB approval of modifications to the MIS-based reporting system including: (1) Minor changes to core MIS data elements for all 65 awardees, and (2) separate data collection and progress reporting for demonstration program awardees, and (3) revised burden estimates based on a modified method for estimating respondent burden.

In the initial OMB approval for MIS-based reporting, total respondent burden was based on a long-term average burden per response. CDC acknowledges that response burden actually varies over the award period, with time commitments for data entry and training being greatest during the first six to twelve months of the award period. After initial population of the MIS has been completed, ongoing maintenance of the system is limited to entering changes, progress information, and new activities, and the burden per response decreases substantially. The revised method for estimating respondent burden distinguishes between these phases.

For the 65 state- and territory-based cancer prevention and control programs, CDC estimates the initial burden of populating the MIS at four hours per response. Some of the information entered into the MIS during the previous cooperative agreement period will be downloaded to minimize respondent burden in the new funding period, but awardees will be responsible for verifying this information and entering new objectives. After completing these steps, the estimated burden for ongoing system maintenance and semi-annual reporting is three hours per response.

For the 13 states and territories that are also participating in the demonstration program, the initial burden of populating the MIS is estimated to be six hours per response. Awardees will be responsible for entering information about the new objectives, staff, and other resources for demonstration program activities, which is not available from existing sources. Thereafter, the estimated burden for ongoing system maintenance and semi-annual reporting is estimated at three hours per response.

OMB approval will be requested for three years. CDC will use the information collection to identify training and technical assistance needs, monitor compliance with cooperative agreement requirements, evaluate progress made in achieving program-specific goals, and obtain information needed to respond to Congressional and other inquiries regarding program activities and effectiveness. Data will be collected electronically twice per year. There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Burden per response (in hr)	Total burden (in hr)
Program Director for State- or Territory-Based Cancer Prevention and Control Program.	Data Elements for All CPC Programs: Initial MIS Population.	22	1	4	88
	Data Elements for All CPC Programs: Semi-annual Reporting.	65	2	3	390
State- or Territory-Based Policy Task Force Coordinator.	Data Elements for CPC Demonstration Program: Initial MIS Population.	5	1	6	30
	Data Elements for CPC Demonstration Program: Semi-annual Reporting.	13	2	3	78
Total					586

Dated: October 29, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–27047 Filed 11–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Partnerships To Advance the National Occupational Research Agenda (NORA)

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: ''Partnerships to Advance the National Occupational Research Agenda (NORA)''.

Public Meeting Time and Date: 10 a.m.–3:30 p.m. EST, January 30, 2013.

Place: Patriots Plaza, 395 E Street SW., Conference Room 9000, Washington, DC 20201.

Purpose of the Meeting: The National Occupational Research Agenda (NORA) has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now structured as a public meeting via the Internet to attract participation by a larger number of organizations and to further enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include updates from NIOSH leadership on NORA as well as updates from approximately half of the NORA Sector Councils on their progress, priorities, and implementation plans to date, likely including the NORA Agriculture, Forestry and Fishing; Healthcare; Mining; Oil and Gas Extraction; and Transportation, Warehousing and Utilities Sector Councils. An update will also be given on planning for the evaluation of the second decade of NORA. An additional NIOSH Program that is working on several NORA priorities may also provide an update. After each update, there will be time to discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and conference room facilities. There is limited space available in the meeting room (capacity 34). Therefore, information to allow participation in the meeting through the Internet (to see the slides) and a teleconference call (capacity 50) will be provided to registered participants. Participants are encouraged to consider attending by this method. Each participant is requested to register for the free meeting by sending an email to *noracoordinator@cdc.gov* containing the participant's name, organization name, contact telephone number on the day of the meeting, and preference for participation in-person or by Web meeting (requirements include: computer, Internet connection, and telephone, preferably with 'mute' capability). An email confirming registration will include the details needed to participate in the Web meeting. Non-US citizens are encouraged to participate in the Web meeting. Non-US citizens who do not register to attend in person on or before January 7, 2013, will not be granted access to the meeting site and will not be able to attend the meeting in-person due to mandatory security clearance procedures at the Patriots Plaza facility.

Background: NORA is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html.*

Since 2006, NORA has been structured according to industrial sectors. Ten major sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the Web and town hall meetings, ten NORA Sector Councils defined sector-specific strategic plans for conducting research and moving the results into widespread practice. To view the National Sector Agendas, see *http://www.cdc.gov/niosh/nora/.*

FOR FURTHER INFORMATION CONTACT: Sidney C. Soderholm, Ph.D., NORA Coordinator, Email

noracoordinator@cdc.gov, telephone (202) 245–0665.

Dated: November 1, 2012.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2012–27172 Filed 11–5–12; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Request for Nominations for Candidates To Serve on the National Public Health Surveillance and Biosurveillance Advisory Committee (NPHSBAC)

The Centers for Disease Control and Prevention (CDC) is soliciting nominations for possible membership on the National Public Health Surveillance and Biosurveillance Advisory Committee (NPHSBAC). This committee provides advice and guidance to the Secretary of the Department of Health and Human Services and the Director of the Centers for Disease Control and Prevention, regarding the broad range of issues impacting the human health component of biosurveillance. The Committee will ensure that the Federal Government is meeting the goal of enabling State and local government public health surveillance capabilities. Specifically, this includes recommendations related to both traditional and innovative information sources of human health related data from State and local government public health authorities and appropriate private sector health care entities. This also includes recommendations to enable healthcare and public health information exchange.

Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the Committee's objectives. Nominees will be selected based upon expertise in the field of public health surveillance and biosurveillance; multi-disciplinary expertise in public health; scientific and technical expertise. Whenever possible, nominees should be acknowledged experts in their fields whose credibility is beyond question. All nominees should have demonstrated skills in critical evaluation of data and communication skills necessary to promote efficient and effective deliberations.

Federal employees will not be considered for membership. Members may be invited to serve up to four-year terms. Consideration is given to representation from diverse geographic areas, both genders, ethnic and minority groups, and the disabled. Nominees must be U.S. citizens.

The following information must be submitted for each candidate: Name, affiliation, address, telephone number, and current curriculum vitae. Email addresses are requested if available.

Nominations should be sent, in writing, and postmarked by November 30, 2012 to: Vernellia Johnson, Management and Program Analyst, Public Health Surveillance and Informatics Program Office, Centers for Disease Control and Prevention, Office of Surveillance, Epidemiology and Laboratory Services, 2500 Century Center Boulevard, Room 3017, Atlanta, Georgia 30345 or via email to *hft9@cdc.gov.* Telephone and facsimile submissions cannot be accepted.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 26, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–27053 Filed 11–5–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0748]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Generic Drug User Fee Cover Sheet; Form FDA 3794

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 6, 2012.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–NEW and title ''Generic Drug User Fee Cover Sheet; Form FDA 3794.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7726, *Ila.Mizrachi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Generic Drug User Fee Cover Sheet; Form FDA 3794—(OMB Control Number 0910–New)

On July 9, 2012, the Generic Drug User Fee Act (GDUFA) (Pub. L. 112–144, Title 111) was signed into law by the President. GDUFA, designed to speed the delivery of safe and effective generic drugs to the public and reduce costs to industry, requires that generic drug manufacturers pay user fees to finance critical and measurable program enhancements. The user fees required by GDUFA are as follows: A one-time fee for original abbreviated new drug applications (ANDAs) pending on October 1, 2012, (also known as backlog applications); fees for type II active pharmaceutical ingredient (API) and final dosage form (FDF) facilities; fees for new ANDAs and prior approval supplements (PASs); and a one-time fee for drug master files (DMFs).

The purpose of this notice is to solicit feedback on the collection of information in an electronic form used to calculate and pay generic drug user fees. Proposed Form FDA 3794, the Generic Drug User Fee Cover Sheet, requests the minimum necessary information to determine if a person has satisfied all relevant user fee obligations. The proposed form is modeled on other FDA user fee cover sheets, including Form FDA 3397, the Prescription Drug User Fee Act Cover Sheet. The information collected would be used by the FDA to initiate the administrative screening of generic drug submissions and DMFs, support the inspection of generic drug facilities, and

otherwise support the generic drug program. A copy of the proposed form will be available in the docket for this notice.

Respondents to this proposed collection of information would be potential or actual generic application holders and/or related manufacturers (manufacturers of FDF and/or APIs). Companies with multiple applications will submit a cover sheet for each application and facility. Based on FDA's database of application holders and related manufacturers, we estimate that 500 companies would submit a total of 3,850 cover sheets annually to pay for application and facility user fees. FDA estimates that the 3,850 annual cover sheet responses would break down as follows: [1] 2,000 facilities fees, 750 ANDAs, 750 PASs, and 350 Type II API DMFs. We also estimate that the one-time backlog fee would affect 350 application owners sponsoring 2,700 applications. The estimated hours per response are based on FDA's past experience with other submissions, and range from approximately 0.1 to 0.5 hours. The hours per response are estimated at the upper end of the range to be conservative.

In the **Federal Register** of July 26, 2012 (77 FR 43844), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received the following comment. Small generic manufacturers will heavily suffer from the establishment fees under GDUFA. FDA notes this comment is outside the scope of the proposed collection of information, Form FDA 3794 (Generic Drug User Fee Cover Sheet).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
FDA 3794 [2]	500	7.7	3,850	0.5	1,925

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] For all applicable applications and fees except for the backlog fee.

The backlog fee is a one-time fee. The Agency expects the majority of these fees to be received in the first year only. The estimated reporting burden for the backlog fee is shown in table 2 of this document.

TABLE 2—ESTIMATED ONE-TIME ANNUAL REPORTING BURDEN [1]

FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
FDA 3794 [2]	350	7.7	2,700	0.5	1,350

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] For backlog fee.

Dated: October 31, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–27003 Filed 11–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–D–0433; (formerly Docket No. 2007D–0169)]

Draft Guidance for Industry on Bioequivalence Recommendation for Lenalidomide Capsules; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Draft Guidance on Lenalidomide.'' The guidance provides specific recommendations on the design of bioequivalence (BE) studies to support abbreviated new drug applications (ANDAs) for lenalidomide capsules. The draft guidance is a revised version of a previously published draft guidance on the subject.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on the draft guidance before it begins work on the final versions of the guidance, submit either electronic or written comments on the draft guidance by January 7, 2013.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kris Andre, Center for Drug Evaluation and Research (HFD–600), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9326.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 11, 2010 (75 FR 33311), FDA announced the availability of a guidance for industry, ''Bioequivalence Recommendations for Specific Products,'' which explained the process that would be used to make

[1] These estimates are based on conversations between the Agency and representatives of regulated industry during the generic drug user fee negotiations.

product-specific BE recommendations available to the public on FDA's Web site at *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*. As described in that guidance, FDA adopted this process as a means to develop and disseminate product-specific BE recommendations and provide a meaningful opportunity for the public to consider and comment on those recommendations. This notice announces the availability of revised draft BE recommendations for lenalidomide capsules.

Revlimid (lenalidomide capsules), approved by FDA on December 27, 2005, is a thalidomide analogue indicated for the treatment of: Multiple myeloma, in combination with dexamethasone, in patients who have received at least one prior therapy and also in patients with transfusion-dependent anemia due to low- or intermediate-1-risk myelodysplastic syndromes associated with a deletion 5q abnormality with or without additional cytogenetic abnormalities. Revlimid is designated as the reference listed drug, and therefore any ANDAs for generic lenalidomide capsules must demonstrate BE to the Revlimid prior to approval. There are no approved ANDAs for this product.

In June 2010, FDA posted on its Web site a draft guidance for industry on the Agency's recommendations for BE studies to support ANDAs for lenalidomide capsules. In that draft guidance, FDA recommended studies in the 15 milligram (mg) and 25 mg strengths of lenalidomide capsules to demonstrate BE. FDA has now determined that a BE study in the 15 mg strength is unnecessary and is revising the guidance to remove that recommendation. FDA also is revising the guidance to recommend that a request for a waiver of in vivo testing be submitted for the 2.5 mg, 5 mg, 10 mg, and 15 mg strengths based on: (1) Acceptable fasting and fed bioequivalence studies on the 25 mg strength, (2) proportional similarity of the formulations across all strengths, and (3) acceptable in vitro dissolution testing of all strengths.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on the design of BE studies to support ANDAs for lenalidomide capsules. They do not create or confer any rights for or on any person and do not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. 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, and will be posted to the docket at *http://www.regulations.gov*.

III. Electronic Access

Persons with access to the Internet may obtain the documents at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: October 31, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–27004 Filed 11–5–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: National Database for Autism Research (NDAR) Data Access Request

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act (PRA) of 1995, the National Institute of Mental Health (NIMH), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 22, 2012, page 37683–37684 (2 pages) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: National Database for Autism Research (NDAR) Data Access Request. *Type of Information Collection Request:* 0925–NEW. *Need and Use of Information Collection:* The NDAR Data Access Request form is necessary for ''Recipient'' Principal Investigators and their organization or corporations with approved assurance from the DHHS Office of Human Research Protections to access data or images from the NDAR Central Repository for research purposes. The primary use of this information is to document, track, monitor, and evaluate the use of the NDAR datasets, as well as to notify interested recipients of updates, corrections or other changes to the database. *Frequency of Response:* Once per request. *Affected Public:* Individuals. *Type of Respondents:* Researchers interested in obtaining access to study data and images from the NDAR Central Repository for research purposes. There are no capital, operating, and/or maintenance costs to the respondents.

There are two scenarios for completing the form. The first where the Principal Investigator (PI) completes the entire NDAR Data Access Request form, and the second where the PI has the Research Assistant begin filling out the form and PI provides the final reviews and signs it. The total estimated annual burden hours to complete data request form is listed below.

ESTIMATE OF ANNUALIZED BURDEN HOURS

Form	Number of respondents	Frequency of response	Average time per response (in hours)	Total annual burden hours
NDAR Data Access Request	40	1	95/60	63

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Keisha Shropshire, NIMH PRA Liaison, Science Policy & Evaluation Branch, OSPPC, NIMH, NIH, Neuroscience Center, 6001 Executive Blvd., MSC 9667, Bethesda, MD 20892, or call non-toll-free number (301) 443–4335 or Email your request, including your address to: *kshropsh@mail.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: October 17, 2012.

Sue Murrin,

Executive Officer, NIMH, NIH.

[FR Doc. 2012–27085 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Community-Based Participatory Research (CBPR) Initiative in Reducing and Eliminating Health Disparities: Dissemination Phase (R24).

Date: December 17–18, 2012.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Robert Nettey, M.D., Chief, Scientific Review Officer, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 496–3996, *netteyr@mail.nih.gov.*

Dated: October 31, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26986 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Board of Scientific Advisors, November 5, 2012, 9:00 a.m. to November 5, 2012, 5:00 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on September 27, 2012, 77FR59406.

This notice is amended to change the adjournment time to 3:45 p.m. The meeting is open to the public.

Dated: October 31, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26987 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Special Emphasis Panel, November 27, 2012, 8:00 a.m. to November 27, 2012, 3:00 p.m., National Institutes of Health, Neurosciences Building, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852, which was published in the **Federal Register** on October 10, 2012, 77 FR 61614.

This notice is amended to change the location, date and time to November 26, 2012, 2:00 p.m. to 4:00 p.m., Executive Plaza North, 6130 Executive Boulevard, Room 6042, Rockville, MD 20852. The meeting is closed to the public.

Dated: October 31, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26988 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Program Project: Mass Spectrometry Resource.

Date: November 26–28, 2012.

Time: 7:00 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bentley Hotel, 500 East 62nd Street, New York, NY 10065.

Contact Person: Arnold Revzin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146,

MSC 7806, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; ESTA Member Conflicts: Cardiac Ion Channels, Fibrillation and Arrhythmias.

Date: December 4, 2012.

Time: 2:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Olga A. Tjurmina, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 31, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26990 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Peer Review Meeting.

Date: November 28, 2012.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda North Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

Contact Person: Ellen S. Buczko, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2676, *ebuczko1@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 31, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26992 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

Name of Committee: National Science Advisory Board for Biosecurity.

Date: November 27, 2012.

Time: 11:00 a.m. to 3:00 p.m. Eastern Time (Times are approximate and subject to change).

Agenda: Presentations and discussions regarding: (1) A proposed framework for guiding HHS funding decisions on HPAI H5N1 gain-of-function research; (2) report of the NSABB Working Group on Global Engagement; and (3) other business of the Board.

Place: National Institutes of Health, Building 31, 6th Floor, Room 6, Bethesda, Maryland 20892.

Contact Person: Ronna Hill, NSABB Program Assistant, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, Maryland 20892, (301) 496–9838, *hillro@od.nih.gov.*

Submitted Under authority 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established the NSABB to provide advice regarding federal oversight of dual use research, defined as biological research that generates information and technologies that could be misused to pose a biological threat to public health and/or national security.

The meeting will be open to the public, however pre-registration is strongly recommended due to space limitations. Persons planning to attend should register online at: *http://oba.od.nih.gov/biosecurity/biosecurity_meetings.html* or by calling Palladian Partners, Inc. (Contact: Joel Yaccarino at 301–650–8660). Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should indicate these requirements upon registration.

This meeting will also be webcast. To access the webcast, as well as the draft meeting agenda and preregistration information, connect to: *http://oba.od.nih.gov/biosecurity/biosecurity_meetings.html.* Please check this site for updates.

Any member of the public interested in presenting oral comments relevant to the mission of the NSABB at the open meeting should notify the Contact Person listed on this notice. Interested individuals and representatives of an organization may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments relevant to the mission of the NSABB. All written comments should be sent via email to the Contact Person listed on this notice. The written comments should include the name, address, telephone number and, when applicable, the business or professional affiliation of the commenter.

Dated: October 31, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26994 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Interventions to Treat Chronic, Persistent and Latent Infections.

Date: November 27, 2012.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Jane K. Battles, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3128, Bethesda, MD 20892–7616, 301–451–2744, *battlesja@mail.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Partnerships for Interventions to Treat Chronic, Persistent and Latent Infections J5.

Date: November 29, 2012.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817.

Contact Person: Jane K. Battles, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Room 3128, Bethesda, MD 20892–7616, 301–451–2744, *battlesja@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 31, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26993 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Generational Trend in Child Maltreatment.

Date: November 19, 2012.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anna L. Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, 301–435–2889, *rileyann@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS-Associated Opportunistic Infections and Cancer Parasitology.

Date: November 28, 2012.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research

Date: November 30, 2012.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jose H. Guerrier, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Cancer Biology—2.

Date: December 4, 2012.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, MBA, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 31, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26991 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Program Project.

Date: November 20, 2012.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An18, Bethesda, MD 20892–6200, (Telephone Conference Call).

Contact Person: Helen R. Sunshine, Ph.D., Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An12F, Bethesda, MD 20892–6200, 301–594–2881, *sunshinh@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of P01 Application.

Date: November 28, 2012.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room 3An18, Bethesda, MD 20892–6200, (Telephone Conference Call).

Contact Person: Robert Horowits, Ph.D., Senior Investigator, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An18, Bethesda, MD 20892–6200, 301–594–6904, *horowitr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and

Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: October 31, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–26989 Filed 11–5–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Administrative Rulings

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-day notice and request for comments; Extension of an existing collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Administrative Rulings. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Written comments should be received on or before January 7, 2013, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual cost burden to respondents or record keepers from the collection of information (total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Administrative Rulings.

OMB Number: 1651–0085.

Form Number: None.

Abstract: The collection of information in 19 CFR part 177 is necessary in order to enable Customs and Border Protection (CBP) to respond to requests by importers and other interested persons for the issuance of administrative rulings. These rulings pertain to the interpretation of applicable laws related to prospective and current transactions involving classification, marking, and country of origin. The collection of information in Part 177 of the CBP Regulations is also necessary to enable CBP to make proper decisions regarding the issuance of binding rulings that modify or revoke prior CBP binding rulings. This collection of information is authorized by 19 U.S.C. 66, 1202, (General Note 3(i), Harmonized Tariff Schedule of the United States). The application to obtain an administrative ruling is accessible at: *https://apps.cbp.gov/erulings.*

Action: CBP proposes to extend the expiration date of this information collection with no change to the estimated burden hours or to the information collected.

Type of Review: Extension (without change).

Affected Public: Businesses.

Rulings:

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 120,000.

Appeals:

Estimated Number of Respondents: 200.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 8,000.

Dated: November 1, 2012.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2012–27025 Filed 11–5–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

[FWS–R4–FHC–2012–N254; FVHC98130406900Y4–XXX–FF04G01000]

Deepwater Horizon Oil Spill; Draft Early Restoration Plan and Environmental Review

AGENCY: Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), and the Framework Agreement for Early Restoration Addressing Injuries Resulting from the Deepwater Horizon Oil Spill, the Federal and State natural resource trustee agencies (Trustees) have prepared a Phase II Draft Early Restoration Plan and Environmental Review (DERP/ER) describing and proposing two additional early restoration projects intended to continue the process of restoring natural resources and services injured or lost as a result of the Deepwater Horizon oil spill, which occurred on or about April 20, 2010, in the Gulf of Mexico. The purpose of this notice is to inform the public of the availability of the DERP/ER and to seek written comments on the proposed restoration alternative presented in the DERP/ER.

DATES:

Comments Due Date: We will consider public comments received on or before December 10, 2012.

Public Meetings: A public meeting is scheduled to facilitate public review and comment on the DERP/ER. Both written and verbal public comments will be taken at the meeting. The meeting will be held on November 13, 2012, at the Escambia County Central Complex Building (a.k.a. the LEED Building), Room 104, 3363 West Park Place, Pensacola, Florida 32505. An open house will begin at 6:00 p.m. (central time); the formal meeting, including a presentation of the DERP/ER will begin at 7:00 p.m. (central time). A meeting notice will be posted on the web at *www.gulfspillrestoration.noaa.gov.*

ADDRESSES:

Obtaining Documents: You may download the DERP/ER and the framework agreement at *http://*

www.gulfspillrestoration.noaa.gov or *http://www.doi.gov/deepwaterhorizon.* You may also review hard copies of the DERP/ER at any of the public repositories listed at *http://www.gulfspillrestoration.noaa.gov.*

Submitting Comments: You may submit comments on the DERP/ER by one of following methods:

- *Via the Web: http://www.gulfspillrestoration.noaa.gov.*
- *For electronic submission of comments containing attachments, email: fw4coastalDERPcomments@fws.gov.*
- *U.S. Mail:* c/o U.S. Fish and Wildlife Service, P.O. Box 2099, Fairhope, Alabama 36533.

FOR FURTHER INFORMATION CONTACT: Brian Spears at *fw4coastalDERPcomments@fws.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

On or about April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252—MC252), experienced a significant explosion, fire and subsequent sinking in the Gulf of Mexico, resulting in discharges of oil and other substances from the rig and from the wellhead on the seabed. An estimated 4.9 million barrels (210 million gallons) of oil were released from the well into the Gulf of Mexico over a period of 87 days. In addition, approximately 1.84 million gallons of dispersants were applied to the waters of the spill area in an attempt to minimize impacts from spilled oil. Affected resources include ecologically, recreationally, and commercially important species and their habitats in the Gulf of Mexico and along the coastal areas of Alabama, Florida, Louisiana, Mississippi, and Texas.

Federal and State trustees (listed below) are conducting the natural resource damage assessment for the *Deepwater Horizon* oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, federal and state agencies and Indian tribes may act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the damages required to compensate the public for those injuries and losses. OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship. The trustees have developed this DERP/ER under the Framework Agreement.

The trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Department of Defense (DOD);
- U.S. Environmental Protection Agency (USEPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- For the State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

Background

On April 20, 2011, BP agreed to provide up to $1 billion toward early restoration projects in the Gulf of Mexico to address injuries to natural resources caused by the *Deepwater Horizon* oil spill. This early restoration agreement, entitled ''Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill'' (Framework Agreement), represents a preliminary step toward the restoration of injured natural resources. The Framework Agreement is intended to expedite the start of restoration in the Gulf in advance of the completion of the injury assessment process. The Framework Agreement provides a mechanism through which the Trustees and BP can work together ''to commence implementation of early restoration projects that will provide meaningful benefits to accelerate restoration in the Gulf as quickly as practicable'' prior to the resolution of the Trustees' natural resource damages claim.

The Trustees actively solicited public input on restoration project ideas through a variety of mechanisms, including public meetings, electronic communication, and creation of a Trustee-wide public Web site and database to share information and receive public project submissions. Their key objective in pursuing early restoration is to secure tangible recovery of natural resources and natural resource services for the public's benefit while the longer-term process of fully assessing injury and damages is underway. As the first step in this accelerated process, the Trustees released, after public review of a draft, a Phase I Early Restoration Plan/Environmental Assessment (Phase I ERP/EA) in April 2012. The Phase I ERP is currently being implemented.

In a continuation of the early restoration process, the Trustees are proposing two additional early restoration projects to address response injuries from the *Deepwater Horizon* oil spill. These projects are approved in principle by BP. They address injuries to the nesting habitats of beach nesting birds and loggerhead sea turtles that resulted from response activities to the oil spill (e.g., efforts to prevent oil from reaching beaches and to remove oil from beaches). These projects address a number of specific public comments on the Phase I projects that requested development of additional habitat and wildlife-based early restoration projects.

Because loggerhead sea turtles and beach nesting birds begin nesting along the Northeast Gulf coast in February, the Trustees recognize the need to implement these two proposed projects in a timely manner to be effective during the 2013 breeding season. Therefore, the Trustees are proposing these projects at this time while continuing to work with BP to develop additional restoration projects in accordance with the Framework Agreement. The Alternatives within this plan are not intended to, and do not fully, address all injuries caused by the spill or provide the extent of restoration needed to satisfy claims against BP.

Overview of the Draft ERP/ER

Draft Early Restoration Plan Alternatives, Including Our Proposed Alternative

The Draft ERP/ER is being released in accordance with the Oil Pollution Act, the Natural Resources Damage Assessment (NRDA) regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), and the Framework for Early Restoration Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill. It describes two early restoration alternatives: No Action—Natural Recovery (required for consideration by OPA) and Proposed

Action—Proposed Early Restoration Projects. Under the No Action alternative, the trustees would not implement early restoration projects as described in this Draft ERP/ER. Rather, the No Action approach would result in delaying protection and improvement of important nesting habitats injured by the oil spill.

Under the Proposed Action, the Trustees are considering two projects that meet the selection criteria, which are also described in the Draft ERP/ER.

Proposed Action—Proposed Early Restoration Projects

The proposed restoration projects are intended to protect and enhance beach nesting habitats used by birds and sea turtles by, among other things, protecting bird nesting habitat with symbolic fencing and signs and reducing the presence of harmful lighting on certain beaches as described in the plan. The proposed projects are: (1) Comprehensive Program for Enhanced Management of Avian Breeding Habitat Injured by Response in the Florida Panhandle, Alabama, and Mississippi; and (2) Improving Habitat Injured by Spill Response: Restoring the Night Sky. Each of these projects will benefit coastal nesting habitats injured by response to the *Deepwater Horizon* oil spill.

Next Step

After the public comment period ends, the Trustees will analyze and address the comments and will consider all input received before an ERP/ER is finalized. As described above, a public meeting is scheduled to facilitate the public review and comment process. During public review and subsequent revision of the ERP/ER, negotiations with BP will be completed and approved projects will proceed to implementation, pending compliance with all applicable state and federal laws.

Public Availability of Comments

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

Administrative Record

The documents comprising the Administrative Record can be viewed electronically at the following location: *http://www.doi.gov/deepwaterhorizon.*

Author

The primary author of this notice is Jim Haas (*james_haas@nps.gov*).

Authority

The authority of this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 et seq.), the implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the Framework Agreement for Addressing Injuries Resulting from the *Deepwater Horizon* Oil Spill.

Cynthia K. Dohner,

DOI Authorized Official.

[FR Doc. 2012–27080 Filed 11–5–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Notice of a New System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of creation of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice of its intent to create the Department of the Interior system of records titled, ''Donations Program Files.'' This system will assist the Department of the Interior in managing the Donations Program and facilitating the acceptance and solicitation of donations of money, real property, personal property, services, or other gifts by members of the public and organizations. This newly established system will be included in the Department of the Interior's inventory of Privacy Act records systems.

DATES: Comments must be received by December 17, 2012. This new system will be effective December 17, 2012.

ADDRESSES: Any person interested in commenting on this new system of records may do so by submitting written comments to the OS/NBC Privacy Act Officer, 1849 C Street NW., Mail Stop 2650 MIB, Washington, DC 20240; or emailing comments to *privacy@nbc.gov.*

FOR FURTHER INFORMATION CONTACT: Partnerships Coordinator, Office of Youth, Partnerships and Service, Department of the Interior, 1849 C Street NW., Mail Stop 3559 MIB, Washington, DC 20240; or by telephone at 202–208–6667.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior (DOI) is creating the Donations Program Files system of records. The purpose of this system is to assist the Department of the Interior in managing the Donations Program and facilitating the acceptance and solicitation of donations of money, real property, personal property, services, or other gifts by members of the public and organizations. The system will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the *Federal Register*), unless comments are received that would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information practices in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' personal information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act Regulations, 43 CFR part 2.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such records within the agency. Below is the description of the Donations Program Files system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

David Alspach,

OS/NBC Privacy Act Officer.

SYSTEM OF RECORDS:

DOI–12

SYSTEM NAME:

Donations Program Files

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records in this system are maintained by the Department of the Interior Office of Youth, Partnerships and Service, 1849 C Street NW., Mail Stop 3559 MIB, Washington, DC 20240; and Bureaus and Offices that manage Donations Programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who donate money, real property, personal property, services, or other gifts to the Department of the Interior, prospective donors, and other individuals who contact or correspond with the Department of the Interior officials on matters related to the Donations Program. This system may also include current and former Federal government employees, contractors, and volunteers who are involved in the management of the Donations Program. This system contains records concerning corporations and other business entities, which are not subject to the Privacy Act. However, records pertaining to individuals acting on behalf of corporations and other business entities may reflect personal information.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains information provided by individuals or organizations who propose to donate money, real property, personal property, services, or other gifts to the Department of the Interior, and may include names, home or work addresses, phone numbers, email addresses, other contact information, financial data such as the amount of the donation and method of remittance, biographical information, and miscellaneous information about gifts donated in the past. This system also contains background data and affiliations related to eligibility determinations for proposed donations; correspondence or other data related to the acceptance of proposed donations; and correspondence and data related to the management of the Donations Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Statutes that allow the Department to accept donations and/or contributions, including 43 U.S.C. 1737, 16 U.S.C. 6 and 43 U.S.C. 36c.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records will be used by the Department of the Interior to manage the Donations Program and facilitate the evaluation, acceptance, and solicitation of donations of money or other gifts by members of the public and organizations. In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, disclosures outside DOI may be made as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To the Executive 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, or for a purpose compatible for which the records are collected or maintained.

(4) To any criminal, civil, or regulatory law enforcement authority (whether federal, state, territorial, local, tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(6) To Federal, state, territorial, local, tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(8) To state, territorial and local governments and tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(9) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(10) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of

harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(11) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(12) To the Department of the Treasury to recover debts owed to the United States.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To the news media and the public, with the approval of the Public Affairs Officer in consultation with Counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(15) To an official of another Federal, state, territorial, local, tribal, or foreign agency to provide information needed in the performance of official duties related to the verification, authorization, or processing of money, real property, personal property, services, or other gift donations by individuals or organizations, or any issue otherwise related to the purpose for which the records were compiled.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper form in file folders stored in file cabinets. Electronic records are maintained in computers, computer databases, email, and electronic media such as removable drives, magnetic disk, diskette, and computer tapes.

RETRIEVABILITY:

Information within this system may be retrieved by individual's name, organization name, nature of the gift, size of the donation, and may also be retrieved by key word search.

SAFEGUARDS:

The records contained in this system are safeguarded in accordance with 43 CFR 2.51 and other applicable security rules and policies. During normal hours of operation, paper records are maintained in locked filed cabinets under the control of authorized personnel. Computers and storage media are encrypted in accordance with DOI security policy. The computer servers in which electronic records are stored are located in Department of the Interior facilities that are secured by security guards, alarm systems and off-master key access. Access to servers containing records in this system is limited to DOI personnel and other authorized parties who have a need to know the information for the performance of their official duties, and requires a valid username and password. Electronic records are safeguarded by permissions set to ''Authenticated Users'' which require password login. Personnel authorized to access the system must complete all Security, Privacy, and Records management training and sign the Rules of Behavior.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with applicable bureau or office records schedules or General Records Schedule (GRS) approved by the National Archives and Records Administration (NARA). Records will be destroyed when no longer needed for agency business in accordance with records retention schedules and NARA guidelines. Paper records are disposed of by shredding or pulping, and records contained on electronic media are degaussed or erased in accordance with 384 Departmental Manual 1.

SYSTEM MANAGER AND ADDRESS:

Partnerships Coordinator, Office of Youth, Partnerships and Service, Department of the Interior, 1849 C Street NW., Mail Stop 3559 MIB, Washington, DC 20240.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should be clearly marked ''PRIVACY ACT INQUIRY''. A request for notification must meet the requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

An individual requesting access to records on himself or herself should send a signed, written inquiry to the System Manager identified above. The request envelope and letter should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS''. The request letter should describe the records sought as specifically as possible. A request for access must meet the requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or contesting information contained in his or her records must send a signed, written request to the System Manager identified above. A request for corrections or removal must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Records in the system are obtained from individual members of the public, organizations, DOI officials, employees, contractors, volunteers, and may be obtained from other Federal officials, state, territorial and local government officials, and non-governmental organizations, in the course of daily business activities and communications related to the management of the Donations Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2012–26997 Filed 11–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO956000 L14200000.BJ0000]

Notice of Filing of Plats of Survey; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Colorado.

SUMMARY: The Bureau of Land Management (BLM) Colorado State Office is publishing this notice to inform the public of the intent to officially file the survey plats listed below and afford a proper period of time to protest this action prior to the plat filing. During this time, the plats will be available for review in the BLM Colorado State Office.

DATES: Unless there are protests of this action, the filing of the plats described in this notice will happen on December 6, 2012.

ADDRESSES: BLM Colorado State Office, Cadastral Survey, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Randy Bloom, Chief Cadastral Surveyor for Colorado, (303) 239–3856.

Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The field notes of the remonumentation of certain original survey corners in Protracted Township 42 North, Range 5 West, New Mexico Principal Meridian, Colorado, were accepted on September 19, 2012.

The field notes of the remonumentation of a mineral corner in Protracted Township 43 North, Range 5 West, New Mexico Meridian, Colorado, were accepted on September 19, 2012.

The plat incorporating the field notes of the dependent resurvey in Township 16 South, Range 70 West, Sixth Principal Meridian, Colorado, was accepted on September 26, 2012.

The plat incorporating the field notes of the remonumentation of certain corners in Township 6 North, Range 98 West, Sixth Principal Meridian, Colorado, was accepted on October 3, 2012.

The field notes of the remonumentation of certain original survey corners in Township 16 South, Range 71 West, Sixth Principal Meridian, Colorado, were accepted on October 10, 2012.

The supplemental plat of Section 6, in Township 35 North, Range 2 West, New Mexico Principal Meridian, Colorado, was accepted on October 17, 2012.

The plat incorporating the field notes of the corrective dependent resurvey in Township 5 North, Range 91 West, Sixth Principal Meridian, Colorado, was accepted on October 25, 2012.

Randy Bloom,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 2012–27056 Filed 11–5–12; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ956000.L14200000.BJ0000.241A]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Arizona.

SUMMARY: The plats of survey of the described lands were officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, on dates indicated.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat representing the dependent resurvey of the south and west boundaries, the subdivisional lines, and the subdivision of certain sections, Township 22 North, Range 18 East, accepted October 25, 2012, and officially filed October 29, 2012, for Group 1069, Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427. 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.

Stephen K. Hansen,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2012–27064 Filed 11–5–12; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–029]

Government in The Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 9, 2012 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

Matters To Be Considered

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–490 and 731–TA–1204 (Preliminary) (Hardwood Plywood from China). The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before November 13, 2012; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before November 19, 2012.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 2, 2012.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2012–27200 Filed 11–2–12; 4:15 pm]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–12–028]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 7, 2012 at 11:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Vote in Inv. Nos. 701–TA–481 and 731–TA–1190 (Final) (Crystalline Silicon Photovoltaic Cells and Modules from China). The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before November 23, 2012.
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting. Earlier notification of this meeting was not possible.

By order of the Commission.

Issued: November 1, 2012.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2012–27144 Filed 11–2–12; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–780]

Certain Protective Cases and Components Thereof; Notice of the Commission's Final Determination; Issuance of a General Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has found a violation of section 337 in this investigation and has (1) issued a general exclusion order prohibiting importation of infringing protective cases and components thereof and (2) issued cease and desist orders direct to domestic respondents.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 30, 2011, based on a complaint filed by Otter Products, LLC of Fort Collins, Colorado (''Otter''). 76 *FR* 38417 (June 30, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain protective cases and components thereof by reason of infringement of some or all of the claims of United States Patent Nos. D600,908 (''the D908 patent''); D617,784 (''the D784 patent''); D615,536 (''the D536 patent''); D617,785 (''the D785 patent''); D634,741 (''the D741 patent''); D636,386 (''the D386 patent''); and claims 1, 5–7, 13, 15, 17, 19–21, 23, 25, 27, 28, 30–32, 37, 38, 42, and 44 of United States Patent No. 7,933,122 (''the '122 patent''); and United States Trademark Registration Nos. 3,788,534; 3,788,535; 3,623,789; and 3,795,187. *Id.* The notice of investigation named the following respondents: A.G. Findings and Mfg. Co., Inc. of Sunrise, Florida (''A.G. Findings''); AFC Trident Inc. of Chino, California (''AFC Trident''); Alibaba.com Hong Kong Ltd. of Hangzhou, China (''Alibaba.com''); Anbess Electronics Co. Ltd. of Schenzhen, China (''Anbess''); Cellairis Franchise, Inc. of Alpharetta, Georgia (''Cellairis''); Cellet Products of Sante Fe Springs, California (''Cellet''); DHgate.com of Beijing, China (''Dhgate.com''); Griffin Technology, Inc. of Nashville, Tennessee (''Griffin''); Guangzhou Evotech Industry Co., Ltd. of Guangdong, China (''Guangzhou Evotech''); Hard Candy Cases LLC of Sacramento, California (''Hard Candy''); Hoffco Brands, Inc. of Wheat Ridge, Colorado (''Hoffco''); Hong Kong Better Technology Group Ltd. of Shenzhen, China (''Better Technology Group''); Hong Kong HJJ Co. Ltd. of Shenzhen, China (''HJJ''); Hypercel Corporation of Valencia, California (''Hypercel''); InMotion Entertainment of Jacksonville, Florida (''InMotion''); MegaWatts Computers, LLC of Tulsa, Oklahoma (''MegaWatts''); National Cellular of Brooklyn, New York (''National Cellular''); OEMBargain.com of Wantagh, New York (''OEMBargain.com''; One Step Up Ltd. of New York, New York (''One Step Up''); Papaya Holdings Ltd. of Central, Hong Kong (''Papaya''); Quanyun Electronics Co., Ltd. of Shenzhen, China (''Quanyun''); ShenZhen Star & Way Trade Co., Ltd. of Guangzhou City, China (''Star & Way''); Sinatech Industries Co., Ltd. of Guangzhou City, China (''Sinatech''); SmileCase of Windsor Mill, Maryland (''SmileCase''); Suntel Global Investment Ltd. of Guangzhou, China (''Suntel''); TheCaseInPoint.com of Titusville, Florida (''TheCaseInPoint''); TheCaseSpace of Fort Collins, Colorado (''TheCaseSpace''); Topter Technology Co., Ltd. of Guangdong, China (''Topter''); and Trait Technology (Shenzhen) Co., Ltd. of Shenzhen, China (''Trait Technology''). *Id.* With respect to accused products by Respondent Griffin, Otter asserted only the '122 patent.

On August 3, 2011, the ALJ issued an ID granting Otter leave to amend the complaint and notice of investigation to add Global Cellular, Inc. of Alpharetta, Georgia (''Global Cellular'') as a respondent. *See* Order No. 3 (August 3, 2011). The Commission determined not to review the order. *See* Notice of Commission Determination not to Review an Initial Determination Granting Complainant's Motion to Amend the Complaint and Notice of Investigation to Add a Respondent (August 18, 2011).

The following respondents were terminated from the investigation based on settlement agreements, consent orders, or withdrawal of allegations from the complaint: One Step Up, InMotion, Hard Candy, DHGate.com, Alibaba.com, A.G. Findings, Cellairis, Global Cellular, AFC Trident, Better Technology Group, and OEMBargain.com. The following respondents were found in default: Anbess, Guangzhou Evotech, Hoffco, HJJ, Sinatech, Suntel, Trait Technology, Papaya, Quanyun, Topter, Cellet, TheCaseSpace, MegaWatts, Hypercel, Star & Way, SmileCase, TheCaseInpoint, and National Cellular (collectively ''Defaulting Respondents''). Griffin is the only remaining respondent not found in default, and the only respondent that appeared before the Commission.

On June 29, 2012, the ALJ issued his final ID, finding a violation of section 337 by Griffin and the Defaulting Respondents. Specifically, the ALJ found that the Commission has subject matter jurisdiction: *in rem jurisdiction* over the accused products and *in personam* jurisdiction over the respondents. ID at 45–46. The ALJ also found that the importation requirements of section 337 (19 U.S.C. 1337(a)(1)(B), (C)) have been satisfied. *Id.* at 38–45. Regarding infringement, the ALJ found that the Defaulting Respondents' accused products infringe the asserted claims of the asserted patents and the asserted trademarks. *Id.* at 62–88. The ALJ further found that Griffin's accused products, the Griffin survivor for iPad 2 and Griffin Explorer for iPhone 4, literally infringe the asserted claims of the '122 patent but that the Griffin Survivor for iPhone 4 and Griffin Survivor for iPod Touch do not literally infringe the asserted claims of the '122 patent. *Id.* at 64–78. The ALJ concluded that an industry exists within the United States for the asserted patents

and trademarks as required by 19 U.S.C. 1337(a)(2). *Id.* at 89–108.

On July 16, 2012, Otter filed a petition for review of the ID. That same day, the Commission investigative attorney filed a petition for review. On July 17, 2012, Griffin filed a petition for review (the Commission granted Griffin's motion for leave to file its petition one day late). On July 24, 2012, the parties filed responses to the petitions for review.

On August 30, 2012, the Commission determined to review a single issue in the final ID and requested briefing on the issue it determined to review, and on remedy, the public interest and bonding. 77 *FR* 54924 (Sept. 6, 2012). Specifically, the Commission determined to review the finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent.

On September 14, 2012, the parties filed written submissions on the issue under review, remedy, the public interest, and bonding. On September 21, 2012, the parties filed reply submissions.

Having examined the record of this investigation, including the ALJ's final ID, the Commission has determined to reverse the ALJ's finding that the accused Griffin Survivor for iPod Touch does not literally infringe the asserted claims of the '122 patent. The Commission adopts the ALJ's findings in all other respects.

Having found a violation of section 337 in this investigation, the Commission has determined that the appropriate form of relief is: (1) A general exclusion order prohibiting the unlicensed entry of protective cases and components thereof covered by the claim of the D908 patent, the D784 patent, the D536 patent, the D785 patent, the D741 patent, or the D386 patent, or one or more of claims 1, 5–7, 13, 15, 17, 19–21, 23, 25, 27, 28, 30–32, 37, 38, 42, and 44 of the '122 patent; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187; (2) cease and desist orders prohibiting domestic respondents Cellet, Hoffco, Hypercel, MegaWatts, National Cellular, SmileCase, TheCaseInPoint, and TheCaseSpace from conducting any of the following activities in the United States, including via internet activity: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, protective cases and components thereof covered by the D908 patent, the D784 patent, the D536 patent, the D785 patent, the D741 patent, or the D386 patent, or one or more of claims 1, 5–7, 13, 15, 17, 19–21, 23, 25, 27, 28, 30–32, 37, 38, 42, and 44 of the '122 patent; or that infringe one or more of U.S. Trademark Reg. Nos. 3,788,534, 3,788,535, 3,623,789, or 3,795,187; and (3) a cease and desist order prohibiting Griffin from conducting any of the following activities in the United States, including via internet activity: importing, selling, marketing, advertising, distributing, offering for sale, transferring (except for exportation), and soliciting U.S. agents or distributors for, protective cases and components thereof covered by one or more of claims 1, 5–7, 13, 15, 17, 19–21, 23, 25, 27, 28, 30–32, 37, 38, 42, and 44 of the '122 patent.

The Commission has also determined that the public interest factors enumerated in section 337(d), (f), and (g) (19 U.S.C. 1337(d), (f), and (g)) do not preclude issuance of the general exclusion order or cease and desist orders. Finally, the Commission has determined that for Griffin, a bond in the amount of 12.45 percent of entered value for tablet cases and no bond for non-tablet cases is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) of its infringing protective cases and components thereof. For Defaulting Respondents, the Commission has determined that a bond of 331.80 percent of entered value for tablet cases and 245.53 percent of entered value for non-tablet cases is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) of protective cases and components thereof that are subject to the orders. For all other infringing products, the Commission has determined that a bond of 100 percent of entered value is required to permit temporary importation during the period of Presidential review (19 U.S.C. 1337(j)) of protective cases and components thereof that are subject to the general exclusion order. The Commission's orders and opinion were delivered to the President and to the United States Trade Representative on the day of their issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure, 19 CFR 210.42–46, 210.50.

Issued: October 31, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–26995 Filed 11–5–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0018]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Federal Firearms License

ACTION: 60-Day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. Comments are encouraged and will be accepted for ''sixty days'' until January 7, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tracey Robertson, Chief, Federal Firearms Licensing Center, at *tracey.robertson@atf.gov* or 244 Needy Road, Martinsburg, WV 25405.

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 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.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Federal Firearms License.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 7 (5310.12). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: None.

Need for Collection

In accordance with 18 U.S.C. 923(a)(1) each person intending to engage in business as a firearms or ammunition importer or manufacturer, or dealer in firearms shall file an application and pay the required fee with ATF and obtain a license before engaging in business. The information requested on the form will be used to determine eligibility for the license as required by 18 U.S.C. Section 923.

(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 13,000 respondents will complete a 1 hour and 15 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 16,250 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 1, 2012.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–27039 Filed 11–5–12; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0081]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Appeals of Background Checks

ACTION: 60-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. Comments are encouraged and will be accepted for ''sixty days'' until January 7, 2013. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christopher Reeves, Chief, Federal Explosives Licensing Center at *FELC@atf.gov,* (877) 283–3352.

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 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.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Appeals of Background Checks.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households.

Need for Collection

The purpose of this collection is to allow applicants, employees, or other affected personnel the opportunity to appeal in writing the results of a background check conducted to satisfy their eligibility to possess explosive materials. The appeal request must include appropriate documentation or record(s) establishing the legal and/or factual basis for the challenge.

(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 500 respondents will spend 2 hours completing the required documentation for the appeal.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,000 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, Room 3W–508, 145 N Street NE., Washington, DC 20530.

Dated: November 1, 2012.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–27040 Filed 11–5–12; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0009]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application To Register as an Importer of U.S. Munitions Import List Articles

ACTION: 60-day notice.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), 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. Comments are encouraged and will be accepted for ''sixty days'' until January 7, 2013. This

process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Desiree Dickinson, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25405.

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 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.

Summary of Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Register as an Importer of U.S. Munitions Import List Articles.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 4587 (5330.4). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None.

Need for Collection

The purpose of this information collection is to allow ATF to determine if the registrant qualifies to engage in the business of importing a firearm or firearms, ammunition, and implements of war, and to facilitate the collection of registration fees.

(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 300 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 150 annual total burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 1, 2012.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–27038 Filed 11–5–12; 8:45 am]

BILLING CODE 4810–FY–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Border Security Technology Consortium

Notice is hereby given that, on October 5, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Border Security Technology Consortium (''BSTC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accenture Federal Services LLC, Arlington, VA; ADSS Incorporated, Tucson, AZ; Aerostar International, Inc., Sioux Falls, SD; Azos AI, LLC, Haymarket, VA; Border Solutions Group, Fabius, NY; CACI–CMS Information Systems, INC., Arlington, VA; Carolina Unmanned Vehicles, Inc., Raleigh, NC; CLS America, Lanham, MD; Command Consulting Group, LLC, Washington, DC; Consolidated Resource Imaging, LLC, Grand Rapids, MI; Digital Barriers Services, LTD, London, UNITED KINGDOM; EADS North America, Herndon, VA; General Dynamics C4 Systems, Scottsdale, AZ; General Robotics, Sherman Oaks, CA; Global Technical Systems, Virginia Beach, VA; Hurley IR, Mount Airy, MD; ICx Tactical Platforms, Forest Park, GA; Innovative Signal Analysis, Inc., Richardson, TX; Liquid Robotics, Sunnyvale, CA; Lockheed Martin Corporation, Gaithersburg, MD; Morpho Detection, Newark, CA; Morpho Trak, Alexandria, VA; NAVISTAR, Lisle, IL; PRO Barrier Engineering, LLC, Middletown, PA; ProQual-I.T., Inc., Rockville, MD; Rumpf Associates International, Inc., Alexandria, VA; SAS Institute Inc., Cary, NC; STARA Technologies, Inc., Gilbert, AZ; Symetrica, Maynard, MA; TCOM, LP, Elizabeth City, NC; Teradata Government Systems, LLC, Annapolis Junction, MD; Terma North America, Inc., Arlington, VA; Terrahawk, LLC, Dallas, TX; Transcend Engineering and Technology, LLC, Stockbridge, VT; Ultra Electronics Prologic, Manassas, VA; Ventera, Reston, VA; Washington DC Homeland Security Roundtable, Washington, DC; WGS Systems, LLC, Frederick, MD; Whitney Bradley & Brown, Inc., Reston, VA, and Worldwide Aeros Corporation, Montebello, CA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BSTC intends to file additional written notifications disclosing all changes in membership.

On May 30, 2012, BSTC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 18, 2012 (77 FR 36292).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–27063 Filed 11–5–12; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; IMS Global Learning Consortium, Inc.

Notice is hereby given that, on October 9, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were

filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Stichting Cito, Anhem, The Netherlands has been added as a party to this venture. Also, UNED, Madrid, Spain has withdrawn as a party to this venture.

In addition, John Wiley & Sons, has changed its name to Wiley, Hoboken, NJ.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on July 16, 2012. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 5, 2012 (77 FR 54611).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–27106 Filed 11–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Heterogeneous System Architecture Foundation

Notice is hereby given that, on October 9, 2012, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 301 *et seq.* (''the Act''), Heterogeneous System Architecture Foundation (''HSA Foundation'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Samsung Electronics Co., Ltd., Gyeonggi-do, REPUBLIC OF KOREA; Symbio, San Jose, CA; Arteris, Inc., Sunnyvale, CA; Vivante Corporation, Sunnyvale, CA; Apical Ltd., London, UNITED KINGDOM; MulticoreWare, Cupertino, CA; Sonics, Inc., Milpitas, CA; Qualcomm Incorporated, San Diego, CA; and LG Electronics, Inc., Seocho-gu, Seoul, REPUBLIC OF KOREA, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and HSA Foundation intends to file additional written notifications disclosing all changes in membership.

On August 31, 2012, HSA Foundation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 11, 2012 (77 FR 61786).

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2012–27107 Filed 11–5–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

[OMB Number 1110–0035]

Agency Information Collection Activities; Existing Collection, Comments Requested: Approval of an Existing Collection; The National Instant Criminal Background Check System (NICS) Point of Contact (POC) State Final Determination Electronic Submission

ACTION: 60-day notice.

The Department of Justice (DOJ), Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division's NICS Section 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. Comments are encouraged and will be accepted for 60 days until January 7, 2013. This process is conducted in accordance with Title 5, Code of Federal Regulations (CFR), Section 1320.10.

If you have comments (especially on the estimated public burden or associated response time), suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Sherry L. Kuneff, Management and Program Analyst, Federal Bureau of Investigation, Criminal Justice Information Services Division, National Instant Criminal Background Check System Section, Module A–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306, or facsimile at (304) 625–7540.

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:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Approval of an Existing Collection.

(2) *Title of the Forms:*

The National Instant Criminal Background Check System (NICS) Point-of-Contact (POC) State Final Determination Electronic Submission

(3) *Agency Form Number, if any, and the applicable component of the department sponsoring the collection:*

Form Number: 1110–0035.

Sponsor: Criminal Justice Information Services (CJIS) Division of the Federal Bureau of Investigation (FBI), Department of Justice (DOJ)

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Full Point-of-Contact (POC) States; Partial POC States; the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)-qualified Alternate Permit States.

Brief Abstract: This collection is requested of Full POC States, Partial POC States, and the Bureau ATF-qualified Alternate Permit States. Per Title 28, Code of Federal Regulations, Section 25.6(h), POC States are required

to transmit electronic determination messages to the FBI CJIS Division's NICS Section of the status of a firearm background check in those instances in which a transaction is ''open'' (transactions unresolved before the end of the operational day on which the transaction was initiated); ''denied'' transactions; transactions reported to the NICS as open and subsequently changed to proceed; and overturned denials. The POC State must send this response to the NICS immediately upon communicating their determination to the Federal Firearms Licensee or in those cases in which a response has not been communicated, no later than the end of the operational day in which the transaction was initiated. For those responses that are not received, the NICS will assume the transaction resulted in a ''proceed.'' *http://www.fbi.gov/programs/nics/index.htm.*

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

There are 21 POC States that are required to submit electronic notifications to the FBI CJIS Division's NICS Section and 18 ATF-qualified Alternate Permit States voluntarily submit electronic notifications to the FBI CJIS Division's NICS Section. Both POC States and ATF-qualified Permit States conduct an average of 5,859,797 transactions per year. It is estimated that 26 percent of these transactions would be affected by this collection and would require electronic messages sent to the NICS. This translates to 1,523,547 transactions, which would be the total number of annual responses. The other 74 percent would not be reported in this collection. It is estimated it will require one minute (60 seconds) for each POC State and ATF-qualified Alternate Permit State to transmit the information per transaction to the NICS. Thus, it is estimated that collectively all respondents will spend 25,392 hours yearly submitting determinations to the NICS. If the number of transactions were distributed evenly among the POC States and ATF-qualified Alternate Permit States, then 651 hours would be the estimated time for each of the 39 states to respond. Record-keeping time is part of the routine business process and is not part of this calculation.

(6) *An estimate of the total public burden (in hours) associated with the collection:*

The average yearly hour burden for submitting final determinations combined is: (5,859,797 total checks × 26 percent)/60 seconds = 25,392 hours.

(7) *Estimates of Total Annual Cost Burden:*

Due to the variety of technical requirements that exist among the different POC state systems, the multiplicity of available technology, and indeterminate volume of transactions, the total annual cost burden to the POC States and ATF-alternate Permit States were estimated to be approximately $13,390,000. This figure includes start-up costs for initial implementation which were estimated according to industry standard data and limited information provided by the POC states. This figure also includes NICS Section estimated annual costs for post-implementation, which includes operation and maintenance, hardware/software upgrades, and overhead based on 13 Full POC States.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 1, 2102.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2012–27036 Filed 11–5–12; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0259]

Agency Information Collection Activities: Proposed Collection; Comments Requested; Bureau of Justice Assistance Application Form: Public Safety Officer's Medal of Valor

ACTION: 30-day notice.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted 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 77, Number 168, page 52369, on August 29, 2012, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until December 6, 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 Maria A. Berry, Senior Advisor by email at *M.A.Berry@ojp.usdoj.gov* or by telephone at 202–353–8643, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. 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:* Extension of a previously approved collection for which approval will expire in November 2012.

(2) *Title of the Form/Collection:* Public Safety Officer Medal or Valor.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: State, local and tribal government agencies within the United States and its territories.

Abstract: The Bureau of Justice Assistance, a component of the Office of Justice Program, Department of Justice, administers the Public Safety Officer's Medal of Valor program. Once a year, the President of the United States of America may award and present in the name of Congress, a Medal of Valor of appropriate design, with ribbons and appurtenances, to a public safety officer

who is cited by the Attorney General, upon the recommendation of the Medal of Valor Review Board, for extraordinary valor above and beyond the call of duty. The Public Safety Officer Medal of Valor is the highest national award given to a public safety officer in recognition of their bravery and altruistic acts of valor to protect and save the lives of others. Nomination(s) for this award is voluntary. Nominations are received through the Internet, or postal mail. The Medal of Valor program is governed by F1.R.802, the ''Public Safety Officer Medal of Valor Act of 2001.''

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 225 applicants under the Medal of Valor approximately 25 minutes to complete the application/nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden to complete the application/nomination form is 93.75 hours.

If additional information is required please contact Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, 145 N Street NE., Room 3W–1407B, Washington, DC 20530.

Dated: November 1, 2012.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–27037 Filed 11–5–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0039]

The Standard on Process Safety Management of Highly Hazardous Chemicals; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Standard on Process Safety Management of Highly Hazardous Chemicals.

DATES: Comments must be submitted (postmarked, sent, or received) by January 7, 2013.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2012–0039, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and OSHA docket number (OSHA–2012–0039) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The collections of information in the Standard are necessary for implementation of the requirements of the Standard. The information is used by employers to ensure that processes using highly hazardous chemicals with the potential of a catastrophic release are operated as safely as possible. The employer must thoroughly consider all facets of a process, as well as the involvement of employees in that process. Employers analyze processes so that they can identify, evaluate and control problems that could lead to a major release, fire, or explosion.

The major information collection requirements in this Standard include: Consulting with workers and their representatives on and providing them access to process hazard analyses and the development of other elements of the standard; developing a written action plan for implementation of employee participation in process hazard analyses and other elements of the standard; completing a compilation of written process safety information; performing a process hazard analysis; documenting actions taken to resolve process hazard analysis team findings and recommendations; updating, revalidating and retaining the process hazard analysis; developing and implementing written operating

procedures and making these procedures accessible to workers; reviewing operating procedures as often as necessary and certifying the procedures annually; developing and implementing safe work practices; preparing training records; informing contract employers of known hazards and applicable provisions of the emergency action plan; maintaining a contract worker injury and illness log; establishing written procedures to maintain the integrity of and documenting inspections and tests of process equipment; providing information on permits issued for hot work operations; establishing and implementing written procedures to manage changes; preparing reports at the conclusion of incident investigations, documenting resolutions and corrective measures, and reviewing the reports with affected personnel; establishing and implementing an emergency action plan; developing a compliance audit report and certifying compliance; and disclosing information necessary to comply with the Standard to persons responsible for compiling process safety information.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting an adjustment increase in burden hours from 4,795,505 hours to 4,862,147 hours (a total increase of 66,642 hours). Although the number of estimated establishments and employees covered by the Standard decreased based on updated data, the estimated number of new and existing PSM processes increased, resulting in a burden hour increase.

Type of Review: Extension of a currently approved collection.

Title: The Standard on Process Safety Management of Highly Hazardous Chemicals (29 CFR 1910.119).

OMB Number: 1218–0200.

Affected Public: Business or other for-profits; Federal Government; State, Local or Tribal Government.

Number of Respondents: 7,642.

Frequency of Response: On occasion; Annually.

Total Responses: 745,316.

Average Time per Response: Varies from three minutes to generate and maintain training records to 2,454 hours to establish and implement a management-of-change program.

Estimated Total Burden Hours: 4,862,147.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2012–0039). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on November 1, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–27043 Filed 11–5–12; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0011]

Advisory Committee on Construction Safety and Health (ACCSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of ACCSH and ACCSH Work Group meetings and renewal of the ACCSH Charter.

SUMMARY: ACCSH will meet November 29–30, 2012, in Washington, DC. In conjunction with the ACCSH meeting, ACCSH Work Groups will meet November 27–28, 2012. OSHA also announces the renewal of the ACCSH Charter for two years.

DATES: *ACCSH meeting:* ACCSH will meet from 8 a.m. to 4:15 p.m., Thursday, November 29, 2012, and from 8 a.m. to noon, Friday, November 30, 2012.

ACCSH Work Group meetings: ACCSH Work Groups will meet Tuesday and Wednesday, November 27–28, 2012. (For Work Group meeting times, see the ''Work Group'' schedule in the **SUPPLEMENTARY INFORMATION** section of this notice.)

Comments, requests to speak, speaker presentations, and requests for special accommodation: You must submit (postmark, send, transmit) comments, requests to address the ACCSH meeting, speaker presentations (written or electronic), and requests for special accommodations for the ACCSH and ACCSH Work Group meetings by November 16, 2012.

ADDRESSES: *ACCSH and ACCSH Work Group meetings:* ACCSH and ACCSH Work Groups will meet in Room N–3437 A–C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: You may submit comments, requests to speak at the ACCSH meeting, and speaker presentations, which you must identify by the docket number for this **Federal Register** notice (Docket No. OSHA–2012–0011), by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the on-line instructions for submissions;

Facsimile (Fax): If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648; or

Mail, hand delivery, express mail, messenger, or courier service: You may submit your materials to the OSHA Docket Office, Docket No. OSHA–2012–0011, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). The Department of Labor and OSHA's Docket Office accept deliveries (hand delivery, express mail, messenger or courier service) during normal business hours, 8:15 a.m.–4:45 p.m., e.t., weekdays.

Requests for special accommodations: Please submit your request for special accommodations to attend the ACCSH and ACCSH Work Group meetings to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *chatmon.veneta@dol.gov.*

Instructions: Your submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0011). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

OSHA will post comments, requests to speak, and speaker presentations, including any personal information you provide, without change, at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

For press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general information about ACCSH and ACCSH meetings: Mr. Damon Bonneau, OSHA Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2020; email *bonneau.damon@dol.gov.*

SUPPLEMENTARY INFORMATION:

ACCSH Meeting

ACCSH will meet November 29–30, 2012, in Washington, DC. The meeting is open to the public.

ACCSH advises the Secretary of Labor (Secretary) and Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3).

The tentative agenda for this meeting includes:

- Assistant Secretary's Agency update and remarks;
- Directorate of Construction update on rulemaking projects;
- Discussion on the Request for Information on Reinforced Concrete/Post Tensioning and Backing Operations;
- National Institute for Occupational Safety and Health (NIOSH) update;
- Discussion of on-line training issues;
- Standards Improvement Project (SIP) IV rulemaking update;
- Presentation on OSHA Information System (OIS);
- ACCSH and ACCSH Work Group reports and administration; and
- Public comment period.

OSHA transcribes ACCSH meetings and prepares detailed minutes of meetings. OSHA places the transcript and minutes in the public docket for the meeting. The docket also includes ACCSH Work Group reports, speaker presentations, comments, and other materials submitted to ACCSH.

Work Group Meetings

In conjunction with the ACCSH meeting, the following ACCSH Work Groups will meet November 27, 2012:

- Health Hazards, Emerging Issues and Prevention through Design: Noon to 2 p.m.
- Diversity/Multilingual/Women in Construction: 2:15 to 4:15 p.m.

The following ACCSH Work Groups will meet November 28, 2012:

- Training and Outreach: 8 to 10 a.m.
- Injury and Illness Prevention Programs: 10:15 a.m. to 12:15 p.m.
- Backing Operations: 1:15 to 3:15 p.m.

ACCSH Work Group meetings are open to the public. For additional information on ACCSH Work Group meetings or participating in them, please contact Mr. Bonneau or look on the ACCSH page on OSHA's Web page at *http://www.osha.gov.*

Public Participation, Submissions, and Access to Public Record

ACCSH and ACCSH Work Group meetings: All ACCSH and ACCSH Work Group meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building at the visitors' entrance, 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification to enter the building. For additional information about building security measures for attending the ACCSH and ACCSH Work Group meetings, please contact Ms. Chatmon (see **ADDRESSES** section). Please submit your request for special accommodations to attend the ACCSH and ACCSH Work Group meetings to Ms. Chatmon.

Submission of comments: You may submit comments using one of the methods in the **ADDRESSES** section. Your submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2012–0011). OSHA will provide copies of submissions to ACCSH members.

Because of security-related procedures, submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand delivery, express mail, and messenger or courier service, contact the OSHA Docket Office (see **ADDRESSES** section).

Requests to speak and speaker presentations: If you wish to address ACCSH at their meeting you must submit your request to speak, as well as your written or electronic presentation (e.g., PowerPoint), by November 16, 2012, using one of the methods listed in

the **ADDRESSES** section. Your request must state:

- The amount of time requested to speak;
- The interest you represent (e.g., business, organization, affiliation), if any; and
- A brief outline of the presentation.

PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2003 and other Microsoft Office 2003 formats.

Alternately, at the ACCSH meeting, you may request to address ACCSH briefly by signing the public-comment request sheet and listing the topic(s) you will address. You also must provide 20 hard copies of any materials, written or electronic, you want to present to ACCSH.

The ACCSH Chair may grant requests to address ACCSH as time and circumstances permit. The Chair will give preference to individuals who submitted speaker requests and presentations by November 16, 2012.

Public docket of the ACCSH meeting: OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket of this ACCSH meeting without change, and those documents may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

OSHA also places the meeting transcript, meeting minutes, documents presented at the ACCSH meeting, Work Group reports, and other documents pertaining to the ACCSH and ACCSH Work Group meetings in the public docket. These documents are available online at *http://www.regulations.gov.*

Access to the public record of ACCSH and ACCSH Work Group meetings: To read or download documents in the public docket of these ACCSH and ACCSH Work Group meetings, go to Docket No. OSHA–2012–0011 at *http://www.regulations.gov.* All documents in the public record for these meetings are listed in the *http://www.regulations.gov* index; however, some documents (e.g., copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov,* are available for inspection and copying in the OSHA Docket Office (see **ADDRESSES** section). Please contact the OSHA Docket Office for assistance in making submissions to, or obtaining materials from, the public docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

Announcement of ACCSH Charter Renewal

The Secretary has renewed the ACCSH Charter, which will expire two years from the day the charter is filed.

To read or download a copy of the new ACCSH Charter, go to Docket No. OSHA–2012–0011 at *http://www.regulations.gov.* The Charter also is available on the ACCSH page on OSHA's Web page at *http://www.osha.gov,* and at the OSHA Docket Office (see **ADDRESSES** section). In addition, the Charter may be viewed or downloaded at the FACA database at *http://www.fido.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by Section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) 40 U.S.C. 3704, 5 U.S.C. App. 2, 29 CFR parts 1911 and 1912, 41 CFR part 102, and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on October 31, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2012–26980 Filed 11–5–12; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0265; Dockets No. 50–003, 50–247, and 50–286; License Nos. DPR–5, DPR–26, and DPR–64]

In the Matter of Entergy Nuclear Operations, Inc.; Entergy Nuclear Indian Point 2, LLC; Entergy Nuclear Indian Point 3, LLC; Indian Point Nuclear Generating, Units 1, 2, and 3; Director's Decision

I. Introduction

By electronic transmission dated March 28, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML110890871), Eric T. Schneiderman, Attorney General for the State of New York, the Petitioner, submitted a petition under section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Requests for Action under This Subpart,'' to Mr. R. W. Borchardt, Executive Director for Operations, U.S. Nuclear Regulatory Commission (NRC, or the Commission). The Petitioner requested that the NRC take enforcement action to correct alleged noncompliance with fire protection regulations at Indian Point Nuclear Generating, Units 1, 2, and 3.

Actions Requested

The Petitioner asked the NRC to take immediate action and issue an Order requiring the following actions regarding Indian Point Nuclear Generating, Units 1, 2, and 3:

- Identify the violations of paragraphs F and G of Section III of Appendix R, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979,'' to 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' which exist as of the date of the petition (March 28, 2011) at Indian Point Units 1, 2, and 3.
- Compel Entergy Nuclear Operations, Inc. (Entergy, or the licensee), and its affiliates to comply on or before September 20, 2011, with the requirements in paragraphs F and G for all fire zones in Indian Point Units 2 and 3, and any Indian Point Unit 1 fire zone or system, structure, or component that Indian Point Units 2 and 3 rely upon.
- Convene an evidentiary hearing before the Commission to adjudicate the violation of paragraphs F and G at Indian Point Units 1, 2, and 3, by Entergy and its affiliates.

As the basis for the request, the Petitioner stated, in part, the following:

- The Petitioner noted that the NRC's fire safety regulations found in 10 CFR 50.48(b) and Appendix R to 10 CFR Part 50 have been in effect since 1980 and the Indian Point reactors still do not comply with the prescriptive requirements.
- The Petitioner cited the population centers adjacent to the Indian Point facility and the associated consequences of a major fire and radiological release at Indian Point. According to the Petitioner, more than 17 million people live within 50 miles of the Indian Point site, which has the highest surrounding population of any operating reactor site in the country. The Petitioner also notes that Indian Point is located within 5 miles of the New Croton Reservoir in Westchester County, which provides drinking water for New York City.
- The Petitioner noted that Indian Point was built before the NRC or its predecessor, the Atomic Energy Commission, developed siting criteria. The Petitioner questioned if the

Commission would approve a reactor facility at this site today.

- The Petitioner opined that approximately half of the core damage risk at operating reactors results from accident sequences initiating from fires.
- The Petitioner described past investigations on fire barriers, specifically Thermo-Lag and Hemyc, by both the NRC's Office of the Inspector General and the Government Accountability Office. The Petitioner observed that both products failed to meet their endurance ratings during extended testing. The Petitioner stated that the NRC staff has not been aggressive in resolving fire barrier issues or in taking meaningful enforcement action against the Indian Point facility.
- The Petitioner focused on the proposed exemptions to Appendix R to 10 CFR Part 50 submitted by the licensee on March 6, 2009. These exemption requests would require NRC approval of operator manual actions (OMAs) in many fire areas at Indian Point. The Petitioner stated that NRC regulations do not authorize OMAs as a way to protect a redundant system from fire, and it recommended that the NRC deny the OMAs.
- The Petitioner referred to the accident at the Fukushima Dai-ichi Nuclear Power Plant that resulted from the March 11, 2011, Great Tōhoku Earthquake and subsequent tsunami. The Petitioner questioned whether plant operators at Indian Point would be capable of performing the necessary manual actions during a similar disaster.
- In conclusion, the Petitioner stated that (1) the NRC should reserve exemptions for extraordinary circumstances, (2) the NRC should not approve the licensee's proposed exemptions, and (3) Entergy had not made a serious effort to comply with Federal regulations.

Representatives of the Petitioner met with the Office of Nuclear Reactor Regulation's (NRR's) Petition Review Board (PRB) on May 9, 2011, to clarify the bases for the petition. The transcript of this meeting, included in the meeting summary dated June 8, 2011 (ADAMS Accession Nos. ML111520459 and ML111520469), has been added as a supplement to the petition and is available for inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by sending an email to *PDR.Resource@nrc.gov.*

In a letter dated June 30, 2011 (ADAMS Accession No. ML111520393), the NRC informed the Petitioner that the agency denied the request for immediate action. The NRC informed the Petitioner that the agency identified no safety concerns when considering compensatory measures in place. Therefore, the NRC had no basis for taking immediate actions. Finally, the NRC informed the Petitioner that the agency was referring the issues in the petition to NRR for appropriate action.

On July 2, 2012, the NRC issued the proposed Director's Decision (ADAMS Accession No. ML120880203) and requested comments from the Petitioner (ADAMS Accession No. ML120880169) and Entergy (ADAMS Accession No. ML120880186). On August 1, 2012, the NRC received comments from both the Petitioner (ADAMS Accession No. ML12222A134) and Entergy (ADAMS Accession No. ML12219A307). Additional comments were received from the Petitioner by letter dated September 19, 2012 (ADAMS Accession No. ML12272A287). The attachment to this final Director's Decision addresses these comments. Finally, the NRC modified its proposed Director's Decision based on the points raised in the comments.

II. Discussion

Plants licensed to operate before January 1, 1979, must meet the fire safety regulations in Section III.G of Appendix R to 10 CFR Part 50. Indian Point Nuclear Generating Unit 1 was permanently shut down on October 31, 1974, and it has remained in safe storage (SAFSTOR) status. The NRC does not review Unit 1 for compliance with Appendix R because fuel has been permanently removed from the reactor vessel. The NRC's program for overseeing the safe operation of a nuclear power reactor that has been permanently shut down is described in Inspection Manual Chapter 2561, ''Decommissioning Power Reactor Inspection Program.'' On January 31, 1996, Amendment No. 45 revised the Indian Point Unit 1 license to possession-only status and revised the technical specifications. Technical Specification 2.11, ''Fire Protection,'' states that Units 1 and 2 share a common fire protection program, which is addressed in Appendix A to the Indian Point Unit 2 Facility Operating License No. DPR–26. Therefore, any system, structure, or component located at Unit 1 that supports the fire protection program at Unit 2, will be documented in Unit 2 inspection activities.

The Unit 2 station blackout diesel generator, which also supports alternative shutdown capability for Appendix R requirements, is located in a Unit 1 structure. However, neither the diesel generator fire zone nor any OMAs related to the Unit 2 station blackout diesel generator were included in the licensee's request for exemptions. As a result, the agency does not consider systems, structures, and components at Unit 1 applicable to this petition.

Indian Point Nuclear Generating, Units 2 and 3, were licensed before January 1, 1979, and must meet the established level of protection as intended by Section III.G of Appendix R to 10 CFR Part 50. The NRC reviewed inspection reports issued from January 1, 2010, to the present and found that there were no violations of fire protection requirements at Indian Point Units 2 and 3, effective on March 28, 2011, the date of the petition. The Triennial Fire Protection Inspection Report at Unit 2 issued on May 7, 2010 (ADAMS Accession No. ML101270240), identified two Green (very low safety significance) non-cited violations (NCVs). The Triennial Fire Protection Inspection for Unit 3, issued on July 11, 2011 (ADAMS Accession No. ML111920339), identified a Green NCV. Most recently, the inspection report dated August 16, 2012 (ADAMS Accession No. ML12229A128), which the Director's Decision will discuss further, identified violations at both operating units for reliance on unapproved OMAs.

The underlying purpose of Section III.G of Appendix R to 10 CFR part 50 is to ensure that the ability to achieve and maintain safe shutdown is preserved following a fire event. Section II of Appendix R to 10 CFR part 50 states that a licensee's fire protection program shall extend the concept of defense-in-depth to fire protection with the following objectives:

- To prevent fires from starting;
- To rapidly detect, control, and promptly extinguish fires that do occur; and
- To provide protection for structures, systems, and components important-to-safety so that a fire not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

Paragraph III.G.2 of Appendix R to 10 CFR part 50 requires one of the following means to ensure that a

redundant train of safe-shutdown cables and equipment is free of fire damage in instances in which redundant trains are located in the same fire area outside of primary containment:

a. Separation of cables and equipment by a fire barrier having a 3-hour rating;

b. Separation of cables and equipment by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards and with fire detectors and an automatic fire suppression system installed in the fire area; and

c. Enclosure of cables and equipment of one redundant train in a fire barrier having a 1-hour rating and with fire detectors and an automatic fire suppression system installed in the fire area.

However, as a result of safe-shutdown-focused inspections conducted in 2000, the NRC identified that, in lieu of the methods specified in Paragraph III.G.2, some licensees, including Indian Point, were crediting OMAs to achieve and maintain safe shutdown in the event of a fire affecting areas in which both trains of a safe-shutdown system or component are co-located. On June 30, 2006, the NRC issued Regulatory Issue Summary (RIS) 2006–10, ''Regulatory Expectations with Appendix R Paragraph III.G.2 Operator Manual Actions,'' (ADAMS Accession No. ML061650389), which stated that the use of OMAs in lieu of the protection methods specified in Paragraph III.G.2 of Appendix R to 10 CFR part 50, is not consistent with the regulations and that plants need regulatory approval for each specific OMA proposed.

On June 30, 2007, the NRC issued Enforcement Guidance Memorandum (EGM) 07–004, ''Enforcement Discretion for Post-Fire Manual Actions Used as Compensatory Measures for Fire Induced Circuit Failures'' (ADAMS Accession No. ML071830345). EGM 07–004 established March 6, 2009, as the date by which licensees must complete corrective actions for OMA noncompliances to qualify for enforcement discretion for those violations. As per EGM 07–004, available licensee corrective actions included submission of exemption requests. In accordance with EGM 07–004, enforcement discretion continues for the duration of the NRC staff review of licensing actions, including exemption requests.

On March 6, 2009, Entergy submitted requests for exemptions from the requirements of Section III.G of Appendix R to 10 CFR Part 50, consistent with information provided in Regulatory Issue Summary (RIS) 2006–10 and EGM 07–004, for Indian Point Nuclear Generating Units 2 and 3 (ADAMS Accession Nos. ML090770151 and ML090760993). The exemptions proposed OMAs as a permanent resolution for credited safe-shutdown components that could be rendered incapable of performing their safety function if either the component or supporting electrical cables were damaged by fire in a fire area. Since EGM 07–004 provided enforcement discretion, NRC inspectors did not cite violations for these potential noncompliances during the staff's review.

As previously discussed, the Petitioner focused on the NRC staff review of the licensee's proposed exemptions that would rely on OMAs. In addition, the Petitioner requested that the NRC identify all violations from Sections III.F and III.G of Appendix R to 10 CFR Part 50. However, the licensee did not request any exemptions from Section III.F of Appendix R to 10 CFR part 50. Section III.F requires that fire detection systems shall be automatic and capable of operating with or without offsite power. The licensee requested exemptions from the safe shutdown requirements of Section III.G of Appendix R to 10 CFR Part 50. Furthermore, the staff guidance documents (i.e., RIS 2006–10 and EGM 07–004) only address Section III.G and not III.F. There were no violations associated with Section III.F and, as a result, this Director's Decision does not address violations with respect to Section III.F of Appendix R to 10 CFR part 50.

In May 2011, NRC regional inspection staff performed an inspection at Indian Point in accordance with Inspection Procedure 71111.05T, ''Fire Protection (Triennial).'' In the ensuing inspection report dated July 11, 2011 (ADAMS Accession No. ML111920339), NRC inspectors reviewed the licensee's proposed OMAs in accordance with the inspection procedure.

By letters dated February 1, 2012 (ADAMS Accession Nos. ML112140509 and ML112200442), the NRC completed its review, approving some exemption requests but denying others at Indian Point Nuclear Generating, Units 2 and 3. By separate letter, also dated February 1, 2012 (ADAMS Accession No. ML12031A176), the NRC informed the licensee that the period of enforcement discretion for noncompliance with NRC fire protection requirements ended with the issuance of these letters. It also notified the licensee that the OMAs not approved represented potential noncompliances with 10 CFR 50.48(b) and Section III.G of Appendix R to 10 CFR Part 50, pending completion of inspections by NRC Region I inspectors. The NRC directed that, within 30 days, the licensee provide its schedule and plans to achieve and verify compliance with the requirements of Section III.G of Appendix R to 10 CFR Part 50, for those areas in which the NRC denied the licensee's request for an exemption. The NRC informed the licensee that, following receipt and review of the licensee's response, the NRC would complete appropriate inspection activities relating to this issue and then inform the licensee of its enforcement decisions.

By letter dated March 1, 2012 (ADAMS Accession No. ML12074A028), the licensee provided its schedule and planned actions for completing corrective actions that will resolve each issue related to protection of redundant safe shutdown trains and thereby comply with the applicable requirements of Paragraph III.G.2 of Appendix R to 10 CFR part 50, for both Indian Point operating units. Compliance with Section III.G of Appendix R to 10 CFR part 50, would be without the use of exemptions to justify reliance upon OMAs. The licensee informed the NRC that it will accomplish its planned resolution through a combination of engineering analysis and plant modifications. The engineering analysis will consist of revisions to the respective post-fire safe-shutdown analysis and methodology. Plant modifications will involve installation of appropriately rated fire barriers, potential rerouting of circuits, and potential modification of circuit protection or control schemes. The licensee informed the NRC that, with few exceptions, it expects to complete all engineering analyses and plant modifications by the end of calendar year 2012. Exceptions to projected completion involve plant modifications for Indian Point Units 3 and 2, which will not be completed until the spring 2013 and 2014 refueling outages, respectively, because those modifications involve activities that require plant outages to install.

In a letter dated March 22, 2012 (ADAMS Accession No. ML120820384), the NRC responded to the licensee's letter of March 1, 2012. The NRC informed the licensee that a near-term inspection would verify that plans for achieving full compliance with fire protection regulations have been entered into the licensee's corrective action program, compensatory measures are appropriate and remain in place, and that the schedule for achieving full compliance will adequately assure public health and safety. The NRC also advised the licensee that the agency

would perform additional inspections to monitor progress in completing corrective actions.

In April 2012, NRC inspectors reviewed the ongoing implementation of the licensee's corrective actions to restore full compliance with Paragraph III.G.2 of Appendix R to 10 CFR part 50 regarding denied exemptions to implement OMAs. The inspection report the NRC issued on August 16, 2012 (ADAMS Accession No. ML12229A128), cited violations at both operating units for use of unapproved OMAs to mitigate safe shutdown equipment malfunctions caused by a fire-induced single spurious actuation in lieu of protecting the equipment in accordance with applicable regulations. The inspection report also included a non-cited violation of Unit 2 for the inappropriate storage of combustible materials. The licensee's letter dated September 17, 2012 (ADAMS Accession No. ML12268A057), provided its response to the violations and their proposed corrective actions.

III. Conclusion

The Petitioner sought enforcement action to achieve compliance with NRC regulations governing fire protection at Indian Point Nuclear Generating, Units 1, 2, and 3. The Petitioner recommended that the NRC deny exemptions requested by the licensee that relied on OMAs, and that the NRC issue an Order taking enforcement action.

The Petitioner requested that the NRC identify violations of Section III.F and G of Appendix R to 10 CFR Part 50 that exist at Indian Point as of the date of the petition. As previously discussed, there were no violations of fire protection requirements at Indian Point effective on March 28, 2011. Following staff review of the licensee's proposed exemptions, the NRC identified potential areas of noncompliance for which the licensee has provided a schedule for achieving full compliance. The NRC's inspectors have monitored the licensee's corrective actions and recently issued violations consistent with the NRC's ongoing reactor oversight process. Therefore, as specified above, the NRC is granting the Petitioner's request to identify violations of fire protection regulations at Indian Point and to take appropriate enforcement actions as part of planned inspection activities.

The Petitioner further requested the NRC to compel the licensee and its affiliates to comply on or before September 20, 2011, with the requirements in Section III.F and G of Appendix R to 10 CFR Part 50 for all fire zones in Indian Point Units Nos. 2 and 3, and any Indian Point Unit No. 1 fire zone or system, structure, or component relied on by Indian Point Unit Nos. 2 and 3. The NRC's letter of June 30, 2011, which denied the Petitioner's request for immediate action, had already denied the Petitioner's request to order compliance by September 20, 2011. The licensee has provided its plans and schedules to resolve the denied exemptions. The licensee's schedule currently anticipates full compliance with the Commission's fire protection regulations at both operating units following the spring 2014 refueling outage at Indian Point Unit No. 2. Therefore, as specified above, the NRC is granting the Petitioner's request that the licensee be brought into compliance inasmuch as the licensee's earlier reliance on denied exemptions will be resolved through this schedule for achieving compliance.

The Petitioner requested that the NRC convene an evidentiary hearing to adjudicate the violations by the licensee and its affiliates of Section III.F and G of Appendix R to 10 CFR Part 50 at Indian Point Units 1, 2, and 3. The NRC staff will disposition violations as part of its ongoing reactor oversight process. Evidentiary hearings before the NRC at the request of third parties are not a part of this process. Therefore, the Petitioner's request to convene a hearing before the Commission is denied.

As provided in 10 CFR 2.206(c), the NRC will file a copy of this Director's Decision with the Secretary of the Commission for the Commission to review. As provided for by this regulation, the decision will constitute the final action of the Commission 25 days after the date of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 24th day of October 2012.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Director, Office of Nuclear Reactor Regulation.

Comments Received From the Petitioner

State of New York

Office of The Attorney General Letter of August 1, 2012

Comment 1

The Proposed Director's Decision is not responsive to the Attorney General's request that NRC identify all fire safety violations at Indian Point. The final Director's Decision should identify all Indian Point fire safety violations.

Response

The U.S. Nuclear Regulatory Commission (NRC) has been responsive to the issues and has handled both the exemption request and your petition in accordance with our processes and with a focus on public health and safety. The petition focused on the NRC staff review of the licensee's proposed exemptions that relied upon operator manual actions (OMAs). The proposed exemptions reflected non-compliance with the Commission's regulations for fire protection; non-compliance is not synonymous with violations. As stated in the proposed Director's Decision, the licensee acted within the enforcement discretion granted to all licensees by EGM 07–004 during the staff's review of the proposed exemptions. Therefore, NRC inspectors did not cite the licensee for violations of fire protection regulations during the staff review.

In response to the request to identify violations of fire protection requirements, a review of NRC inspection reports indicates that the licensee did not violate fire protection requirements at Indian Point Unit Nos. 1, 2, and 3, effective on March 28, 2011, the date of the petition. The only violations of fire protection regulations the NRC identified during the past two years were two non-cited violations (NCVs) of very low safety significance (Green) at Unit No. 2 discussed in the May 7, 2010, Unit No. 2 Triennial Fire Protection Inspection Report (ADAMS Accession No. ML101270240), one NCV of very low safety significance (Green) at Unit No. 3 discussed in the July 11, 2011, Unit No. 3 Triennial Fire Protection Inspection Report (ADAMS Accession No. ML111920339), and three violations discussed in the most recent August 16, 2012, inspection report (ADAMS Accession No. ML12229A128). The NRC modified the final Director's Decision accordingly.

Comment 1.a

The Proposed Director's Decision provides no rational basis for not addressing fire safety violations at Indian Point Unit 1.

The Proposed Director's Decision refusal to identify Indian Point Unit No. 1 fire safety violations is also arbitrary and capricious because Entergy's schedule for correcting Indian Point Unit No. 2 fire safety violations includes two violations in an Indian Point Unit No. 1 structure. Entergy proposes to correct fire safety violations in the Indian Point Unit 1 Superheater Building at Fire Area J, Zones 25–23 (*so in the original*) and 270.

Response

On January 31, 1996, Amendment No. 45 revised the Indian Point Unit No. 1 license to possession-only status and revised the technical specifications. Technical Specification 2.11, ''Fire Protection,'' states that Unit Nos. 1 and 2 share a common fire protection program, which is addressed in Appendix A to the Indian Point Unit No. 2 Facility Operating License No. DPR–26. Therefore, any system, structure, or component located at Unit No. 1 that supports the fire protection program at Unit No. 2, will be documented in Unit No. 2 inspection activities.

The NRC conducted a fire inspection at Indian Point in April 2012. The NRC issued the inspection report on August 16, 2012 (ML12229A128). Part of the inspection scope was to review all OMAs and walk down all circuits that were not protected in accordance with Paragraph III.G.2 of Appendix R to 10 CFR Part 50 requirements. Specifically, for circuits that traversed Unit No. 1 (i.e., Fire Area J, Zone 25, 23 Battery Room), the staff reviewed the circuits associated with OMA No. 12. OMA No. 12 was a manual action to transfer instrument busses 23 and 23A to their emergency power sources.

Although these circuits were in Unit No. 1, if these circuits caused a malfunction of Unit No. 2 safe shutdown systems, structures, or components, this would be a violation of Unit 2's fire protection program license condition, not a violation of Unit No. 1. Upon further review, the staff concluded that the circuits in Unit No. 1 fire zones J/25 and J/270 would not actually cause a maloperation of equipment and, therefore, the instrument busses would automatically swap to their emergency power sources. As a result, the NRC determined this OMA was unnecessary because the automatic operation is not in the fire zones of interest and could be credited to maintain power to the instrument busses. In conclusion, our inspectors did not identify a violation of the Unit No. 2 fire protection program with respect to Paragraph III.G.2 of Appendix R to 10 CFR Part 50 for fire zones J/25 and J/270. A violation of Unit No. 1 was not applicable.

Comment 1.b

The Proposed Director's Decision implies that the fire safety violations Entergy identified in its 2009 exemption requests are the only such violations at Indian Point, but does not make an explicit finding that these are the only such violations.

Response

The exemption requests submitted by Entergy on March 6, 2009, were within the enforcement discretion granted to all licensees by EGM 07–004 and were handled as non-compliances with Appendix R as opposed to violations. The period of enforcement discretion ended with the issuance of the staff's safety evaluation on February 1, 2012. As stated in item 1 above, there were no violations of 10 CFR Part 50, Appendix R, at Indian Point effective on March 28, 2011. The NRC modified the final Director's Decision accordingly.

Comment 2

The Proposed Director's Decision is unenforceable, but the final Director's Decision should be enforceable.

Response

This comment misconceives the purpose of requests for enforcement actions under 10 CFR 2.206. Section 2.206 serves as ''an effective, equitable, and credible mechanism for the public to prompt Commission investigation and resolution of potential health and safety problems.'' *Sec. 2.206 Petitions Requesting Institution of a Proceeding to Modify, Suspend or Revoke a License, or for Such Other Action as May Be Proper; Workshop,* 1993 WL 270694, *2 (June 23, 1993) 58 FR 34726–01. Therefore, not every safety concern identified by a petitioner in the 2.206 process necessarily results in a show cause proceeding and issuance of a proposed enforcement order.

Often, as here, measures short of an enforcement order are sufficient. As the comment itself notes, enforcement orders stand atop the hierarchy of NRC's enforcement tools. Inasmuch as a formal enforcement order requires issuance of a show cause order that triggers the right of the licensee to demand a formal hearing (s*ee generally* 10 C.F.R. § 2.202), it would be inefficient and inequitable for NRC to conclude every enforcement investigation—including responses to Section 2.206 petitions—with a formal order.

Here, the public health and safety is adequately assured for the reasons explained in the Director's Decision without issuance of a show cause order and conduct of a proceeding. The comment offers no basis for NRC to conclude that the licensee's commitment will not adequately protect public health and safety, or that licensee will not honor its commitments. In short, the Director's Decision describes the issues raised by the Petitioner, discusses the safety significance of the issues, and explains the staff's disposition of and future oversight of those issues. Violations identified during NRC inspections will be handled through the reactor oversight process (ROP).

In NUREG–1649, Revision 4, ''Reactor Oversight Process,'' the NRC describes its established oversight process to inspect, measure, and assess the safety performance of commercial nuclear power plants and to respond to any decline in plant performance. The ROP focuses inspections on areas of greatest risks, applies greater regulatory attention where there are plant performance problems, uses objective measurements of performance, gives the public timely and understandable assessments of plant performance, and provides responses to violations in a predictable and consistent manner that corresponds to the safety significance of the problem.

Comment 3

The Proposed Director's Decision does not contain a target date for full fire safety compliance at Indian Point, but the final Director's Decision should.

Response

The NRC requested the licensee to describe its plans to restore compliance as part of our inspection planning process. By letter dated March 1, 2012, and later modified by letter dated July 11, 2012, the licensee provided its schedule and planned actions for completing corrective actions that will resolve each issue related to protection of redundant safe shutdown trains and thereby comply with the applicable requirements of Paragraph III.G.2 of Appendix R to 10 CFR Part 50, for both Indian Point operating units. As described in the licensee's letters, a combination of engineering analysis and plant modifications will result with Unit No. 2 being in compliance by the end of the 2014 refueling outage and Unit No. 3 being in compliance by the end of the 2013 refueling outage.

The NRC performed inspections and issued two Notices of Violations (NOVs). Upon receiving the licensee's NOV responses, we will make conclusions regarding the adequacy of the licensee's corrective actions to restore compliance. In determining whether the licensee is making reasonable efforts to complete corrective actions promptly, the NRC will consider safety significance, the effects on operability, the significance of the degradation, and what is necessary to implement the corrective action.

The licensee's commitment management process will track actions to restore compliance to a schedule we

conclude is acceptable. The NRC will schedule and complete further inspections using inspection procedure 92702, ''Followup on Corrective Actions for Violations and Deviations.'' We will document our inspection findings in future inspection reports. This process will assure that full fire safety compliance is achieved within a time frame necessary for protection of public health and safety. Accordingly, a specific date beyond that described above is not considered necessary.

Comment 4

The Proposed Director's Decision endorses permanent fire safety exemptions that forego regulatory compliance that would make Indian Point safer.

Response

Safety evaluations issued on February 1, 2012, provided justification for approving the exemptions as permanent. The criteria for granting exemptions in 10 CFR 50.12(a) ensures adequate protection of public health and safety and protection of the environment. The NRC determined that the licensee met the regulatory standard and that the authority of the NRC to grant exemptions was upheld in *Brodsky v. NRC,* 783 F.Supp.2d 448, 455–58 (S.D.N.Y. 2011) (appeal pending). The final Director's Decision will not reopen the staff's review of the exemptions. Just as the Section 2.206 process may not be used to challenge licensing decisions collaterally. *In re Envirocare of Utah, Inc.,* 45 NRC 63, 68–69 (1997) (''section 2.206 is not a venue for presenting licensing contentions''), Section 2.206 likewise may not be used to challenge grant or denial of an exemption.

Comment 5

Despite 30 years of noncompliance with fire safety regulations at Indian Point, the Proposed Director's Decision does not propose any financial penalty.

Response

The NRC enforcement actions for the fire protection violations at Indian Point are in accordance with the NRC Enforcement Policy and the ROP. Typically, violations assessed under the ROP are not considered for civil penalties. However, civil penalties are considered for violations associated with inspection findings evaluated through the ROP's Significance Determination Process (SDP) that involve actual consequences.

As evaluated under the ROP, the NRC determined the violations at Indian Point Units 2 and 3, regarding OMAs did not involve actual consequences and are of very low safety significance. Therefore, civil penalties were not warranted. If the NRC determines the licensee's actions to restore compliance are not adequate, further enforcement action may be considered in accordance with the NRC Enforcement Policy.

Comments Received From the Petitioner

State of New York

Office of the Attorney General Letter of September 19, 2012

Comment 1 Entergy Effort To Recharacterize NRC Enforcement

The proposed Director's Decision concluded that the Petitioner's requests to identify violations of fire protection requirements and bring the licensee into compliance were granted. The licensee's letter of August 1, 2012, objected to concluding that the Petitioner's request was being granted and indicated that the NRC would make similar findings via the reactor oversight process without the impetus of a petition.

The Petitioner's letter of September 19, 2012, is supportive of the original wording and states that Entergy improperly seeks to recharacterize the final Director's Decision.

Response

As discussed in responding to the licensee's comments, the staff's practice has been to grant the request in a Section 2.206 petition whenever the Petitioner's requests are consistent with the staff's final actions. Therefore, the NRC staff did not revise the original wording of the proposed Director's Decision and concludes that the Petitioner's requests were granted insofar as consistent with the staff's actions.

Comment 2 New York Requested Identification and Correction of All Fire Safety Violations at Indian Point

The Petitioner objected to an email sent by the NRC staff (ADAMS Accession No. ML122650249) seeking clarification to the original petition regarding violations with respect to Sections III.F and III.G of Appendix R to 10 CFR Part 50. The Petitioner believed the staff was limiting consideration of violations to the proposed exemptions of March 6, 2009, and was mistakenly omitting violations with respect to Section III.F.

Response

The NRC staff did not limit its consideration of violations to the proposed exemptions. The staff simply informed the Petitioner by email in advance that the final Director's Decision would not address violations with respect to Section III.F. NRC so informed the Petitioner because (1) Section III.F only requires that fire detection systems shall be automatic and capable of operating with or without offsite power, (2) the licensee did not request any exemptions from Section III.F, and (3) all of the requested exemptions were from the safe shutdown requirements of Section III.G.

The final Director's Decision was modified to clarify the differences between Sections III.F and III.G.

Comment 3 Identification and Correction of All Fire Safety Violations at Indian Point Is Needed

The licensee's letter dated July 11, 2012 (ADAMS Accession No. ML12220A006), states that OMAs 20 and 21 were inadvertently omitted from the March 6, 2009, request for exemptions. The Petitioner cites this letter as further justification for a comprehensive identification and correction of Indian Point fire safety violations.

Response

The NRC staff agrees that the licensee's letter dated July 11, 2012, states that two OMAs that were being relied upon to achieve and maintain safe shutdown were inadvertently omitted from the licensee's request for exemptions dated March 6, 2009. The licensee further stated that the omitted OMAs would be treated as unapproved or denied OMAs and that additional plant modifications during the Unit No. 2 refueling outage during the Spring of 2014 would be necessary. The licensee's letter did not provide any explanation for the omission nor did it provide an extent of condition for this omission.

As discussed in the NRC inspection report dated August 16, 2012 (ADAMS Accession No. ML12229A128), NRC inspectors identified that the licensee failed to identify OMAs 20 and 21 in their March 6, 2009, request for exemptions (see page 5 of Enclosure 2). As further stated, similar to the OMAs for which exemptions were denied, the licensee committed to resolve the omitted OMAs and establish compliance with Section III.G to Appendix R of 10 CFR part 50.

By letter dated September 17, 2012 (ADAMS Accession No. ML12268A057), the licensee provided its explanation for the omission of OMAs 20 and 21 in their March 6, 2009, request for exemptions (see page 4 of Attachment 1). The licensee stated that the use of non-standard nomenclature and presentation resulted in the error of

omission. The licensee further indicated that it performed an extent of condition review and concluded that the use of non-standard nomenclature did not result in the omission of any additional OMAs. The NRC staff will review the licensee's letter as part of the overall reactor oversight process.

Comment 4 New Indian Point Fire Safety Violations Identified

The Petitioner again cites the licensee's letter of July 11, 2012, as a further example of the need to perform a comprehensive identification and correction of Indian Point fire safety violations. The Petitioner also notes that the NRC apparently discovered the omission of OMAs 20 and 21 and that the licensee's letter did not provide any explanation for the occurrence.

Response

See the staff's previous response to comment 3 above. As previously stated, NRC inspectors made this discovery and the licensee has committed to resolve the omitted OMAs and establish compliance with Section III.G to Appendix R of 10 CFR part 50.

Comment 5 Confirmation of Indian Point Unit 1 Involvement in Fire Safety Violations

The licensee's letter dated August 1, 2012, offered clarification for the use of ''fire areas'' versus ''fire zones'' in the proposed Director's Decision. The Petitioner cited the licensee's explanation as a further example that fire violations exist at Indian Point Unit No. 1. This is similar to the Petitioner's Comment 1.a in the Petitioner's letter dated August 1, 2012.

Response

See the staff's response to Comment 1.a from the Petitioner's letter dated August 1, 2012. As previously stated, any system, structure, or component located at Unit No. 1 that supports the fire protection program at Unit No. 2, will be documented in Unit No. 2 inspection activities.

Comment 6 Unjustified Delay in Eliminating Indian Point Fire Safety Violations

The licensee's letter dated August 1, 2012, offered clarification to the proposed Director's Decision for their schedule to restore full compliance with fire safety regulations at Indian Point. The Petitioner objected to the licensee's schedule and explanation that full compliance will not be achieved before the Unit No. 2 refueling outage in the spring of 2014.

Response

See the staff's response to Comment 3 from the Petitioner's letter dated August 1, 2012. As previously stated, in determining whether the licensee is making reasonable efforts to complete corrective actions promptly, the NRC has considered safety significance, the effects on operability, the significance of the degradation, and what is necessary to implement the corrective action. As a result, the NRC has determined that the public health and safety will be adequately assured in the interim while full compliance is being achieved. These same considerations will continue to guide NRC enforcement discretion during its oversight as the licensee proceeds with its scheduled compliance.

Comments Received From the Licensee

Entergy Nuclear Operations, Inc.

A. General Comments

Section III, Conclusion, Pages 9 and 10

The letter indicates the NRC is granting the Petitioner's request for identifying violations and taking enforcement actions as well as bringing IPEC [Indian Point Energy Center] into compliance. It is Entergy's belief that the NRC is following the requirements and protocols established in the regulatory oversight process (ROP) as relates to these actions, and is not granting the Petitioner's request. The letter should indicate that the ROP is a mature process that provides guidance to the NRC and licensees. The items identified by NY State were items the NRC staff was well aware of and the actions taken by the NRC would have been taken regardless of the NY State petition.

Response

The NRC does not disagree with the premise of the licensee's comment. The petition did not present facts previously unknown to the NRC staff, and the staff would likely have reached the same conclusions through the ROP without the impetus of the petition. Regardless, the staff's practice has been that whenever the Petitioner's requests are consistent with the staff's final actions, whether in whole or in part, they are considered to be granted.

B. Specific Comments—Suggested Changes

[Suggested changes are shown as strikethroughs for [DELETED (deletions)] and underlines for *additions.*]

1. Section II, Discussion, Page 5

''However, neither the diesel generator fire [DELETED (area)] *zone* * * *''

Response

• Fire zones are subsets of larger fire areas. The suggested change provides a more definitive description of the concern. The NRC modified the final Director's Decision accordingly.

2. Section II, Discussion, Page 8

''Exceptions to projected completion involve plant modifications for Indian Point Unit*s No. 3 and* No.2, which will not be completed until the spring *2013 and* 2014 refueling outage*s respectively* because those modifications involve [DELETED (access to plant areas accessible only during a plant shutdown)] *activities that require plant outages to install said modifications.*''

Response

• The suggested changes provide a more complete description of the planned modifications. The NRC modified the final Director's Decision accordingly.

[FR Doc. 2012–27046 Filed 11–5–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03038458; NRC–2012–0267]

License Amendment Request to Byproduct Material License 06–31445–01 for Light Sources, Inc., Orange, CT

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact for license amendment.

FOR FURTHER INFORMATION CONTACT: Dennis Lawyer, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 2100 Renaissance Blvd., King of Prussia, Pennsylvania 19406–2713; telephone 610–337–5366; fax number 610–337–5269; or by email: *Dennis.Lawyer@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering the issuance of a license amendment to Byproduct Materials License No.06–31445–01 issued to Light Sources, Inc. (the Licensee), to approve of proposed alternate disposal procedures under section 20.2002 of

Title 10 of the *Code of Federal Regulations* (10 CFR), for its facility located at 37 Robinson Boulevard, Orange, Connecticut (the Facility). License No. 06–31445–01 was issued by the U.S. Nuclear Regulatory Commission on September 6, 2011, pursuant to 10 CFR Part 30. This license authorizes Light Sources, Inc. to possess and store lamps containing up to 4 kilobecquerel (kBq) (0.12 microcuries) of krypton 85 (Kr-85) prior to initial distribution.

Pursuant to the provisions in 10 CFR 20.2002, issuance of the license amendment would authorize the transfer of up to 200 lamps each year to a recycling facility that handles hazardous wastes, including mercury. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements in 10 CFR Part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment will be issued to the Licensee following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment

Identification of Proposed Action

The proposed action would be granted under 10 CFR 20.2002 and approve the Licensee's September 9, 2011, license amendment request as modified in their letter dated November 17, 2011, by authorizing the transfer of up to 200 lamps per year, not to exceed 4 KBq (0.12uCi) of Kr-85 each, and utilizing a recycling facility that handles hazardous wastes, including mercury, for disposal. The mercury would be recycled and the krypton would be released by ventilation at the recycler.

Need for the Proposed Action

The Licensee needs this license amendment to allow disposal of up to 200 lamps per year at a waste recycling facility, authorized to process hazardous material, including mercury.

Environmental Impacts of the Proposed Action

The NRC staff reviewed the license amendment request to allow up to 200 lamps each year containing Kr-85, to be disposed at a hazardous waste recycler. Individual lamps vary in the amount of Kr-85 contained depending on the size and wattage of the lamp, but contain no more than 4 KBq (0.12uCi) of Kr-85 each. The Licensee estimates that no more than 7MBq (0.2mCi) of Kr-85 in intact lamps will be sent for disposal annually.

Characteristics of krypton gas are such that exposure to workers and the general public from Kr-85 vented from the lamps during the recycling process will have minimal effects. Since it is a gas, Kr-85 will immediately disperse once the lamp is broken. It is not considered an inhalation hazard and does not react with biological systems when inhaled. Due to the minimal risks presented, the NRC does not specify an Annual Limit on Intake (ALI) for Kr-85.

The Licensee provided the International Atomic Energy Agency report, ''Assessment of the Radiological Impact of the Recycling and Disposal of Light Bulbs Containing Tritium, Krypton-85, and Radioisotopes of Thorium'' (Jones, et al., 2011). This report was commissioned by the European Lamp Companies Federation, a forum developed to oversee the European lamp manufacturers, to assess radiation doses associated with the recycling and disposal of lamps containing small quantities of H-3, Kr-85, and thorium. This study considered a range of exposure scenarios in order to estimate the highest doses received by various individuals, including workers at facilities that recycle lamps, workers at incinerators, foundries, and landfill sites, as well as members of the public.

Highly conservative assumptions and parameter values were used for the dose assessment in this report in order to ensure that the doses calculated will not underestimate actual doses. The report assumes that Kr-85 associated with 1.5 million metal halide lamps and 1 million glow switches in first generation non-integrated compact fluorescent lamps are recycled annually. This quantity greatly exceeds the anticipated quantities of up to 200 lamps that the Licensee plans to recycle annually. Corresponding exposure times for various workers dealing with these greater quantities are also assumed to be much greater than the exposure times associated with lamps shipped by the Licensee for recycling.

Using the conservative parameter values, doses were calculated for workers in each of the processes used to recycle the lamps containing Kr-85 as well as members of the general public living near the recycling facility. The recycling workers' total effective dose was determined to be 0.5 μSv/yr (0.05 mrem) with the largest contribution coming from working within Kr-85 vapor while manually sorting lamps before the actual recycling process begins. The estimated dose to members of the public living near the recycling facility was calculated to be 4.0E–6 μSv/yr (4.0E–7 mrem) for processing of 1.5 million lamps and 1 million glow switches. These doses are well below the NRC's annual dose limits for workers and the general public, and the dose from the estimated 200 lamps proposed by the licensee would be proportionally smaller (Estimated at less than 0.025% of the dose calculated in the report).

The environmental impact of sending 200 lamps to a recycler would result in sending a maximum 20,000 milligrams of mercury to a recycler. The amount being recycled is expected to be significantly less since the most commonly sold lamp contains 14 milligrams and much fewer than 200 lamps per year is expected to be sent to the recycler. This is a non-significant impact on the environment. For comparison, a local recycler, NLR, reports that they have recycled 5,270,000 milligrams of mercury in a typical year. Thus the amount from the Licensee would result in a maximum increase of less than 0.38% per year. Recycling is an authorized disposal method for lamps containing mercury under the Universal Waste Regulations, 40 CFR Part 273. According to the ''Mercury Emissions from the Disposal of Fluorescent Lamps'', report (*http://www.epa.gov/wastes/hazard/wastetypes/universal/merc-emi/merc-pgs/emmrpt.pdf*) dated March 1998, the central estimated emissions from recycling mercury in lamps would be 10% elemental and 1.09% divalent mercury. Lamps from the Licensee are made with triple distilled mercury containing approximately 100% elemental mercury. The lamps being sent for recycling from the Licensee consist of bulbs that prematurely failed which leaves the mercury in an elemental state. Thus the maximum discharge to the environment from recycling 200 lamps would be a maximum of 2000 milligrams of elemental mercury.

Environmental Impacts of the Alternatives to the Proposed Action

The alternative to the proposed action is to deny the requested license amendment. The no-action alternative would leave things as they are, resulting in the material being disposed as mixed waste in accordance with Universal Waste regulations. The lamps would be sent to a licensed radioactive waste contractor which could result in the Kr-85 being discharged—an increase in the environmental impact—or recovered, depending upon the methods employed by the licensed radioactive waste contractor. With respect to the mercury,

the environmental impact is that the licensed radioactive waste contractor could recycle the mercury, resulting in the same environmental impact as granting the license amendment or properly dispose of the mercury by using a Subtitle C landfill. According to the ''Mercury Emissions from the Disposal of Fluorescent Lamps'', report (*http://www.epa.gov/wastes/hazard/wastetypes/universal/merc-emi/merc-pgs/emmrpt.pdf*) dated March 1998, the estimated emissions from lamps being sent to a Subtitle C landfill is 100% elemental mercury and 0% for divalent mercury. The resulting mercury discharge for up to 200 lamps from the licensee would be a maximum of 20,000 milligrams elemental mercury or ten times the amount discharged in recycling the lamps. Thus environmental impacts of either method are small, denying the amendment request would result in similar environmental impacts. The environmental impacts of the proposed action as compared to the alternative action are similar and therefore, the alternative action is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with NRC regulations and guidance. The NRC staff reviewed the dose modeling analysis performed in the referenced report, which considers recycling activities for much larger quantities of lamps containing Kr-85. The report, which used extremely conservative parameter values in its assessment, calculates doses to workers involved in the recycling of these lamps as well as members of the public residing near the recycling centers that are significantly less than the NRC's corresponding annual dose limits. Since the quantity of lamps and the corresponding exposure times for workers recycling lamps from the Licensee are much smaller than those considered in the report the NRC staff is confident that the resulting doses to workers and the general public would also be proportionally smaller. Approving the proposed action would allow the Licensee to ship the lamps to a recycler for proper recycling of any of the recoverable mercury ensuring that the mercury is recycled. Recycling has shown to be the best method to recover elemental mercury which is the mercury contained in the Licensee's lamps. Because the proposed action will not significantly impact the quality of the human environment and will allow mercury that is recoverable to be recycled and not disposed, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

The NRC provided a draft of this Environmental Assessment to the State of Connecticut for review on April 25, 2012. On June 4, 2012, Connecticut Department of Energy and Environmental Protection responded by electronic mail. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. Licensee's amendment request letter dated September 9, 2011 [ML112560291]
2. Licensee's additional information letter dated November 17, 2011 [ML113250060]
3. Licensee's email attachment dated August 29, 2012 [ML12243A199]
4. Licensee's additional information letter received September 14, 2012 [ML12258A264].

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 2100 Renaissance Blvd., King of Prussia, this 25th day of October 2012.

For the Nuclear Regulatory Commission.

Judith Joustra,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 2012–27065 Filed 11–5–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0232]

Proposed Revision to Probabilistic Risk Assessment and Severe Accident Evaluation for New Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft section revision; extension of comment period.

SUMMARY: On October 9, 2012 (77 FR 61446), the U.S. Nuclear Regulatory Commission (NRC or the Commission), issued a NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' on a proposed Revision 3 to its Standard Review Plan (SRP), Section 19.0 ''Probabilistic Risk Assessment and Severe Accident Evaluation for New Reactors.'' The NRC is extending the public comment period for its SRP, Section 19.0 from November 8, 2012 to December 8, 2012.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0232. You may submit comments by any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0232. 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: Ms. Amy E. Cubbage, 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:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0232 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

• Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0232.

• 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 ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The SRP, Section 19.0, is under ADAMS Accession No. ML12132A481.

• 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–2012–0232 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 that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely 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 that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The Office of New Reactors and the Office of Nuclear Reactor Regulation are revising SRP Section 19.0, which updates Revision 2 (ADAMS Accession No. ML071700652) dated June 2007, to reflect the changes as listed in the description of changes. These changes include (1) incorporation of guidance previously contained in Interim Staff Guidance (ISG), DC/COL–ISG–003 (ADAMS Accession No. ML081430087) concerning the review of probabilistic risk assessment (PRA) information and severe accident assessments for new reactors submitted to support design certification (DC) and combined license (COL) applications, (2) incorporation of guidance previously contained in ISG DC/COL–ISG–020 (ADAMS Accession No. ML100491233) concerning review of information from PRA-based seismic margin analyses submitted in support of DC and COL applications, (3) incorporation of guidance previously contained in ISG DI&C/COL–ISG–003 (ADAMS Accession No. ML080570048) concerning review of digital instrumentation and control system PRAs, including common cause failures in PRAs and uncertainty analysis associated with new reactor digital systems, and (4) incorporation of additional procedures for review of PRA information and severe accident assessments developed during NRC reviews of DC and COL applications completed after ISG DC/COL–ISG–003 was issued. A redline document comparing Revision 2 and the current proposed Revision 3 can be found under ADAMS Accession No. ML12153A008. The NRC staff issues **Federal Register** notices to facilitate timely implementation of the current staff guidance and to facilitate activities associated with the review of amendment applications. The NRC staff intends to incorporate the final approved guidance into the next revision of NUREG–0800, SRP Section 19.0 Revision 3. Therefore, the comment submittal period is extended from the original date of November 8, 2012 to December 8, 2012.

Dated at Rockville, Maryland, this 25th day of October 2012.

For the Nuclear Regulatory Commission.

Amy E. Cubbage,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2012–27073 Filed 11–5–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0268]

Proposed Revisions to Radiation Protection

AGENCY: Nuclear Regulatory Commission.

ACTION: Standard review plan-draft section revision; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is revising the following sections in Chapter 12, ''Radiation Protection'' and soliciting public comment on NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR Edition,'' Section 12.1, ''Assuring that Occupational Radiation Exposures Are As Low As Is Reasonably Achievable,'' Section 12.2, ''Radiation Sources,'' 12.3–12.4, ''Radiation Protection Design Features,'' and Section 12.5, ''Operational Radiation Protection Program.''

DATES: Submit comments by January 7, 2013. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure 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 are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0268. You may submit comments by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0268. 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: Ms. Amy E. Cubbage, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone at 301–415–2875, email at *mailto:Amy.Cubbage@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0268 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 are publicly available, by any of the following methods:

• *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0268.

• *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 ADAMS Accession numbers for redline documents comparing current revisions and the proposed revisions of individual sections are available in ADAMS under Accession Nos.: Section 12.1, Proposed Revision 4 (ML12186A005), Current Revision 3 (ML070710474), Redline (ML12199A463); Section 12.2 Proposed Revision 4 (ML12186A009), Current Revision 3 (ML070710496), Redline (ML12199A461); Section 12.3—12.4 Proposed Revision 5 (ML12191A219), Current Revision 4 (ML113081427), Redline (ML12199A462); and Section 12.5 Proposed Revision 5 (ML12186A007), Current Revision 4 (ML100740544), Redline (ML12199A009).

• *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–2012–0268 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 enters the comment submissions into ADAMS. The NRC does not routinely 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 does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Further Information

The Office of New Reactors and Office of Nuclear Reactor Regulation are revising Sections 12.1—12.5 of the current Standard Review Plan (SRP). Details of specific revisions are included in the end of each of the revised sections themselves and are shown in the description of changes.

The changes to this SRP Chapter reflect current staff review methods and practices based on lessons learned from NRC reviews of design certification (DC) and combined license (COL) applications completed since the last revision of this chapter in March 2007. Changes include: (1) Guidance to the staff for evaluating the acceptability of the radiation protection program, including the applicant's use of generic radiation protection and groundwater program templates, (2) additional guidance for review of existing regulatory requirements related to the material covered in Chapter 12 of the SRP, (3) updating the review interfaces to improve the efficiency and consistency of staff reviews, and (4) updating references covered in SRP Chapter 12.

The NRC staff is issuing this notice to solicit public comments on the proposed SRP revisions to Chapter 12. After the NRC staff considers any public comments, it will make a determination regarding the proposed SRP Sections in Chapter 12.

Dated at Rockville, Maryland, this October 26, 2012.

For the Nuclear Regulatory Commission.

Amy E. Cubbage,

Chief, Policy Branch, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2012–27069 Filed 11–5–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30254; 812–13974]

Salient Advisors, L.P. and MarketShares ETF Trust; Notice of Application

October 31, 2012

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

APPLICANTS: Salient Advisors, L.P. (''Salient'') and MarketShares ETF Trust (the ''Trust'').

SUMMARY OF APPLICATION: Applicants request an order that permits: (a) Actively-managed series of the Trust to issue shares (''Shares'') redeemable in large aggregations only (''Creation Units''); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days after the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

FILING DATES: The application was filed on November 14, 2011, and amended on

May 9, 2012, and October 19, 2012. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 26, 2012, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, c/o Stacy L. Fuller, Esq., K&L Gates LLP, 1601 K Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Mark N. Zaruba, Senior Counsel, at (202) 551–6878 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust will be registered as an open-end management investment company under the Act and is organized as a Delaware statutory trust. The Trust will initially offer one series, the Salient MLP and Energy Infrastructure ETF (the ''Initial Fund''). The investment objective of the Initial Fund will be to seek to provide a high level of total return with an emphasis on making quarterly cash distributions to shareholders. Salient, a Texas limited partnership, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''), and will serve as investment adviser to the Initial Fund.

2. Applicants request that the order apply to the Initial Fund and any future series of the Trust and to any other open-end investment company or series thereof that is an actively managed exchange-traded fund (''ETF'') and (a) is advised by Salient or an entity controlling, controlled by, or under common control with Salient (each such entity and any successor thereto included in the term ''Adviser'') [1] and (b) complies with the terms and conditions of the application (collectively, ''Future Funds,'' and together with the Initial Fund, the ''Funds'').[2] The Adviser may enter into subadvisory agreements with investment advisers to act as subadvisers with respect to the Funds (''Subadvisers''). Any Subadviser will be registered under the Advisers Act. A registered broker-dealer (''Broker) under the Securities Exchange Act of 1934 (''Exchange Act''), which may be an affiliate of the Adviser, will serve as the principal underwriter and distributor for each of the Funds (''Distributor'').

3. Each Fund will consist of a portfolio of securities (including fixed income securities and/or equity securities) and/or currencies traded in the U.S. or non-U.S. markets (''Portfolio Instruments''). To the extent consistent with other investment limitations, the Funds may invest all of their assets in mortgage- or asset-backed securities, including ''to-be-announced transactions'' or ''TBA Transactions,'' [3] and may engage in forward commitment transactions.[4] Funds may also invest in ''Depositary Receipts.'' [5] Certain Funds may hold non-U.S. investments and are referred to as ''Global Funds.'' No Fund relying on the order will invest in options contracts, futures contracts or swap agreements.

4. Applicants also request that any exemption under section 12(d)(1)(J) of the Act from sections 12(d)(1)(A) and (B) apply to: (1) Any Fund as well as any principal underwriter for such Fund and any Brokers selling Shares of such a Fund to an Investing Fund (as defined below); and (2) each management investment company or unit investment trust registered under the Act that is not part of the same ''group of investment companies,'' within the meaning of section 12(d)(1)(G)(ii) of the Act, as the Funds, and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies, ''Investing Management Companies,'' such unit investment trusts, ''Investing Trusts,'' and Investing Management Companies and Investing Trusts together are ''Investing Funds''). Investing Funds do not include the Funds.[6]

5. Applicants anticipate that a Creation Unit will consist of at least 25,000 Shares and that the trading price of a Share will range from $10 to $25. All orders to purchase Creation Units must be placed with the Distributor by or through an ''Authorized Participant,'' which is either (a) a Broker or other participant in the Continuous Net Settlement System of the National Securities Clearing Corporation (''NSCC'', and such clearing process the ''NSCC Process''), or (b) a participant in the Depository Trust Company clearing process (''DTC,'' such participant ''DTC Participant,'' and such clearing process, the ''DTC Process''), which, in either case, has executed an agreement with the Distributor with respect to the purchase and redemption of Creation Units.

6. Shares will be purchased and redeemed in Creation Units and generally on an in-kind basis. Except where the purchase or redemption will include cash under the limited circumstances specified below, purchasers will be required to purchase Creation Units by making an in-kind deposit of specified instruments (''Deposit Instruments''), and shareholders redeeming their Shares will receive an in-kind transfer of specified instruments (''Redemption Instruments'').[7] On any given Business

[1] A successor is limited to an entity or entities that result from a reorganization into another jurisdiction or a change in the type of business organization. Any Adviser will be registered as an investment adviser under the Advisers Act.

[2] All entities that currently intend to rely on the order are named as applicants. Any entity that relies on the order in the future will comply with the terms and conditions of the application.

[3] A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date.

[4] In a forward commitment transaction, the buyer/seller enters into a contract to purchase/sell, for example, specific securities for a fixed price at a future date beyond normal settlement time.

[5] Depositary Receipts are typically issued by a financial institution (a ''depositary'') and evidence ownership in a security or pool of securities that have been deposited with the depositary. A Fund will not invest in any Depositary Receipts that the Adviser deems to be illiquid or for which pricing information is not readily available. No affiliated persons of applicants will serve as the depositary bank for any Depositary Receipts held by a Fund.

[6] An Investing Fund may rely on the order only to invest in a Fund and not in any other registered investment company.

[7] The Funds must comply with the federal securities laws in accepting Deposit Instruments and satisfying redemptions with Redemption Instruments, including that the Deposit Instruments and Redemption Instruments are sold in transactions that would be exempt from registration

Day [8] the names and quantities of the instruments that constitute the Deposit Instruments and the names and quantities of the instruments that constitute the Redemption Instruments will be identical, and these instruments may be referred to, in the case of either a purchase or a redemption, as the ''Creation Basket.'' In addition, the Creation Basket will correspond pro rata to the positions in a Fund's portfolio (including cash positions),[9] except: (a) In the case of bonds, for minor differences when it is impossible to break up bonds beyond certain minimum sizes needed for transfer and settlement; (b) for minor differences when rounding is necessary to eliminate fractional shares or lots that are not tradeable round lots; [10] or (c) TBA Transactions and other positions that cannot be transferred in kind [11] will be excluded from the Creation Basket.[12] If there is a difference between the net asset value (''NAV'') attributable to a Creation Unit and the aggregate market value of the Creation Basket exchanged for the Creation Unit, the party conveying instruments with the lower value will also pay to the other an amount in cash equal to that difference (the ''Cash Amount'').

7. Purchases and redemptions of Creation Units may be made in whole or in part on a cash basis, rather than in kind, solely under the following circumstances: (a) To the extent there is a Cash Amount, as described above; (b) if, on a given Business Day, a Fund announces before the open of trading that all purchases, all redemptions or all purchases and redemptions on that day will be made entirely in cash; (c) if, upon receiving a purchase or redemption order from an Authorized Participant, a Fund determines to require the purchase or redemption, as applicable, to be made entirely in cash; (d) if, on a given Business Day, a Fund requires all Authorized Participants purchasing or redeeming Shares on that day to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) Such instruments are not eligible for transfer through either the NSCC Process or DTC Process; or (ii) in the case of Global Funds, such instruments are not eligible for trading due to local trading restrictions, local restrictions on securities transfers or other similar circumstances; or (e) if a Fund permits an Authorized Participant to deposit or receive (as applicable) cash in lieu of some or all of the Deposit Instruments or Redemption Instruments, respectively, solely because: (i) such instruments are, in the case of the purchase of a Creation Unit, not available in sufficient quantity; (ii) such instruments are not eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting; or (iii) a holder of Shares of a Global Fund would be subject to unfavorable income tax treatment if the holder receives redemption proceeds in kind.[13]

8. Each Business Day, before the open of trading on a national securities exchange, as defined in section 2(a)(26) of the Act (''Stock Exchange''), on which Shares are listed and traded, each Fund will cause to be published through the NSCC the names and quantities of the instruments comprising the Creation Basket, as well as the estimated Cash Amount (if any), for that day. The published Creation Basket will apply until a new Creation Basket is announced on the following Business Day, and there will be no intra-day changes to the Creation Basket except to correct errors in the published Creation Basket. The Stock Exchange will disseminate every 15 seconds throughout the trading day an amount representing, on a per Share basis, the sum of the current value of the Portfolio Instruments that were publicly disclosed prior to the commencement of trading in Shares on the Stock Exchange.

9. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee (''Transaction Fee'') to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or sale of Creation Units.[14] All orders to purchase Creation Units must be placed with the Distributor by or through an Authorized Participant and the Distributor will transmit such orders to the Funds. The Distributor will be responsible for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

10. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on the Stock Exchange. Applicants expect that one or more the Stock Exchange specialists (''Specialists'') or market makers (''Market Makers''), will be assigned to the Shares.[15] The price of Shares trading on the Stock Exchange will be based on a current bid-offer in the secondary market. Purchases and sales of Shares in the secondary market will not involve a Fund and will be subject to customary brokerage commissions and charges.

11. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. Specialists and Market Makers, in providing a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[16] Applicants believe that the structure and operation of the Funds will be designed to enable efficient arbitrage and, thereby, minimize the probability that Shares will trade at a material premium or discount to a Fund's NAV.

12. Shares will not be individually redeemable and owners of Shares may acquire those Shares from a Fund, or tender such shares for redemption to a Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be

under the Securities Act of 1933 (''Securities Act''). In accepting Deposit Instruments and satisfying redemptions with Redemption Instruments that are restricted securities eligible for resale pursuant to Rule 144A under the Securities Act, the Funds will comply with the conditions of Rule 144A.

[8] Each Fund will sell and redeem Creation Units on any day the Fund is open, including as required by section 22(e) of the Act (each, a ''Business Day'').

[9] The portfolio used for this purpose will be the same portfolio used to calculate the Fund's NAV for that Business Day.

[10] A tradeable round lot for a security will be the standard unit of trading in that particular type of security in its primary market.

[11] This includes instruments that can be transferred in kind only with the consent of the original counterparty to the extent the Fund does not intend to seek such consents.

[12] Because these instruments will be excluded from the Creation Basket, their value will be reflected in the determination of the Cash Amount (defined below).

[13] A ''custom order'' is any purchase or redemption of Shares made in whole or in part on a cash basis in reliance on clause (e)(i) or (e)(ii).

[14] Cash purchases and redemptions of Shares may involve a higher Transaction Fee to cover the costs of purchasing and selling the applicable Deposit and Redemption Instruments. In all cases, the Transaction Fee will be limited in accordance with requirements of the Commission applicable to management investment companies offering redeemable securities.

[15] If Shares are listed on The NASDAQ Stock Market LLC (''Nasdaq''), no particular Market Maker would be contractually obligated to make a market in Shares. However, the listing requirements on Nasdaq stipulate that at least two Market Makers must be registered in Shares to maintain a listing. Registered Market Makers are required to make a continuous two-sided market or subject themselves to regulatory sanctions. No Market Maker will be an affiliated person, or an affiliated person of an affiliated person, of the Funds, except within the meaning of section 2(a)(3)(A) or (C) of the Act due solely to ownership of shares.

[16] Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

placed by or through an Authorized Participant. As discussed above, redemptions of Creation Units will generally be made on an in-kind basis, subject to certain specified exceptions under which redemptions may be made in whole or in part on a cash basis, and will be subject to a Transaction Fee.[17]

13. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a traditional open-end investment company or mutual fund. Instead, each Fund will be marketed as an ''actively-managed exchange-traded fund.'' All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units, or Shares traded on the Stock Exchange, or refer to redeemability, will prominently disclose that Shares are not individually redeemable and that the owners of Shares may acquire those Shares from a Fund or tender those Shares for redemption to the Fund in Creation Units only.

14. The Funds' Web site (''Web site''), which will be publicly available prior to the public offering of Shares, will include each Fund's prospectus (''Prospectus''). The Web site will contain, on a per Share basis for each Fund, the prior Business Day's NAV and the market closing price or mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''), and a calculation of the premium or discount of the market closing price or the Bid/Ask Price against such NAV. On each Business Day, prior to the commencement of trading in Shares on the Stock Exchange, each Fund shall post on the Web site the identities and quantities of the Portfolio Instruments and other assets held by the Fund that will form the basis for the calculation of the Fund's calculation of NAV at the end of that Business Day.[18]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an ''open-end company'' as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust and each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and that Creation Units will always be redeemable in accordance with the provisions of the Act. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) generally prohibits a registered investment company from

[17] *See* supra note 14.

[18] Under accounting procedures followed by the Funds, trades made on the prior Business Day (''T'') will be booked and reflected in NAV on the current Business Day (T+1). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants observe that the settlement of redemptions of Creation Units of the Global Funds is contingent not only on the settlement cycle of the U.S. securities markets but also on the delivery cycles present in foreign markets for underlying foreign Portfolio Instruments in which those Funds invest. Applicants have been advised that, under certain circumstances, the delivery cycles for transferring Portfolio Instruments to redeeming investors, coupled with local market holiday schedules, will require a delivery process of up to fourteen (14) calendar days. Applicants therefore request relief from section 22(e) in order to provide payment or satisfaction of redemptions within a longer number of calendar days as required for such payment or satisfaction in the principal local markets where transactions in the Portfolio Instruments of each Global Fund customarily clear and settle, but in all cases no later than fourteen (14) days following the tender of a Creation Unit. With respect to Future Funds that are Global Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances exist similar to those described in the application. Except as disclosed in the SAI for a Fund, deliveries of redemption proceeds for Global Funds are expected to be made within seven days.[19]

8. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed or unforeseen delays in the actual payment of redemption proceeds. Applicants assert that allowing redemption payments for Creation Units of a Fund to be made within a maximum of fourteen (14) calendar days would not be inconsistent with the spirit and intent of section 22(e). Applicants state that the Prospectus and/or SAI will identify those instances in a given year where, due to local holidays, more than seven calendar days, up to a maximum of fourteen (14) calendar days, will be needed to deliver redemption proceeds and will list such holidays. Applicants are not seeking relief from section 22(e) for Global Funds that do not effect redemptions of Creation Units in-kind.

[19] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6–1.

Section 12(d)(1) of the Act

9. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

10. Applicants request relief to permit Investing Funds to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any Broker to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act.

11. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

12. Applicants submit that their proposed conditions address any concerns regarding the potential for undue influence. To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the adviser of an Investing Management Company (''Investing Fund Adviser''), sponsor of an Investing Trust (''Sponsor''), any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor (''Investing Fund's Advisory Group'') from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any subadviser to an Investing Fund (''Investing Fund Subadviser''), any person controlling, controlled by or under common control with the Investing Fund Subadviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Investing Fund Subadviser or any person controlling, controlled by or under common control with the Investing Fund Subadviser (''Investing Fund's Subadvisory Group'').

13. Applicants propose a condition to ensure that no Investing Fund or Investing Fund Affiliate [20] (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate (''Affiliated Underwriting''). An ''Underwriting Affiliate'' is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Investing Fund Subadviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

14. Applicants propose several conditions to address the potential for layering of fees. Applicants note that the board of directors or trustees (for any entity, the ''Board'') of any Investing Management Company, including a majority of the directors or trustees who are not ''interested persons'' within the meaning of section 2(a)(19) of the Act (for any Board, ''disinterested directors or trustees''), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, an

[20] An ''Investing Fund Affiliate'' is any Investing Fund Adviser, Investing Fund Subadviser, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. ''Fund Affiliate'' is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

Investing Fund Advisor, trustee of an Investing Trust (''Trustee'') or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Advisor, Trustee or Sponsor or an affiliated person of the Investing Fund Advisor, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Advisor, Trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Investing Fund in the Fund. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[21]

15. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

16. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds (''FOF Participation Agreement''). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in a Fund and not in any other investment company.

Section 17(a) of the Act

17. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person (''Second Tier Affiliates''), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an ''Affiliated Fund'').

18. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or Second Tier Affiliates of the Funds solely by virtue of one or more of the following: (a) holding 5% or more, or more than 25%, of the Shares of the Trust of one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds. Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the transactions that would accompany such sales and redemptions with, any Investing Fund of which the Fund is an affiliated person or Second-Tier Affiliate.[22]

19. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons or Second Tier Affiliates from acquiring or redeeming Creation Units through in-kind transactions. Both the deposit procedures for in-kind purchases of Creation Units and the redemption procedures for in-kind redemptions will be the same for all purchases and redemptions. Deposit Instruments and Redemptions Instruments will be valued in the same manner as the Portfolio Instruments held by the relevant Fund. Applicants thus believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

20. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Creation Units directly from a Fund will be based on the NAV of the Fund.[23] The FOF Participation Agreement will require any Investing Fund that purchases Creation Units directly from a Fund to represent that the purchase will be in compliance with its investment restrictions and consistent with the investment policies set forth in its registration statement. Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

A. Actively Managed Exchange-Traded Fund Relief

1. As long as a Fund operates in reliance on the requested order, the Shares of the Fund will be listed on a Stock Exchange.

2. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that Shares are not individually redeemable and that owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

3. The Web site, which is and will be publicly accessible at no charge, will contain, on a per Share basis, for each Fund the prior Business Day's NAV and the market closing price or Bid/Ask Price, and a calculation of the premium

[21] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[22] Applicants anticipate that most Investing Funds will purchase Shares in the secondary market and will not purchase or redeem Creation Units directly from a Fund. Relief from section 17(a) is not required when an Investing Fund that is an affiliate or Second Tier Affiliate of a Fund purchases or sells Shares in the secondary market as such transactions are not principal transactions with the Fund. However, the requested relief would apply to direct sales of Shares in Creation Units by a Fund to an Investing Fund and redemptions of those Shares in Creation Units. The requested relief is intended to cover transactions that would accompany such sales and redemptions. Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person, of an Investing Fund because the Adviser is also an investment adviser to that Investing Fund.

[23] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of its Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

or discount of the market closing price or Bid/Ask Price against such NAV.

4. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Instruments and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

5. The Adviser or any Subadviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Instrument for the Fund through a transaction in which the Fund could not engage directly.

6. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed ETFs.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Subadvisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Subadvisory Group with respect to a Fund for which the Investing Fund Subadviser or a person controlling, controlled by or under common control with the Investing Fund Subadviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The Board of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Investing Fund Adviser and any Investing Fund Subadviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares of a Fund exceeds the limit in section l2(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-l under the Act) received from a Fund by the Investing Fund Adviser, or Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Investing Fund Subadviser will waive fees otherwise payable to the Investing Fund Subadviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Investing Fund Subadviser, or an affiliated person of the Investing Fund Subadviser, other than any advisory fees paid to the Investing Fund Subadviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Investing Fund Subadviser. In the event that the Investing Fund Subadviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of a Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (i) Whether the purchases were consistent with the investment objectives and policies of the Fund; (ii) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (iii) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to ensure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the

information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the Board of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund relying on the section 12(d)(1) relief will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of other investment companies for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27001 Filed 11–5–12; 8:45 am]

BILLING CODE 8011–01–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, November 8, 2012 at 2:00 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 Gallagher, 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, November 8, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

A litigation matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: November 1, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–27128 Filed 11–2–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68123; File No. SR–NASDAQ–2012–123]

Self-Regulatory Organizations; NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend and Adopt Several NASDAQ Rules To Reflect Changes To Rules of the Financial Industry Regulatory Authority (''FINRA'')

October 31, 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 October 22, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend and adopt several NASDAQ rules to reflect changes to rules of the Financial Industry Regulatory Authority (''FINRA''). NASDAQ will implement the proposed rule change thirty days after the date of the filing.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Many of NASDAQ's rules governing member conduct are based on the rules of FINRA (formerly the National Association of Securities Dealers (''NASD'')). During 2008, FINRA embarked on an extended process of moving rules formerly designated as ''NASD Rules'' into a consolidated FINRA rulebook. In most cases, FINRA has renumbered these rules, and in some cases has substantively amended them. Accordingly, NASDAQ has also been undertaking a process of modifying its rulebook to ensure that NASDAQ rules corresponding to FINRA/NASD rules continue to mirror them as closely as practicable. To the extent possible, NASDAQ will designate a NASDAQ rule that is intended to parallel a FINRA rule with the suffix ''A''. For example, the NASDAQ rule paralleling FINRA Rule 5320 will be designated as Rule 5320A. In this filing, NASDAQ is amending Rule 3110 (Books and Records) and redesignating it as Rule 3110A to incorporate NASD Rule 3110 (or any successor FINRA rule) by reference. In addition, NASDAQ is deleting IM–3110 (Customer Account Information), and adopting the Rule 4510A Series (Books and Records Requirements). The series includes Rule 4511A (General Requirement), which incorporates FINRA Rule 4511; Rule 4512A (Customer Account Information), which incorporates FINRA Rule 4512; Rule 4513A (Records of Written Customer Complaints), which incorporates FINRA Rule 4513; Rule 4514A (Authorization Records for Negotiable Instruments Drawn from a Customer's Account), which incorporates FINRA Rule 4514; and Rule 4515A (Approval and Documentation of Changes in Account Name or Designation), which incorporates FINRA Rule 4515.[3] NASDAQ notes that in some instances, the amended rules reference rules that are being adopted or renumbered by contemporaneous NASDAQ rule filings that have been filed on an immediately effective basis.[4]

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)(5) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed changes will conform various NASDAQ Rules to changes made to corresponding FINRA rules (including certain changes resulting in adoption of new rules), thus promoting application of consistent regulatory standards with respect to the rules that FINRA enforces pursuant to its regulatory services agreement with NASDAQ.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f)(6) of Rule 19b–4 thereunder,[8] in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

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–2012–123 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–2012–123. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

[3] *See* Securities Exchange Act Release No. 63784 (January 27, 2011), 76 FR 5850 (February 2, 2011) (SR–FINRA–2010–052).

[4] *See* SR–NASDAQ–2012–122 (October 22, 2012); SR–NASDAQ–2012–124 (October 22, 2012).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2012–123 and should be submitted on or before November 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27000 Filed 11–5–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68124; File No. SR–NASDAQ–2012–121]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Apply the Position Limit Exemption Rules of NASDAQ OMX PHLX LLC For Certain Index Options

October 31, 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 October 18, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASDAQ Stock Market [sic] to amend NASDAQ Options Market LLC (''NOM'') [3] Rules at Chapter XIV, Sections 5 (Position Limits for Broad-Based Index Options) and 7 (Position Limits for Industry and Micro-Narrow Based Index Options) to apply the position limit exemption rules of NASDAQ OMX PHLX LLC (''Phlx'') for certain broad-based index options and industry and micro-narrow based index options.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Chapter XIV, Sections 5 (Position Limits for Broad-Based Index Options) and Section 7 (Position Limits for Industry and Micro-Narrow Based Index Options) of the NASDAQ Rules to permit NASDAQ Options Market LLC (''NOM'') Options Participants to utilize position limit exemptions,[4] which are currently available on Phlx with respect to certain index options discussed below.

Currently, Chapter XIV, Sections 5 and 7 state that NOM Options Participants shall comply with the applicable rules of the Chicago Board Options Exchange, Incorporated (''CBOE'') with respect to position limits, both for broad-based and industry or micro-narrow index options. The Exchange recently filed to list options on several Phlx proprietary and non-proprietary indexes on NOM, which are not listed on CBOE: MSCI EM, MSCI EAFE, PHLX Oil Service Sector℠ index (OSX), PHLX Semiconductor Sector℠ Index (SOX) and PHLX Housing Sector™ Index (HGX) [5] (collectively ''MSCI and PHLX Indexes''). In each of these filings, the Exchange sought to list and trade the MSCI and PHLX Indexes on NOM by amending the NOM rules to provide for the same position limits that are applied currently on Phlx for options overlying the MSCI and PHLX Indexes.[6] Both filings intended that options on the MSCI and PHLX Indexes would be listed and traded on NOM as they are on Phlx.[7] Both filings added new sections to Chapter XIV, Sections 5 and 7 to specify the applicable position limits because options on the MSCI and PHLX Indexes were not listed on another exchange other than Phlx.[8]

Unlike index options that are listed on CBOE, where applicable CBOE rules relating to position limits, including exemptions from position limits, are incorporated by reference in NOM's rules, all applicable Phlx rules relating to position limits for the MSCI and PHLX Indexes, including specifically position limit exemptions, are not incorporated by reference in NOM's rules.[9] Rather, only the specified position limits for these indexes as set forth in Phlx's rules are replicated in NOM's rules.[10]

The Exchange is proposing to incorporate by reference the entirety of Phlx's rules relating to position limits with respect to options overlying the MSCI and PHLX Indexes. This would allow NOM Options Participants desiring to trade options on the MSCI and PHLX Indexes to avail themselves of the same exemptions as Phlx members receive today.

To this end, the Exchange is proposing to amend Chapter XIV, Section 5 to state that the applicable Phlx position limit rules would apply to the MSCI EAFE and MSCI EM broad-based index options. Also, the Exchange would amend Chapter XIV, Section 7 to state that the applicable Phlx position limit rules would apply to PHLX Oil Service Sector℠ index (OSX), PHLX Semiconductor Sector℠ Index (SOX) and PHLX Housing Sector™ Index (HGX) industry and micro-narrow based index options. The Exchange proposes to remove section (d) of Chapter XIV,

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NOM is NASDAQ's facility for executing and routing standardized equity and index options.

[4] This would include all rules relating to exemptions. *See* Phlx Rule 1001A Position Limits.

[5] *See* Securities Exchange Act Release Nos. 67582 (August 2, 2012), 77 FR 47455 (August 8, 2012) (SR–NASDAQ–2012–092) (an immediately effective filing relating to option [sic] on the MSCI EM and MSCI EAFE Index [sic]) and 67105 (June 4, 2012), 77 FR 34110 (June 8, 2012) (SR–NASDAQ–2012–065) (an immediately effective filing relating to strike price intervals and position limits for OSX, SOX and HGX).

[6] *Id.* Today, this does not include the application of Phlx exemptions.

[7] *Id.*

[8] *Id.*

[9] *See* Phlx Rules [sic] 1001A Position Limits. *See also* NOM Rules at Chapter XIV, Section 5(d) and Section 7(d) which replicate the Phlx position limits for the MSCI and Phlx Indexes within the NOM Rules.

[10] *See* Phlx Rules [sic] 1001A Position Limits. *See also* NOM Rules at Chapter XIV, Section 7(d) and (e) which replicate the Phlx position limits for Phlx Indexes within the NOM Rules.

Section 5 and sections (d) and (e) of Chapter XIV, Section 7 as that rule text is no longer necessary because all applicable Phlx position limit rules and exemptions would apply going forward to the MSCI and PHLX Indexes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing NOM Options Participants that desire to transact options on MSCI and PHLX Indexes the ability to avail themselves of the same position limit rules and exemptions as Phlx members. It was the intent of the Exchange to list and trade options on the MSCI and PHLX Indexes in the same manner as those index options are traded on Phlx. This would include providing the same position limit rules and exemptions on position limits as are permitted on Phlx. The Exchange believes that permitting applicable Phlx position limit exemption rules, in addition to position limits, to be applied will ensure that the same exemptions would apply to options on the MSCI and PHLX Indexes on both NOM and Phlx.

Today the CBOE rules are applied on NOM in the same manner as the Exchange proposes to apply Phlx rules relating to position limits and exemptions. Those index options which trade on CBOE and NOM are subject to applicable CBOE rules with respect to index option position limits and exemptions. The Exchange believes that because NOM does not have its own rules governing exemptions, applying the CBOE position limit rules, including exemptions, ensures that NOM Options Participants are able to trade index options in much the same manner as they are traded on CBOE, subject to the same regulatory requirements. The Exchange is proposing to similarly apply Phlx rules in the same manner with respect to the MSCI and PHLX Indexes. The Exchange believes that this filing is non-controversial because it seeks to apply the rules of another self-regulatory organization to NOM Options Participants in the same way as those rules apply today to Phlx members trading the MSCI and PHLX Indexes.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [16] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Exchange believes that doing so would provide NOM Options Participants with the ability to utilize position limit exemptions for the MCSI and PHLX Indexes and trade options on those indexes in the same manner as Phlx members. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–121on 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–2012–121. 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 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR–NASDAQ–2012–121 and should be submitted on or before November 27, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27033 Filed 11–5–12; 8:45 am]

BILLING CODE 8011–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Import Statistics Relating to Competitive Need Limitations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: This notice is to inform the public of the availability of import statistics for the first eight months of 2012 relating to competitive need limitations (CNLs) under the Generalized System of Preferences (GSP) program. These import statistics identify some articles for which the 2012 trade levels may exceed statutory CNLs. Interested parties may find this information useful in deciding whether to submit a petition to waive the CNLs for individual beneficiary developing countries (BDCs) with respect to specific GSP-eligible articles. As previously announced in the **Federal Register** (77 FR 44704 (July 30, 2012)), the deadline for submission of product petitions to waive the CNLs for individual BDCs with respect to GSP-eligible articles is 5 p.m., November 21, 2012.

FOR FURTHER INFORMATION CONTACT: Contact Marin Weaver, Director for GSP, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508. The telephone number is (202) 395–9618 and the email address is *Marin_Weaver@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Competitive Need Limitations

The GSP program provides for the duty-free importation of designated articles when imported from designated BDCs. The GSP program is authorized by Title V of the Trade Act of 1974 (19 U.S.C. 2461, *et seq.*), as amended (the ''1974 Act''), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

Section 503(c)(2)(A) of the 1974 Act sets out the two CNLs. When the President determines that a BDC has exported to the United States during a calendar year either (1) a quantity of a GSP-eligible article having a value in excess of the applicable amount for that year ($155 million for 2012), or (2) a quantity of a GSP-eligible article having a value equal to or greater than 50 percent of the value of total U.S. imports of the article from all countries (the ''50 percent CNL''), the President must terminate GSP duty-free treatment for that article from that BDC by no later than July 1 of the next calendar year.

Under section 503(c)(2)(F) of the 1974 Act, the President may waive the 50 percent CNL with respect to an eligible article imported from a BDC, if the value of total imports of that article from all countries during the calendar year did not exceed the applicable *de minimis* amount for that year ($21 million for 2012). Further, under section 503(c)(2)(C) of the 1974 Act, if imports of an eligible article from a BDC ceased to receive duty-free treatment due to exceeding a CNL in a prior year, the President may redesignate such an article for duty free treatment if imports in the most recently completed year did not exceed the CNLs.

II. Implementation of Competitive Need Limitations

Exclusions from GSP duty-free treatment where CNLs have been exceeded will be effective July 1, 2013, unless the President grants a waiver before the exclusion goes into effect. Exclusions for exceeding a CNL will be based on full 2012 calendar-year import statistics.

III. Interim 2012 Import Statistics

In order to provide advance notice of articles that may exceed the CNLs for 2012, interim import statistics for the first eight months of 2012 relating to CNLs can be viewed at: *http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preferences-gsp/current-review.* Full calendar-year 2012 data for individual tariff subheadings will be available in February 2013 on the Web site of the U.S. International Trade Commission at *http://dataweb.usitc.gov/.*

The interim 2012 import statistics are organized to show, for each article, the Harmonized Tariff Schedule of the United States (HTSUS) subheading and BDC of origin, the value of imports of the article from the specified country for the first eight months of 2012, and the corresponding share of total imports of that article from all countries. The list includes the GSP-eligible articles from BDCs that, based on interim eight-month 2012 data, exceed $87 million dollars, or an amount greater than 42 percent of the total value of U.S. imports of that product and therefore may be on track to exceed the applicable thresholds. In all, the following twelve products met the criteria to be placed on the list:

- 4409.10.05—Coniferous wood continuously shaped along any of its ends (Brazil)
- 7202.99.20—Calcium silicon ferroalloys (Brazil)
- 7202.30.00—Ferrosilicon manganese (Georgia)
- 2924.29.95—Other nonaromatic cyclic amides and their derivatives (India)
- 2934.99.47—Nonaromatic drugs of other heterocyclic compounds (India)
- 7307.21.50—Stainless steel, not cast, flanges for tubes/pipes (India)
- 7307.91.50—Iron or steel (o/than stainless), not cast, flanges for tubes/pipes (India)
- 6911.10.37—Porcelain or non-bone china, household table & kitchenware sets (Indonesia)
- 2927.00.15—1,1′-Azobisformamide (Indonesia)
- 7202.21.50—Ferrosilicon containing between 55% and 80% of silicon (Russia)
- 2106.90.99—Miscellaneous food preparations not canned or frozen (Thailand)
- 9506.70.40—Ice skates w/footwear permanently attached (Thailand)

The list published on the USTR Web site includes the relevant eight-month trade statistics for each of these products and is provided as a courtesy for informational purposes only. The list is based on interim 2012 trade data, and may not include all articles that may be affected by the GSP CNLs. Regardless of whether or not an article is included on the list referenced in this notice, all determinations and decisions regarding application of the CNLs of the GSP program will be based on full calendar-year 2012 import data for each GSP-eligible article. Each interested party is advised to conduct its own review of 2012 import data with regard to the possible application of GSP CNLs. Please see the notice announcing the 2012 GSP Review which was published in the **Federal Register** on July 30, 2012, regarding submission of product petitions requesting a waiver of a CNL. The notice is available at *http://www.regulations.gov/*

[18] 17 CFR 200.30–3(a)(12).

#!documentDetail;D=USTR-2012-0013-0001.

William D. Jackson,

Deputy Assistant U.S. Trade Representative for the GSP Program, Chairman, GSP Subcommittee of the Trade Policy Staff Committee.

[FR Doc. 2012–27083 Filed 11–5–12; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 30186]

Tongue River Railroad Company, Inc.—Rail Construction and Operation—in Custer, Powder River and Rosebud Counties, MT.; Correction to the Notice of Intent To Prepare an Environmental Impact Statement (EIS)

The Surface Transportation Board's Office of Environmental Analysis (OEA) issued a Notice of Intent (NOI) to prepare an EIS, a Draft Scope of Study, and a notice of scoping meetings in the above-captioned proceeding on October 22, 2012 and published it in the **Federal Register** on the same day. OEA is issuing this Notice of Correction because the location listed on page 3 of the NOI for the scoping meeting in Forsyth, Montana, is unavailable and has been changed.

The Forsyth meeting will be held at the following new location on Tuesday, November 13, 2012 between 2–4 p.m. and 6–8 p.m.: Haugo Center at Riverview Villa, Rosebud Street, Exit 95, Forsyth, MT 59327.

Please correct your copies accordingly. The NOI is available on the Board's Web site at *www.stb.dot.gov.*

By the Board, Victoria Rutson, Director, Office of Environmental Analysis.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–26981 Filed 11–5–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Management Service

Senior Executive Service; Combined Performance Review Board (PRB)

AGENCY: Treasury Department, Financial Management Service (FMS).

ACTION: Notice of members of Combined Performance Review Board (PRB).

SUMMARY: This notice announces the appointment of the members of the Combined Performance Review Board (PRB) for the Bureau of the Public Debt (BPD), the Financial Management Service (FMS), the Bureau of Engraving and Printing (BEP), the United States Mint, the Alcohol and Tobacco Tax and Trade Bureau (TTB), and the Financial Crimes Enforcement Network (FinCEN). The Combined PRB reviews the performance appraisals of career senior executives who are below the level of bureau head and principal deputy in the bureaus, except for executives below the Assistant Commissioner/Executive Director level in the Bureau of the Public Debt and Financial Management Service. The Combined PRB makes recommendations regarding proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions.

DATES: The membership of the Combined PRB as described in the Notice is effective on November 6, 2012.

FOR FURTHER INFORMATION CONTACT: Wanda J. Rogers, Deputy Commissioner, Financial Management Service, 401 14th Street SW., Washington, DC; (202) 874–7000.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this Notice announces the appointment of the following primary and alternate members to the Combined PRB:

Primary Members

Wanda J. Rogers, Deputy Commissioner, FMS;
Peter S. Alvarado, Deputy Director, FinCEN;
Anita Shandor, Deputy Commissioner, BPD;
Pamela J. Gardiner-Little, Deputy Director, BEP;
Richard Peterson, Deputy Director, United States Mint;
Mary G. Ryan, Deputy Administrator, TTB.

Alternate Members

Marty Greiner, Chief Financial Officer/Assistant Commissioner, FMS;
Amy Taylor, Associate Director, FinCEN;
Lori Santamorena, Executive Director, BPD;
Leonard R. Olijar, Chief Financial Officer/Associate Director, BEP;
Beverly Ortega Babers, Chief Administrative Officer, United States Mint;
Cheri Mitchell, Chief Financial Officer/Assistant Administrator, TTB.

Dated: October 31, 2012.

Wanda J. Rogers,

Deputy Commissioner.

[FR Doc. 2012–26974 Filed 11–5–12; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Submission for OMB Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions with Total Consolidated Assets of $50 Billion or More under the Dodd-Frank Wall Street Reform and Consumer Protection Act.''

The OCC is also announcing that the proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Comments must be received by December 6, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Mailstop 2–3, Attention: 1557–0237, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0237, U.S. Office of Management and Budget, 725 17th

Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, OCC has submitted the following proposed collection of information to OMB for review and clearance.

Company-Run Annual Stress Test Reporting Template and Documentation for Covered Institutions With Total Consolidated Assets of $50 Billion or More Under the Dodd-Frank Wall Street Reform and Consumer Protection Act

Section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (Dodd-Frank Act) requires certain financial companies, including national banks and Federal savings associations, to conduct annual stress tests [2] and requires the primary financial regulatory agency [3] of those financial companies to issue regulations implementing the stress test requirements.[4] A national bank or Federal savings association is a ''covered institution'' and therefore subject to the stress test requirements if its total consolidated assets are more than $10 billion. Under section 165(i)(2), a covered institution is required to submit to the Board of Governors of the Federal Reserve System (Board) and to its primary financial regulatory agency a report at such time, in such form, and containing such information as the primary financial regulatory agency may require.[5] On October 9, 2012, the OCC published in the **Federal Register** a final rule implementing the section 165(i)(2) annual stress test requirement.[6] This notice describes the reports and information required to meet the reporting requirements under section 165(i)(2). These information collections will be given confidential treatment (5 U.S.C. 552(b)(4)).

The OCC intends to use the data collected through these templates proposal to assess the reasonableness of the stress test results of covered institutions and to provide forward-looking information to the OCC regarding a covered institution's capital adequacy. The OCC also may use the results of the stress tests to determine whether additional analytical techniques and exercises could be appropriate to identify, measure, and monitor risks at the covered institution. The stress test results are expected to support ongoing improvement in a covered institution's stress testing practices with respect to its internal assessments of capital adequacy and overall capital planning.

The Dodd-Frank Act stress testing requirements apply to all covered institutions, but the OCC recognizes that many covered institutions with consolidated total assets of $50 billion or more have been subject to stress testing requirements under the Board's Comprehensive Capital Analysis and Review (CCAR). The OCC also recognizes that these institutions' stress tests will be applied to more complex portfolios and therefore warrant a broader set of reports to adequately capture the results of the company-run stress tests. These reports will necessarily require more detail than would be appropriate for smaller, less complex institutions. Therefore, the OCC has decided to specify separate reporting templates for covered institutions with total consolidated assets between $10 and $50 billion and for covered institutions with total consolidated assets of $50 billion or more. In cases where a covered institution with assets less than $50 billion is affiliated with a banking organization with assets of $50 billion or more, the OCC reserves the authority to require that covered institution to use the reporting template for larger institutions with total consolidated assets of $50 billion or more. The OCC may also, on a case-by-case basis, require a covered institution with assets of $50 billion or more to report stress test results using a simpler format to be specified by the OCC. The reporting templates for institutions with assets of $50 billion or more are described below.

The OCC has worked closely with the Board and the Federal Deposit Insurance Corporation (FDIC) to make the agencies' respective rules implementing annual stress testing under the Dodd-Frank Act consistent and comparable by requiring similar standards for scope of application, scenarios, data collection and reporting forms. The OCC has worked to minimize any potential duplication of effort related to the annual stress test requirements. The OCC also recognizes that many covered institutions with total consolidated assets of $50 billion or more are required to submit reports using CCAR reporting form FR Y–14A.[7] Therefore, the OCC based its reporting requirements closely on the Board's form FR Y–14A for covered institutions with total consolidated assets of $50 billion or more. The OCC recognizes the Board modified the FR Y–14A and, to the extent practical, the OCC anticipates keeping its reporting requirements consistent with the Board's FR Y–14A in order to minimize burden on covered institutions.[8] In order to fully evaluate the stress test results submissions, the OCC may conduct follow up discussions with or request responses to follow up questions from respondents, as needed.

Description of Reporting Templates for Institutions With $50 Billion or More in Assets

The OCC DFAST–14A Summary Schedule includes data collection worksheets necessary for the OCC to assess the company-run stress test results for baseline, adverse and severely adverse scenarios as well as any other scenario specified in accordance with regulations specified by the OCC. The DFAST–14A Summary Schedule includes worksheets that collect information on the following areas:

1. Income Statement;
2. Balance Sheet;
3. Capital Statement;
4. Retail Risk;
5. Securities: Available-for-Sale/Held to Maturity (AFS/HTM);
6. Trading;
7. Counterparty Credit Risk (CCR);
8. Operational Risk; and
9. Pre-Provision Net Revenue (PPNR).

Each covered institution reporting to the OCC using this form will be required to submit to the OCC a separate DFAST–14A Summary Schedule for each scenario provided to covered institutions in accordance with regulations implementing Section 165(i)(2) as specified by the OCC.

Worksheets: Income Statement

This income statement worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected losses and revenues in the following categories.

1. Loan losses;
2. Losses due to contingent commitments and liabilities;

[1] Public Law 111–203, 124 Stat. 1376, July 2010.

[2] 12 U.S.C. 5365(i)(2)(A).

[3] 2 U.S.C. 5301(12).

[4] 12 U.S.C. 5365(i)(2)(C).

[5] 12 U.S.C. 5365(i)(2)(B).

[6] 77 FR 61238, October 9, 2012—Prior to issuance of the final rule, the OCC published on January 24, 2012, a notice of proposed rulemaking (NPR) implementing the section 165(i)(2) annual stress test requirement (77 FR 3408).

[7] *http://www.federalreserve.gov/reportforms.*

[8] 77 FR 60695, October 4, 2012.

3. Other Than Temporary Impairments (OTTI) on assets held to maturity and available for sale;
4. Trading account losses;
5. Allowance for loan and lease losses;
6. Pre-provision net revenue; and
7. Repurchase reserve/liability for representations and warranties.

This schedule provides information used to assess losses that covered institutions can sustain in adverse and severely adverse stress scenarios.

Worksheets: Balance Sheet

The balance sheet worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on projected equity capital, as well as on assets and liabilities in the following categories.

1. HTM Securities;
2. AFS Securities;
3. Loans;
4. Trading Assets;
5. Intangibles;
6. Deposits; and
7. Trading Liabilities.

The OCC intends to use this worksheet to assess the projected changes in assets and liabilities that a covered institution can sustain in an adverse and severely adverse stress scenario. This worksheet will also be used to assess the revenue and loss projections identified in the income statement worksheet.

Worksheets: Capital

The capital worksheet collects data for the quarter preceding the planning horizon and for each quarter of the planning horizon for the stress test on the following areas.

1. Changes to Equity Capital;
2. Changes to Regulatory Capital; and
3. Capital Actions.

The OCC intends to use this worksheet to assess the impact on capital of the projected losses and projected changes in assets that the covered institution can sustain in a stressed scenario. In addition to reviewing the worksheet in the context of the balance sheet and income statement projections, the OCC also intends to use this worksheet to assess the adequacy of the capital plans and capital planning processes for each covered institution.

Worksheets: Retail Projections

The retail projections worksheets collect data for each quarter of the planning horizon for the stress test on projected balances and losses for major retail portfolios: residential real estate, credit card, automobile, student loans, small business loans, and other consumer. For residential real estate, the worksheets collect data for first lien mortgages, home equity lines of credit, and home equity loans. For all major retail portfolios, the worksheets contain separate segments for domestic and international loans for various product types. Within each broad product-type segment, the reporting for the portfolio is divided into a number of sub-segments that embody unique risk characteristics. This modular product-type design of the retail worksheet allows for a targeted data collection that encompasses only the material portfolios in a given product area for a particular covered institution. A covered institution would be required to complete only the segments and sub-segments material for that institution. This design is intended to limit burden while maximizing the supervisory information produced from the collection.

Worksheets: Securities

Several securities worksheets collect data related to AFS and HTM securities. The worksheets collect data and information such as: projected OTTI by asset class for each quarter of the forecast time horizon; methodologies and assumptions used to generate the OTTI projections for each asset class; projected stressed fair market value (FMV) for each asset class as well as qualitative information on the methodologies and assumptions used to generate the stressed market value; and actual FMV including the source (vendor or proprietary) and key assumptions used in determining market values (if using a proprietary model).

Worksheets: Trading and Counterparty Risk

The trading and counterparty risk worksheets collect projected losses associated with a specified global market risk scenario for covered institutions with large trading operations. The OCC provides a set of risk factors relevant to the trading and counterparty positions so that respondent covered institutions project trading and counterparty components in the adverse and severely adverse scenarios.

Completion of the trading and counterparty risk worksheets would be required only for those institutions subject to the market shock provided by the OCC.

Worksheets: Operational Risk

The operational risk worksheets collect data on covered institutions' projections of operational losses for each quarter of the planning horizon for the stress test. Operational losses are defined as losses arising from inadequate or failed internal processes, people, and systems or from external events including legal losses. Some examples of operational loss events are losses related to improper business practices (including class action lawsuits), execution errors, and fraud. Additional detail may be requested in order for the OCC to evaluate the transformation of the covered institutions' historical loss experience into operational loss projections. Additional detail also may be requested on any budgeting processes used to project operational losses.

Completion of the operational risk worksheets would be required only for those institutions subject to advanced approaches risk-based capital rules.

Worksheets: PPNR

For the PPNR worksheets, covered institutions must provide projections for the three major components of PPNR (net interest income, non-interest income, and non-interest expense) for each quarter of the planning horizon. Collection of these data in this format is based on the assumption that the revenues generated by different business lines are affected differently by different stress scenarios, and such a view facilitates a more robust analysis of the resulting projections.

Description of OCC DFAST–14A Counterparty Credit Risk Template

The CCR template collects, on various worksheets, data to identify credit valuation adjustment (CVA), exposures, and CVA sensitivities for the covered institution's top counterparties along a number of dimensions, including current CVA, stressed CVA, net current exposure, and gross current exposure. Covered institutions also must submit aggregate CVA, exposures, and CVA sensitivities by ratings categories. The *Notes to the CCR Schedule* worksheet allows covered institutions to voluntarily submit additional information to provide clarity to the portfolio. Covered institutions are required to report results for one scenario and two specifications to capture Expected Exposure profiles.

Completion of the CCR template would be required only for those institutions subject to the market shock provided by the OCC.

Description of OCC DFAST–14A Basel III and Dodd-Frank Template

The Basel III and Dodd-Frank template collects projections of Tier 1 Common Equity, Tier 1 Capital, Risk-

Weighted Assets (RWA), and Leverage Exposures (along with granular components of those elements) under the baseline scenario for each year through 2017. Banks are required to complete the schedule based on the methodologies outlined in the U.S. banking agencies NPRs: Basel III NPR, Advanced Approaches NPR, and final market risk capital rule (see OCC Joint Release NR 2012–88 dated June 12, 2012). Covered institutions also are required to include data on the projected impact of any significant actions planned in response to Basel III and the Dodd-Frank Act (for example, asset sales, asset wind-downs, and data collection and modeling enhancements). The OCC expects to align this template and its instructions with the rules implementing the Basel III framework in the U.S. when those rules are final.

Description of OCC DFAST–14A Regulatory Capital Instruments Template

The regulatory capital instruments schedule collects historical data and projections of covered institutions' balances of the funded instruments that are included in regulatory capital. The schedule collects data by instrument type, in addition to projections for issuances and redemptions that contribute to changes in balances under the covered institution baseline scenario.

Description of OCC DFAST–14A Operational Risk Template

The operational risk schedule collects data on covered institutions' historical and current operational losses. This schedule is only required from covered institutions subject to the advanced approaches risk-based capital rules. The first worksheet gathers data on covered institutions' operational risk capital by unit-of-measure (undiversified basis) from Q4 of the previous year to Q3 of the reporting year. The second worksheet gather data on the total dollar value of a covered institutions' legal reserve balance as of September 30.

Description of OCC DFAST–14A Scenario Template

To conduct the stress test required under this rule, a covered institution may need to project additional economic and financial variables to estimate losses or revenues for some or all of its portfolios. In such a case, the covered institution is required to complete a worksheet for each scenario where such additional variables are used to conduct the stress test. Each scenario worksheet collects the variable name (matching that reported on the Scenario Variable Definitions worksheet), the actual value of the variable during the Q3 of the reporting year, and the projected value of the variable for nine future quarters.

Description of OCC DFAST–14A Contact Information Template

The contact information template includes a directory worksheet for reporting points of contact for each of the templates described above: summary, counterparty credit risk, Basel III and Dodd-Frank, operational risk, regulatory capital instruments, and scenario.

Description of Supporting Documentation

Covered institutions must submit clear documentation of the projections included in the worksheets to support efficient and timely review of annual stress test results by the OCC. The supporting documentation should be submitted electronically and is not expected to be reported in the workbooks used for required data reporting. This supporting documentation must clearly describe the methodology used to produce the stress test projections, and must include how the macroeconomic factors were translated into a covered institution's projections, as well as technical details of any underlying statistical methods used. Where company-specific assumptions are made that differ from the broad macroeconomic assumptions incorporated in stress scenarios provided by the OCC, the documentation must also describe such assumptions and how those assumptions relate to reported projections. Where historical relationships are relied upon, the covered institutions must describe the historical data and provide the basis for the expectation that these relationships would be maintained in each scenario, particularly under adverse and severely adverse conditions.

Comment Summary

In the **Federal Register** of August 16, 2012 (77 FR 49488), OCC published a 60-day notice requesting public comment on the templates and the collection of information. OCC received three comments on the notice. Two of the comments received were from banking organizations and one was from an industry group.

The commenters generally expressed support for stress testing and for the OCC's efforts to ensure appropriate risk management processes. In addition, two commenters acknowledged the OCC's efforts to coordinate with the other agencies and avoid duplication of efforts. However, the commenters also advocated that several changes be made to the templates. Two commenters urged the OCC to more closely align the data collection templates to those of the other agencies, with one commenter suggesting that the Board, FDIC, and OCC develop one common set of data templates to reduce cost and burden on banking organizations.

One commenter requested that the OCC provide more clarity about how the OCC will use the data collected and provide more detailed instructions, while a second requested that the OCC include a formal process for addressing questions seeking clarification of the reporting templates. Another commenter urged the OCC to permit banks which comprise nearly all material activities of the parent holding company to incorporate by reference into the bank's OCC stress test submission the results of the holding company's CCAR tests.

After carefully considering the comments received, the OCC aligned its reporting forms with those of the Federal Reserve to the extent practicable. For example, the Basel III Capital template will only collect results related to the baseline scenario on an annual basis rather than quarterly results under the adverse and severely adverse scenarios. However, some elements required by the Federal Reserve are only applicable at the bank holding company level and the Federal Reserve required some elements to fulfill its other obligations related to covered companies' stress tests. The OCC will continue to consider the practicability of a single set of reporting forms or the use of cross-references.

The OCC does not believe it is appropriate for covered institutions to simply reference holding company stress test results, even where the covered institution or institutions comprise the bulk of holding company activities. This is consistent with the treatment under the OCC's final rule implementing section 165(i)(2), which requires such covered institutions to conduct annual stress tests.[9] The OCC notes that under that rule, a covered institution that is a subsidiary of a holding company subject to the Board's annual stress testing rule generally may use the stress testing systems and processes of the holding company where appropriate, which will reduce

[9] 77 FR 61238 (October 9, 2012); see also 77 FR 3408 (January 24, 2012) (Notice of proposed rulemaking).

the burden associated with separate reporting.

Finally, the OCC believes that established OCC processes for responding to queries from supervised entities will be adequate to address any questions related to use of these reporting templates, and that no additional formal processes are necessary.

Burden Estimates

OCC estimates the burden of this collection of information as follows:

Estimated Number of Respondents: 22.

Estimated Total Annual Burden: 10,436 hours.

The OCC recognizes the Board has estimated 79,200 hours for bank holding companies to prepare their systems for submitting data for the FR Y–14.[10] The OCC believes that these systems will also be used to submit data for the reporting templates described in this notice.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility; (b) The accuracy of the OCC'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 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.

[10] 77 FR 60695 (October 4, 2012).

Dated: November 2, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–27171 Filed 11–5–12; 8:45 am]

BILLING CODE 4810–33–P

FEDERAL REGISTER

Vol. 77 Tuesday,
No. 215 November 6, 2012

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 438, 441 and 447
Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration Under the Vaccines for Children Program; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 438, 441, and 447

[CMS–2370–F]

RIN 0938–AQ63

Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration Under the Vaccines for Children Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule implements Medicaid payment for primary care services furnished by certain physicians in calendar years (CYs) 2013 and 2014 at rates not less than the Medicare rates in effect in those CYs or, if greater, the payment rates that would be applicable in those CYs using the CY 2009 Medicare physician fee schedule conversion factor. This minimum payment level applies to specified primary care services furnished by a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine, and also applies to services rendered by these provider types paid by Medicaid managed care plans contracted by states to provide the primary care services. It also provides for 100 percent federal financial participation (FFP) for any increase in payment above the amounts that would be due for these services under the provisions of the approved Medicaid state plan, as of July 1, 2009. In other words, there will not be any additional cost to states for payments above the amount required by the 2009 rate methodology. In this final rule, we specify which services and types of physicians qualify for the minimum payment level in CYs 2013 and 2014, and the method for calculating the payment amount and any increase for which increased federal funding is due.

In addition, this final rule will update the interim regional maximum fees that providers may charge for the administration of pediatric vaccines to federally vaccine-eligible children under the Pediatric Immunization Distribution Program, more commonly known as the Vaccines for Children (VFC) program.

DATES: The provisions of this final rule are effective on January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Mary Cieslicki, (410) 786–4576, or Linda Tavener, (410) 786–3838, for issues related to payments for primary care physicians.

Mary Beth Hance, (410) 786–4299, for issues related to charges for the administration of pediatric vaccines.

SUPPLEMENTARY INFORMATION:

I. Executive Summary and Background

A. Executive Summary

1. Purpose

This final rule implements sections 1902(a)(13), 1902(jj), 1905(dd) and 1932(f) of the Social Security Act directing payment by state Medicaid agencies of at least the Medicare rates in effect in CYs 2013 and 2014 or, if higher, the rate using the CY 2009 conversion factor (CF) for primary care services furnished by a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine. Also, this final rule implements the statutory payment provisions uniformly across all states and defines, for purposes of enhanced federal match, eligible primary care physicians, identifies eligible primary care services, and specifies how the increased payment should be calculated. Finally, this rule provides general guidelines for implementing the increased payment for primary care services delivered by managed care plans.

This final rule also provides updates to vaccine rates that have not been updated since the VFC program was established in 1994.

2. Summary of the Major Provisions

a. Payments to Physicians for Primary Care Services

This final rule will implement Medicaid payment for primary care services furnished by certain physicians in calendar years (CYs) 2013 and 2014 at rates not less than the Medicare rates in effect in those CYs or, if greater, the payment rates that will be applicable in those CYs using the CY 2009 conversion factor (CF). It will also provide for a 100 percent federal matching rate for any increase in payment above the amounts that were due for these services under the provisions of the state plan as of July 1, 2009. In other words, there will not be any additional cost to states for payments above the amount required by the 2009 rate methodology.

b. Vaccine Administration Under the Vaccines for Children (VFC) Program

This final rule updates the regional maximum fees that providers may charge for the administration of pediatric vaccines to federally vaccine-eligible children under the Pediatric Immunization Distribution Program, more commonly known as the Vaccines for Children (VFC) program. The formula used to determine the updated rates used the Medicare Economic Index (MEI) which is a price index used by CMS as part of the updates to Medicare physician payments. We believe the MEI is the best tool to update these rates because: (1) It reflects input price inflation faced by physicians inclusive of the time period when the national average was established in 1994; and (2) we believe that input prices associated with this specific type of physician-provided service are consistent with overall input prices. The MEI was most recently updated at the end of 2011.

3. Summary of the Costs and Benefits

Provision description	Total costs	Total benefits
Payments to Physicians for Primary Care Services.	The overall economic impact of this final rule is an estimated $5.600 billion in CY 2013 and $5.745 billion in CY 2014 (in constant 2012 dollars). In CY 2013, the federal cost for Medicaid and CHIP is approximately $5.835 billion with $235 million in state savings. In CY 2014, the federal cost for Medicaid and CHIP is approximately $6.055 billion with $310 million in state savings. The associated impact of this final rule requiring states to reimburse specified physicians for vaccine administration at the lesser of the Medicare rate or the VFC regional maximum during CYs 2013 and 2014, is estimated at an additional $975 million in federal costs. Specifically, this reflects federal costs for CYs 2013 and 2014 of $495 million and $480 million, respectively.	The overall benefit of this rule is the expected increase in provider participation by primary care physicians resulting in better access to primary and preventive health services by Medicaid beneficiaries.

Provision description	Total costs	Total benefits
Increase in Vaccines for Children Program Maximum Administration Fee.	This rule updates the maximum rate that states could pay providers for the administration of vaccines under the VFC program in years after CY 2014. While states have the flexibility to raise their VFC ceilings up to the new regional maximum administration fee, they are not anticipated to do so in 2013 and 2014 because of the implementation of the primary care payment increase. If all states were to increase their reimbursement rates to the updated maximum administration fee, it is estimated that the total economic impact would be $75 million per year.	The overall benefit of this provision is that it gives states the ability to increase their VFC vaccine administration rates. We expect that this increase will help maintain provider participation in the VFC program.

B. Background

1. Payments to Physicians for Primary Care Services: Statutory and Regulatory Framework

a. Improving Primary Care

On March 23, 2010, the Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted and on March 30, 2010, the Health Care and Education Reconciliation Act of 2010 (HCERA) (Pub. L. 111–152) was enacted; together they are known as the Affordable Care Act. This final rule will implement sections 1902(a)(13), 1902(jj), 1932(f), and 1905(dd) of the Social Security Act, as amended by the Affordable Care Act. Section 1902(a)(13) of the Act requires payment by state Medicaid agencies of at least the Medicare rates in effect in calendar years (CYs) 2013 and 2014 or, if higher, the rate that will be applicable using the CY 2009 Medicare conversion factor (CF), for primary care services furnished by a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine.

Primary care for any population is critical to ensuring continuity of care, as well as to providing necessary preventive care, which improves overall health and can reduce health care costs. The availability of primary care is particularly important for Medicaid beneficiaries, to establish a regular source of care and to provide services to a group that is more prone to chronic health conditions that can be appropriately managed by primary care physicians. Primary care physicians provide services that are considered to be a core part of a state's Medicaid benefit package. Additionally, these physicians can perform the vital function of coordinating care, including specialty care.

As we move towards CY 2014 and the expansion of Medicaid eligibility, it is critical that a sufficient number of primary care physicians participate in the Medicaid program. Section 1902(a)(13) of the Act is intended to encourage primary care physicians to participate in Medicaid by increasing payment rates in CYs 2013 and 2014.

b. Medicaid Payment to Providers

Section 1902(a)(30)(A) of the Act requires that Medicaid payments be consistent with efficiency, economy, and quality of care and be sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area. In meeting these requirements, states have broad discretion in establishing and updating Medicaid service payment rates to primary care providers. For instance, many states reimburse based on the cost of providing the service, a review of the amount paid by commercial payers in the private market, or as a percentage of rates paid under the Medicare program for equivalent services. States may update rates based on specific trending factors such as the MEI or a Medicaid specific trend factor that incorporates a state-determined inflation adjustment rate. Increasingly, states are providing a range of Medicaid services through managed care plans under contracts with managed care organizations (MCOs) and other organized delivery systems, such as prepaid inpatient health plans (PIHPs) and prepaid ambulatory health plans (PAHPs). According to the Medicaid and CHIP Payment and Access Commission (MACPAC), 49 million Medicaid beneficiaries receive services through some form of Medicaid managed care. The contract between the state and the managed care plan requires the plan to provide access to and make payments to primary care physicians using the funds the state pays to the managed care plan.

Section 1902(a)(13)(C) of the Act requires that states pay a minimum payment amount for certain primary care services delivered by designated primary care physicians. Primary care services are defined in new section 1902(jj) of the Act and include certain specified procedure codes for evaluation and management (E&M) services and certain vaccine administration codes. Under this provision, states must reimburse at least as much as the Medicare physician fee schedule (MPFS) rate in CYs 2013 and 2014 or, if greater, the payment rate that will apply using the CY 2009 Medicare CF. The directive for payment at the Medicare rate extends to primary care services paid on a fee-for-service (FFS) basis, as well as to those paid on a capitated or other basis by Medicaid managed care plans. This regulation will specify which services and physicians qualify for the increased payment amount in CYs 2013 and 2014, and the method for calculating that payment.

Section 1905(dd) of the Act provides for higher FFP for the required increase in physician payment for services provided on a fee for service basis and through managed care arrangements. The FFP rate will be 100 percent for the difference between the Medicaid state plan rate in effect on July 1, 2009, and the amount required to be paid under section 1902(a)(13)(C) of the Act, or by application, under section 1932(f). That means that, unless a state has reduced its rates since 2009, it will be fully reimbursed for these increased payments by the federal government.

One goal of this rule is to define the payment provisions further so that states may uniformly identify the rate differential. Specifically, we proposed a payment methodology that took into account potential changes in Medicare rates between CYs 2013 and 2014 and CY 2009 that is independent of the legislatively required payment reductions caused by Medicare's sustainable growth rate mechanism. Furthermore, this final rule will address Medicare's use of different fee schedules that take into account the site of service (for example, physician's office, or outpatient department of a hospital) and geographical location of the provider.

The Affordable Care Act amended section 1932(f) of the Act to clarify that states must incorporate the requirement for increased payment to primary care providers into contracts with managed care organizations. We proposed general guidelines for states to follow when

identifying the amounts by which MCOs must increase existing payments to primary care providers, and any additional capitation costs to the state attributable to such required increases in existing payments. We also proposed to extend this same treatment to PIHPs and PAHPs through regulations at part 438, to the extent that primary care provider payments are made by these entities.

We solicited comments on how best to implement through regulation the provision that managed care plans pay primary care providers at the Medicare rate for primary care services, consistent with those paid on a FFS basis. Additionally, we solicited comments from states and other stakeholders on the best way to adequately identify the increase in managed care capitation payments made by the state that is attributable to the increased provider payment, for the purpose of claiming 100 percent FFP. We were particularly interested in ensuring that primary care physicians receive the benefit of the increased payment. Section 1932(f) of the Act, as amended by the Affordable Care Act, requires that the managed care contracts pay providers at the applicable Medicare rate levels. We proposed to review managed care contracts to ensure that this requirement is imposed on managed care plans by the state. We also proposed to require managed care plans to report to the state the payments made to physicians under this provision to justify any adjustments to the capitation rates paid by the state under the contract. In proposing this approach, we were mindful of balancing the need for adequate documentation of the payment with the administrative burden it places on states and managed care plans. We requested comment on these provisions and additional suggestions on how to ensure that managed care plans provide the necessary data to the state, as well as how to ensure and monitor that managed care plans appropriately pass on to physicians the portion of the increased capitation rate that is attributable to the primary care rate increase.

This final rule also addresses identification of the rate differential eligible for 100 percent federal matching funds for vaccine administration, as set forth in section 1905(dd) of the Act. In 2011, the vaccine administration billing codes were changed so it is not possible to track the Medicaid state plan rate in CY 2009 directly to the rates applicable in CYs 2013 and 2014. We requested comment on our proposal for imputing the CY 2009 rate.

c. Medicare Payment to Primary Care Providers

Medicare provides health insurance coverage to people who are aged 65 and over, people with disabilities or people who meet other special criteria, under title XVIII of the Act. For institutional care, such as hospital and nursing home care, Medicare makes payments to providers using prospective payment systems. Payment for physicians' services under Medicare is based on the MPFS. The MPFS assigns relative value units (RVUs) for each procedure, as well as geographic practice cost indices (GPCIs) for geographic variations in payments, and a global CF, which converts relative value units (RVUs) into dollars. Individual fee schedule amounts for the MPFS are the product of the geographic adjustment, RVUs, and CF. Site of service (for example, physician office or outpatient hospital) is reflected as an adjustment to the RVUs. We generally issue the MPFS final rule for the subsequent calendar year on or before November 1st each year. The MPFS final rule includes the RVUs and CF for the upcoming calendar year, which permits the calculation of rates. Updates may occur throughout the year, but normally occur quarterly.

2. Vaccine Administration Under the Vaccines for Children (VFC) Program

The Omnibus Budget Reconciliation Act of 1993 (OBRA 1993), (Pub. L. 103–66), created the Vaccines for Children (VFC) Program, which became effective October 1, 1994. Section 13631 of OBRA 1993 added section 1902(a)(62) to the Act to require that states provide for a program for the purchase and distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children in accordance with section 1928 of the Act. Section 1928 of the Act requires each state to establish a VFC Program (which may be administered by the state Department of Health) under which certain specified groups of children are entitled to receive qualified pediatric immunizations without charge for the cost of the vaccine.

Under the VFC Program, a provider, in administering a qualified pediatric vaccine to a federally vaccine-eligible child, may not impose a charge for the cost of the vaccine. Section 1928(c)(2)(C)(ii) of the Act allows a provider to impose a fee for the administration of a qualified pediatric vaccine as long as the fee, in the case of a federally vaccine-eligible child, does not exceed the costs of such administration (as determined by the Secretary based on actual regional costs for such administration). However, a provider may not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parents or legal guardian to pay the administration fee.

This regulation updates the administration fee for the first time since the VFC program began in 1994. We requested comments on the methodology used to calculate the administration fee update as well as the impact of the updated administration fee on uninsured and underinsured VFC-eligible children.

II. Summary of Proposed Provisions and Analysis of and Response to Public Comments

On May 11, 2012, we published a proposed rule (77 FR 27671) in the **Federal Register** entitled ''Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration under the Vaccines for Children Program.''

We received a total of 171 comments from states, advocacy groups, health care providers, employers, health insurers, health care associations, as well as individual citizens. The comments ranged from general support for the proposed provisions to specific questions or comments regarding the proposed changes.

The following are brief summaries of each proposed provision, summaries of the public comments received, and our responses to those public comments:

General Comments

Comment: Several commenters questioned whether the provisions of this rule apply to services paid under the Children's Health Insurance Program (CHIP). CHIP programs can be structured as expansions of the state's Medicaid program, as separate CHIP programs, or as a combination of a Medicaid expansion program and a separate CHIP program.

Response: The statute applies to fee for service and managed care payments made for services provided to Medicaid beneficiaries. Therefore, this rule applies only to CHIP Medicaid expansion programs since beneficiaries in such programs are Medicaid-eligible. CHIP stand-alone programs are not eligible for 100 percent FFP and physicians providing services to children in those programs are not eligible for higher payment at the Medicare rate by operation of these rules. At state option, states may align their CHIP payment rates for primary care providers with these Medicaid payment provisions.

Comment: Many commenters suggested that the rule be modified to specifically require that states collect and report to CMS data that would help the Congress determine whether or not to extend the provision beyond 2014.

Response: We agree and have revised § 447.400(d) accordingly, as described below.

Comment: Many commenters believe that the budget impact estimates underestimate the time and resources for states to undertake the significant coding and related systems work, conduct the necessary analyses and develop policies, implement the regulation as part of regular operations and maintain compliance with the regulation as proposed in the proposed rule.

Response: We are sensitive to state concerns about the difficulty of implementing some of the provisions of the proposed rule and have modified this final rule to limit the administrative burden on states to the extent possible. We will also provide technical assistance to states as they implement the requirements of this rule to help minimize the administrative burden.

Comment: Several commenters stated that the proposed rule is contrary to current state and federal efforts to incentivize the entire health care delivery system to move away from volume-based reimbursement and would force states to relinquish savings in Medicaid efficiencies that have already been put into place. One commenter disagreed with our determination that each individual service code must be reimbursed at the Medicare payment level and believed that states should be permitted to increase total payments in the aggregate, with flexibility to determine how those payments are distributed. The commenter recommended that, at a minimum, a value-based option for implementing the increase be added to the final rule. Several commenters suggested that the final rule permit states to develop methodologies to calculate the aggregate value of the primary care rate increase across all qualified providers and services and to use non fee for service payment mechanisms to deliver that aggregate increase equitably to eligible providers.

Response: The statute requires that state plans provide for ''payment for primary care services * * * at a rate not less than 100 percent of the payment rate that applies to such services and physicians under part B of title XVIII * * *'' Since the Medicare payment rate reimburses services individually, we continue to believe that this language precludes aggregated payments not specific to the service and physician. However, this does not preclude states from creating incentive payments or penalties based on performance measures. While we believe the Congress intended the payment levels to rise to Medicare payments, there is no prohibition on states having incentives/penalties external to the rates under traditional fee-for-service or managed care delivery systems.

Comment: One commenter asked about the applicability of the rule to services provided under section 1115 demonstration waivers.

Response: This final rule implements the statutory payment provisions uniformly across the states regardless of the authority under which a state's Medicaid program operates. Specified primary care services delivered by eligible primary care physicians must be reimbursed at the enhanced rate. We intend to continue a dialogue with states with waivers through the implementation process.

A. Payments to Physicians for Primary Care Services

1. Primary Care Services Furnished by Physicians With Specified Specialty and Subspecialty (§ 447.400)

a. Specified Specialties and Subspecialties

Section 1902(a)(13)(C) of the Act specifies that physicians with a specialty designation of family medicine, general internal medicine, and pediatric medicine qualify as primary care providers for purposes of increased payment. We proposed that services provided by subspecialists within the primary care categories designated in the statute would also qualify for higher payment. These subspecialists would be recognized in accordance with the American Board of Medical Specialties (ABMS) designations. For example, a pediatric cardiologist would qualify for payment if he or she rendered one of the specified primary care services by virtue of that physician's subspecialty within the qualifying specialty of pediatric medicine. Additionally, we proposed a method for states to use in identifying practitioners who may receive the increased payment.

Under the proposed rule, states were required to establish a system to require physicians to identify to the Medicaid agency their specialty or subspecialty before an increased payment was made. For program integrity purposes, the state would be required to confirm the self-attestation of the physician before paying claims from that provider at the higher Medicare rate. We proposed that this be done either by verifying that the physician was Board certified in an eligible specialty or subspecialty or through a review of a physician's practice characteristics.

Specifically, for a physician who attested that he or she was an eligible primary care specialist or subspecialist but who was not Board certified (including those who are Board-eligible, but not certified), we required that a review of the physician's billing history be performed by the Medicaid agency. We proposed that at least 60 percent of the codes billed by the physician for all of CY 2012 be for the E&M codes and vaccine administration codes specified in this regulation. For a new physician who enrolled during either CY 2013 or CY 2014 and who attested that he or she was within one of the eligible specialties or subspecialties and who was not Board certified we proposed that, following the end of the CY in which enrollment occurs, the state would review the physician's billing history to confirm that 60 percent of codes billed during the CY of enrollment were for primary care services eligible for payment under sections 1902(a)(13)(C) and 1902(jj) of the Act.

Comment: Most commenters supported the inclusion of subspecialists. However, some commenters requested that CMS permit payment for subspecialists recognized by Boards outside of the ABMS, pointing out that other Boards are just as relevant. In particular, commenters noted that osteopaths, who are recognized as physicians under Medicaid regulations, are licensed by their own specialty Board and are excluded under the provisions of the proposed rule.

Response: We agree and have revised the rule to include physicians recognized by the American Board of Physician Specialties (ABPS) and the American Osteopathic Association (AOA), as well as the American Board of Medical Specialties. These are the major, nationally recognized physician Boards.

Comment: Many commenters disagreed with the inclusion of subspecialists. The commenters stated that the proposed rule would create disincentives for delivery of primary care services in the most appropriate settings, and posed a ''threat'' with regard to states' ability to meet the statutory requirements of section 1902(a)(30) of the Act, which requires that payments under the state plan be consistent with economy, efficiency and quality of care. The commenters stated

that the proposal would add 44 additional specialty designations to the list of physicians eligible to receive higher payments without a ''rational'' correlation to the subspecialists that do, or that might as a result of the temporary payment increase, deliver primary care. Commenters believed that this provision of the proposed rule would actually work against an expansion in true primary care.

One commenter stated that states will not be able to sustain increased payment after 2014 because the proposed rule would result in payments that are so widely distributed across the delivery system as to make the impact of the increase extremely difficult to evaluate. This, in turn, would hamper states' ability to demonstrate cost savings necessary to gain approval from their legislatures for continued higher payment.

One commenter noted that CMS said it was particularly swayed by arguments that pediatric subspecialists provide primary care services in deciding to extend higher payment to all subspecialists. The commenter believes that the absence of a justification for including subspecialists does not lead to the conclusion that all subspecialists should be included. Rather, the decision to expand to other subspecialists should be based on an analysis of whether increasing payment rates is likely to improve access to primary care services for Medicaid beneficiaries. Since states are in the best position to make that assessment, the commenter urged CMS to permit states the flexibility to determine which approach best meets the needs of its beneficiaries.

Several commenters were concerned that including subspecialists will add ''unwarranted'' costs. The commenters encouraged CMS ''to adhere more closely to the intent of the law and only qualify true primary care physicians for this increased payment.'' Several stated that the regulation exceeds the authority granted in the Affordable Care Act, which they believed limits the categories of providers to physicians with specialty designations of family medicine, general internal medicine, or pediatric medicine.

Response: We continue to believe that the statute supports inclusion of subspecialists related to the three specialty categories designated in the statute and disagree that extending payments to subspecialists will dilute the impact of the regulation on Medicaid beneficiary access to primary care or result in ''unwarranted'' costs. The American Academy of Pediatrics cited the importance of pediatric subspecialists, particularly neonatologists, as a source of primary care services. The Web site of the American Academy of Family Physicians notes that primary care services can be delivered outside an office setting and that physicians who are not trained in the primary care specialties of family medicine, general internal medicine or general pediatrics may sometimes provide patient care services that are usually delivered by primary care physicians. This rule only provides for higher payment to subspecialists to the degree that they actually furnish the E&M codes specified in the regulation and, consequently, will not result in costs that are for services that are not properly considered primary care. Therefore, we continue to believe that all subspecialists related to the three specialty categories designated in the statute should be eligible for higher payment to the extent that they provide covered E&M services.

Comment: Other commenters indicated that the proposed rule, while properly recognizing E&M codes provided in emergency departments, unfairly excluded the majority of emergency physicians who are either not Board certified or are certified in emergency medicine. Other commenters urged that obstetricians and gynecologists (OB/GYNs) be included because of the important role they play in providing primary care to women.

Response: The statute provides for higher payment of services furnished by ''a physician with a primary specialty designation of family medicine, general internal medicine or pediatric medicine.'' Therefore, although we recognize the role that other specialty physicians play in providing primary care services, the authority does not exist to extend the payment to other categories of physicians, including OB/GYNs.

Comment: While some commenters strongly supported the proposed rule requirements that Medicaid agencies verify self-attestations with evidence of Board certification or practice history (60 percent of codes billed in a prior period were to be for E&M codes specified in the proposed rule), others cited both requirements as administratively burdensome and as requiring major and costly modifications to state processes and systems. They indicated that states have different enrollment and claims processing capacity and may not be able to identify all provider subspecialties or reimburse a different rate by subspecialty. Commenters suggested that states be permitted to use their existing enrollment processes, usually self-attestation alone, to identify which physicians qualify for payment, or to be permitted to use Medicare's NPI designation, which is also based on self-attestation. One commenter suggested that self-attestation could be verified with a random audit by the Medicaid agency.

Some commenters stated that permitting self-attestation to be verified with evidence of Board certification alone creates an inequity. This is because many traditional primary care providers who are not Board certified and do not reach the 60 percent threshold of E&M codes billed will be excluded from increased payment in favor of subspecialists who provide relatively few primary care services.

One commenter disagreed with our decision to base the 60 percent claims verification threshold on the Medicare primary care incentive program threshold, stating that the Congress could have imposed a similar requirement on Medicaid, but did not. They do not believe it is appropriate to designate any threshold of claims verification. They also suggested permitting non-Board certified physicians to qualify if they completed an approved residency in any of the three designated primary care physician specialties. Other commenters suggested using allowed charges as the threshold to parallel the Medicare primary care payment or services paid, rather than billed, asserting that data on rejected claims is not readily available.

One commenter suggested that states be permitted to define eligible physicians based on enrollment criteria for existing state primary care programs. Another commenter suggested that states be given flexibility to rely on methods that already exist within each state's payment systems, such as requiring eligible providers to bill with a unique modifier.

One commenter also asked that we clarify procedures for the identification of qualifying out-of-state providers, suggesting that the home state's verification be used.

Response: We agree that there is variation among states for provider enrollment procedures and Medicaid Management Information System (MMIS) capabilities. We acknowledge that many states have existing programs designed to increase the availability of primary care services and that those programs may differ from the provisions of the proposed rule. We also acknowledge that permitting self-attestation to be verified with evidence of Board certification alone creates an inequity in that Board certified physicians who provide few primary

care services will be eligible for higher payment while non-Board certified physicians who provide many primary care services but not enough to meet the 60 percent threshold will be excluded. We continue to believe that there must be uniform, auditable standards for the identification of eligible physicians and that Board certification and claims history are appropriate standards. However, we acknowledge the concerns regarding the significant administrative burden of this requirement. Therefore, this rule removes the requirement that the State Medicaid agency verify the self-attestation of all physicians by confirming Board certification or an appropriate claims history. Instead, this rule requires that physicians self-attest that they are either Board certified in family medicine, general internal medicine, or pediatric medicine or a subspecialty within those specialties or that that sixty percent of all Medicaid services they bill, or provide in a managed care environment, are for the specified E&M and vaccine administration codes. This rule also clarifies that states may defer to the state where the physician's practice is located with respect to a determination of a physician's eligibility for higher payment.

For the threshold itself, we often use Medicare program standards in developing policy for the Medicaid program, and we believe that it is appropriate to apply the 60 percent threshold applicable to the Medicare primary care incentive payment to the Medicaid payment as well.

Comment: One commenter suggested that the proposed § 447.400(a) be amended to add a subsection to define what is meant by self-attestation of a specialty or subspecialty designation.

Response: We believe that the meaning of self-attestation is generally understood in this context as both the states and managed care organizations credential providers. Therefore, we do not agree that an amendment to § 447.400(a) is necessary.

Comment: Commenters questioned whether the process for identifying eligible providers was the same across delivery systems and if states with MCOs, PIHPs or PAHPs could rely on the definition of primary care provider established through the managed care contract. Commenters suggested that the broad definition of primary care provider proposed by the proposed rule would reward providers that do not focus their practice on primary care.

Response: We recognize that the definition of a primary care provider under existing managed care contracts may, in some instances, be more or less targeted than that proposed under this rule. The contract definition may also exceed the scope of those primary care physicians that qualify for this payment. However, section 1902(a)(13)(C) of the Act, as amended by the Affordable Care Act, specifies that physicians with a specialty designation of family medicine, general internal medicine, and pediatric medicine qualify as primary care providers for the purposes of the increased payment rate. The proposed rule clarified that qualified providers include subspecialists related to the three designated provider practice types. Therefore, we must require that the same approach apply to identifying eligible providers reimbursed under managed care delivery systems.

Comment: A commenter noted that some physicians have more than one identifier and asked if separate information on both identifications would be necessary if the physician receives differing rates based on the identification number used.

Response: This is an operational issue beyond the scope of this rule.

Comment: A commenter suggested that non-contracted providers that deliver primary care services to managed care enrollees that have a permissible out-of-network encounter should not be eligible for payment at the Medicare rate.

Response: We disagree. Section 1932(f) of the Act, as amended by the Affordable Care Act, requires that managed care contracts pay designated providers for the provision of designated services at the Medicare rate. Further, there are no exceptions made in the statute to the minimum payment requirement for services provided out of network. If a Medicaid beneficiary receives eligible services out-of-network from a provider covered by this rule, the reimbursement rate must also align with the requirements stated herein.

Comment: One commenter stated that not all subspecialists providing services through managed care delivery systems have the expertise to function as a primary care provider.

Response: This rule does not create new requirements for primary care providers. Rather, it assures payment of the Medicare rate for services that the subspecialist bills within the E&M and vaccine administration code range specified in the rule.

Comment: One commenter asked if the intent of the managed care payment is to include subspecialties such as otolaryngology, ophthalmology or urology and also stated that the payment should be limited to subspecialists that directly serve primary care needs.

Response: The intent of the managed care payment is to reimburse at the Medicare rate only those primary care subspecialists and related subspecialists designated in this rule and only for the E&M and vaccine administration code range specified in the rule.

Summary of Final Policy: This final rule provides for higher payment in both the fee for service and managed care settings to physicians practicing within the scope of practice of medicine or osteopathy with a specialty designation of family medicine, general internal medicine and pediatric medicine. It also provides for higher payment for subspecialists related to those specialty categories as recognized by the American Board of Medical Specialties, American Osteopathic Association and the American Board of Physician Specialties. Lists of specialists and subspecialists can be found at the respective Board Web sites which are: *www.abms.org, www.osteopathic.org* and *www.abps.org.* This rule removes the requirement that the state Medicaid agency verify the self-attestation of all physicians by confirming Board certification or an appropriate claims history. However, in the absence of an industry-wide definition of ''primary care physician'' we believe it is necessary to impose a uniform standard to identify such providers. Therefore, this rule requires that physicians self-attest that they are either Board certified in family medicine, general internal medicine, or pediatric medicine or a subspecialty related to those specialties or that 60 sixty percent of all Medicaid services they bill, or provide in a managed care environment, are for the specified E&M and vaccine administration codes.

State Medicaid agencies may pay physicians based on their self-attestation alone or in conjunction with any other provider enrollment requirements that currently exist in the state. However, if a state relies on self-attestation it must annually review a statistically valid sample of physicians who have self-attested that they are eligible primary care physicians to ensure that the physician is either Board certified in an eligible specialty or subspecialty or that 60 percent of claims either billed or paid are for eligible E&M codes. In the case of services provided through a managed care delivery system, states will be given flexibility in the manner in which they perform this verification. We expect states to work with the health plans to determine an appropriate verification methodology.

We recognize that data may not be readily available on rejected claims, making services paid a more appropriate

threshold and either claims billed or claims paid can be used in the sample. This rule also clarifies that a state whose beneficiaries receive services from a physician in a neighboring state may accept the determination of eligibility for higher payment made by the physician's home state in making higher payment under this rule.

b. Services Furnished by a Specified Physician

Section 1902(a)(13)(C) of the Act requires increased payment for ''primary care services furnished in CYs 2013 and 2014 by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine.'' The proposed rule specified that the increased payment applies only for services under the ''physicians' services'' benefit at section 1905(a)(5)(A) of the Act and in regulations at § 440.50. Increased payment would not be available for services provided by a physician delivering services under any other benefit under section 1905(a) of the Act such as, but not limited to, the Federally Qualified Health Center (FQHC) or Rural Health Clinics (RHC) benefits because, in those instances, payment is made on a facility basis and is not specific to the physician's services. Section 1902(a)(13)(C) of the Act requires payment ''for primary care services * * * furnished by a physician with a primary specialty designation of family medicine, general internal medicine, or pediatric medicine at a rate no less than 100 percent of the payment rate that applies to such services and physicians under Part B of Title XVIII.'' We believe that the statute limits payment to physicians who, if Medicare providers, would be reimbursed using the MPFS. The MPFS is not used to reimburse physicians in settings such as FQHCs or RHCs. Therefore, we believe physicians delivering primary care services at FQHCs and RHCs are not eligible for increased payments under section 1902(a)(13) of the Act. Furthermore, we noted that the Medicaid statute already provides a payment methodology for FQHCs and RHCs that is designed to reimburse those providers at the appropriate rate.

In specifying that payment is made for qualified primary care services under the physicians' services benefit at § 440.50, the increased payment for primary care services would be required for services furnished ''by or under the personal supervision'' of a physician who is one of the primary care specialty or subspecialty types designated in the regulation. In Medicaid, many primary care physician services are actually furnished under the personal supervision of a physician by nonphysician practitioners, such as nurse practitioners and physician assistants. Such services are usually billed under the supervising physician's program enrollment number and are treated in both Medicare and Medicaid as services of the supervising physician. Consistent with that treatment, we proposed that primary care services be paid at the higher rates if properly billed under the provider number of a physician who is enrolled as one of the specified primary care specialists or subspecialists, regardless of whether furnished by the physician directly, or under the physician's personal supervision. This would align with Medicaid's longstanding practice in providing physician services, as well as Medicare's Part B FFS payment methodology for professional services. Additionally, this policy would recognize the important role that non physician practitioners working under the supervision of physicians have in the delivery of primary care services.

Comment: Most commenters supported the proposal to include practitioners working under the supervision of a physician, however they disagreed with the exclusion of those same practitioners when billing under their own Medicaid number. Numerous commenters urged CMS to include independently practicing certified nurse midwives, nurse practitioners, certified registered nurse anesthetists, clinical nurse specialists and other advanced practice nurses, as well as pharmacists, who often administer vaccines, as eligible practitioners on the grounds that they provide identical services to those provided by primary care physicians.

Some commenters urged CMS to extend increased payment to FQHCs and RHCs, pointing out their important role in the provision of primary care services in underserved areas. Several urged that services provided by other types of clinics and Health Departments be included and asked whether services provided by public health providers in those settings were eligible if billed by an eligible physician using his own National Provider Identifier (NPI). One commenter asked how primary care services reimbursed as part of a nursing facility per diem rate and billed under the nursing facility's Medicaid number would be reimbursed.

Response: The statute provides for higher payments for ''primary care services furnished * * * by physicians with a primary specialty designation of family medicine, general internal medicine or pediatric medicine * * *.'' Therefore, consistent with the statute, services provided by pharmacists or independently practicing nonphysician practitioners not under the supervision of an eligible physician are excluded. In addition, we continue to believe that eligible services are those reimbursed on a physician fee schedule. Services provided in FQHCs, RHCs and clinics and Health Departments, to the extent that they are reimbursed on an encounter or visit rate, are not eligible for higher payment, nor are services provided in nursing facilities that are reimbursed as part of the per diem rate.

Comment: A commenter noted that managed care contracts may require that FQHC and RHC services be paid at a level not less than that received by other providers under contract for the same scope of services, and that any increase to the FQHC or RHC service rate to account for enhanced payments to primary care providers under this rule should be eligible for 100 percent FFP. One commenter recommended that the final rule clarify that, if a state requires managed care organizations to increase payments to primary care providers in FQHCs, the state should make a corresponding adjustment in the plan's capitation rate in a transparent and timely fashion. An additional comment was made that FQHCs and RHCs should be eligible for higher payment under this rule, thereby reducing the managed care ''wrap around'' required by the prospective payment system (PPS).

Response: The increased payment for primary care services eligible for 100 percent federal matching funds is implemented as a physician payment under section 1905(a)(5) of the Act. This means that services delivered by physicians under another Medicaid benefit at section 1905(a) of the Act, such as FQHC services, are not subject to the higher payment requirement or eligible for enhanced federal matching funds. Managed care contractual payment arrangements for FQHCs and RHCs are unaffected by and beyond the scope of this rule.

Comment: One state asserted that the proposed rule unfairly treats comparable providers unequally based solely on their practice setting or enrollment status. That same commenter noted that precluding independently enrolled practitioners from receiving the enhanced reimbursement undermines the purpose of section 1902(kk) of the Act to improve data collection and program integrity by requiring ''all rendering or referring physicians or other professionals to be enrolled under the state plan or under a waiver as a participating provider.'' In order to

comply, the state has been requiring independent enrollment of nonphysician practitioners, where possible under state law.

Many commenters expressed concern with the requirement that services be billed under the physician's billing number. They indicated that many states have billing and oversight policies and procedures designed to elicit desirable policy goals or analyses, but which will also make it administratively difficult for nonphysician providers to receive the higher Medicare rate. They also stated that some states require certain nonphysician providers to obtain and bill under their own provider number, even when being supervised by a physician, and that the definition of a physician at § 440.50 does not specify that services must be billed under the physician's number. Another commenter indicated that, in many situations, the billing entity is often a legal entity, not a practitioner. In the case of a group practice, the claim would most likely be billed under the practice number and not the physician's number.

Another commenter stressed that states have varying definitions of ''physician supervision'' and suggested that CMS defer to state rules on this point. Commenters suggested that CMS permit various kinds of arrangements or agreements between physicians and independently billing nonphysician practitioners so that primary care services such as those provided by nurse practitioners and physician assistants at commercial emergency facilities could receive increased reimbursement.

Response: We acknowledge the variation in billing practices and requirements among states. Therefore, this rule removes the requirement that services be billed under the physician's billing number. We also acknowledge that states have varying requirements with regard to services provided under the supervision of a physician. However, by specifying in the statute that services be furnished by physicians, we believe that the Congress clearly intended that there be direct physician involvement in the services provided. Therefore, while deferring to state requirements, this rule assumes a relationship in which the physician has professional oversight or responsibility for the services provided by the practitioners under his or her supervision. This precludes the types of arrangements in which independent nurse managed clinics or other practitioners enter into arms-length arrangements with physicians for purposes of establishing a relationship that leads to higher payment of the practitioner services.

Comment: CMS was asked to clarify in the final rule that services provided by all advanced practice clinicians, including nurse midwives, providing services under the supervision of a physician will be eligible for higher payment.

Response: Eligible services provided by all advanced practice clinicians providing services within their state scope of practice under the supervision of an eligible physician will be eligible for higher payment. This includes those not specifically mentioned in the proposed rule, such as nurse midwives.

Comment: CMS was asked to clarify whether services provided by advanced practice clinicians under the supervision of a physician will be billed at 100 percent of the Medicare physician rate, or the practitioner rate, since many states reimburse services provided by supervised nonphysician practitioners at a percentage of the physician fee schedule rate.

Response: The statute provides for 100 percent FFP on the difference between the Medicaid rates paid as of July 1, 2009 and the applicable Medicare rates in CYs 2013 and 2014. Therefore, if the state plan in 2009 reimbursed services provided by nonphysician practitioners under the supervision of a physician at a percentage of the physician fee schedule rate, that same practice must be continued in CYs 2013 and 2014. If a state reimbursed all physician services at a single rate in 2009, it should continue to reimburse in that manner in CYs 2013 and 2014.

Summary of Final Policy: This rule provides for higher payment for services provided by eligible physicians reimbursed pursuant to a physician fee schedule. Higher payment is not available for physicians who are reimbursed through a FQHC, RHC or health department/clinic encounter or visit rate or as part of a nursing facility per diem rate.

This rule provides for higher payment for services provided under the personal supervision of eligible physicians by all advanced practice clinicians. In recognition of state efforts to enroll advanced practice clinicians in the Medicaid program and to require them to use their own Medicaid number, this rule removes the requirement that services be billed under the physician's billing number. However, it requires that the physician have professional oversight or responsibility for the services provided by the practitioners under his or her supervision. This rule also provides that the state reimburse for services provided by advanced practice clinicians in 2013 and 2014 in the manner in which it reimbursed for those services as of July 1, 2009. If the state reimbursed for services actually rendered by supervised advanced practice clinicians at a percentage of the physician fee schedule rate, it should continue to do so in 2013 and 2014.

c. Eligible Primary Care Services (§ 447.400(b))

We proposed that Healthcare Common Procedure Coding System (HCPCS) (E&M) codes 99201 through 99499 and vaccine administration codes 90460, 90461, 90471, 90472, 90473 and 90474 or their successors will be eligible for higher payment and FFP. These codes are specified by the statute and include those primary care E&M codes not reimbursed by Medicare.

Specifically, we proposed to include as primary care services the following E&M codes that are not reimbursed by Medicare:

- New Patient/Initial Comprehensive Preventive Medicine—codes 99381 through 99387;
- Established Patient/Periodic Comprehensive Preventive Medicine—codes 99391 through 99397;
- Counseling Risk Factor Reduction and Behavior Change Intervention—codes 99401 through 99404, 99408, 99409, 99411, 99412, 99420 and 99429;
- E&M/Non Face-to-Face physician Service—codes 99441 through 99444.

Comment: Most commenters were supportive of the range of E&M codes identified for higher payment and of the inclusion of codes not reimbursed by Medicare. Two commenters suggested expanding the list of covered codes to include HCPCS ''G'' codes and two suggested permitting states to designate additional codes at their discretion. Two commenters suggested extending higher payment to all codes billed by a primary care pediatrician, pediatric subspecialist, or surgical specialist.

Some commenters stated that some of the codes identified by CMS are not viewed by the industry as constituting primary care. These include the following: Hospital Observation Care and Inpatient Consultation codes for inpatient services provided by the non-admitting physician (99217–99220, 99224–99226, 99251–99255, 99231–99233); Consultations (99241–99245, 99251–99255); Emergency Department Services (99281–99288); and Critical Care Services (99291–99292). Commenters stated that some are rendered in settings not known for primary care delivery such as intensive care units and emergency departments. They believe that inclusion of those

codes will encourage inappropriate utilization and result in increased health care costs overall. One commenter suggested limiting increased reimbursement to office-based services.

However, other commenters commended the inclusion of these same codes. They stated that these settings often are the point of first contact for primary care due to new injuries or lack of timely access to primary care services in the community.

Response: The statute identifies specific services according to HCPCS codes that will receive the increased payment. Accordingly, we are finalizing the list of codes specified in the proposed rule.

Comment: One state indicated that it is still using local codes rather than the E&M codes identified in this rule and asked for confirmation that services billed using those codes will be eligible for higher payment. It was suggested that states be permitted to provide CMS with a crosswalk of those local codes to the E&M codes they represent.

Response: We confirm that higher payment may be made for services billed using local codes. States will need to submit a crosswalk of those codes to the eligible E&M codes as part of the required implementing state plan amendment. However, this flexibility is limited to substitutes for covered E&M codes and does not extend to vaccine administration codes.

Comment: A number of states indicated that they do not reimburse for all of the codes in the specified E&M range and asked that CMS clarify that they are not required to do so for purposes of this rule. Other commenters suggested that states be required to pay for all codes specified in the regulation. Several commenters stated that all of the E&M codes specified in section 1902(jj) of the Act are not necessarily included in managed care contracts and questioned whether reimbursement of all E&M codes was a requirement under this rule.

One commenter stated that the definition of primary care services by CMS is broader than what is currently used by some MCOs and expressed concern that the rate adjustment will inadvertently fail to adjust for the scope in services.

Response: This rule clarifies that states need not pay for codes within the specified range that are not otherwise reimbursable under their Medicaid program and that managed care contracts need not be amended to specifically require coverage of previously non-covered codes. To that end, we do not anticipate an impact on the scope of primary care services eligible for enhanced federal match under managed care delivery systems that would affect rate setting.

Comment: A commenter asked whether CMS intends for providers to be reimbursed at a higher rate for services provided through managed care irrespective of actual billed charges or if MCOs are required to utilize the Medicaid fee schedule in payment of providers and services designated in the rule.

Response: The statute requires providers to be reimbursed at the Medicare rate for primary care services when furnished by the qualified physicians and does not make exceptions for a situation where a provider may be charging less than the required amount. Therefore, no such exception is carved out for managed care payment. If a MCO reimburses a physician a fee schedule amount then the rate must be at least as much as the Medicare rate used for FFS payment. We intend to continue to work with the states regarding the identification of the 2009 baseline rate for eligible services and the rate differential eligible for 100 percent federal matching.

Comment: A number of states asked if the 2009 base rate for a code not reimbursed by the state in 2009, but currently reimbursed, would be $0. This includes three codes (subsequent observation care) in the E&M code range which have been added since 2009.

Response: For new codes added to the E&M code range since 2009, we confirm that the 2009 rate would be $0 and 100 percent FFP will be available for the entire payment. This is also true for other codes within the range not reimbursed by the state in 2009 but subsequently added to the fee schedule as covered codes. However, we do not expect states to make modifications to their code sets in 2013 or 2014 solely for the purpose of maximizing FFP. We will require that the state plan amendment submitted by the state providing for reimbursement under this rule list not only the codes for which higher payment will be available in 2013 and 2014 but that it specifically identify the codes which have been added since 2009 as well.

Comment: One commenter asked if states that reimburse the consultation codes reimbursed by Medicare in 2009 but not covered in 2013 and 2014 still will receive the enhanced federal match for these codes.

Response: States will receive 100 percent FFP for the payment differential for the difference in payment made for codes in effect in 2013 and 2014 and the base year. In general, a state will receive enhanced match for any code that it reimbursed in the baseline period and in 2013 or 2014, even if the code is not reimbursed by Medicare. As stated earlier, we will develop Medicare-like rates in 2013 and 2014 for CPT codes not reimbursed by Medicare but recognized for reimbursement in the final rule.

Comment: A comment was made regarding the baseline for payment to out-of-state providers, in particular, that states and managed care organizations should be allowed to use statewide or ''rest of state'' rates to pay those providers for the provision of eligible primary care services.

Response: In setting the requirement for managed care payment the statute does not make an exception to permit out of state providers to be reimbursed at less than the minimum amount. Therefore, managed care contracts must assure such providers receive the Medicare FFS rate.

Comment: We received a number of comments about how states should be able to set the minimum payment in a managed care environment. Some commenters believed that payment should be consistent with the Medicare rate in the aggregate for the capitated group, while another urged us to permit states to implement a rate based on a multiple of the Medicare rate derived from using the state's average Medicaid fee schedule versus the Medicare schedule for the state. Another commenter asked whether we expect MCOs, PIHPs or PAHPs to unbundle payments to be able to track individual services.

Response: We do not specify in this rule how a state must meet the statutory requirement for payment at the Medicare rate under managed care delivery systems. Rather, the methodologies required under new § 438.804(a)(1) will need to identify the 2009 baseline rate and rate differential based on reasonable and documented data and assumptions available to the state. As stated throughout this rule, we will continue a dialogue with the states on these issues during the implementation process.

Summary of Final Policy: This rule requires state Medicaid agencies to reimburse at the applicable 2013 or 2014 Medicare rate for E&M codes 99201 through 99499 to the extent that those codes are covered by the approved Medicaid state plan or included in a managed care contract. The 2009 base rate for codes not covered in 2009 but subsequently added will be $0. Services billed using local codes will be eligible for higher payment if the state Medicaid agency submits, as part of the required state plan amendment, a crosswalk of

those codes to the specified E&M codes. States will also be required to identify all codes in use and eligible for higher payment as well as those codes added since 2009 for which the base rate will be $0. States will be given flexibility in developing a methodology to identify the base payment under managed care delivery systems.

2. Amount of Required Minimum Payments (§ 447.405)

Section 1902(a)(13)(C) of the Act requires payment not less than the amount that applies under the MPFS in CYs 2013 and 2014 or, if greater, the payment rate that would be applicable if the 2009 CF were used to calculate the MPFS.

a. Use of Fee Schedule Amount Applicable to the Geographic Location of Service

We proposed that states use the MPFS rate applicable to the site of service and geographic location of the service at issue. The Medicare Part B rates vary by geographic location and site of service. For example, rates are higher for services provided in an office setting as opposed to the outpatient hospital setting. We proposed that states would be required to use the MPFS payment amounts applicable to the site of service and geographic location because we believed these are integral to the MPFS payment system. Individual fee schedule amounts for the MPFS are the product of the geographic adjustment, relative value units (RVUs), and conversion factor (CF) that converts adjusted RVUs into dollar amounts. Site of service is reflected as an adjustment to the RVUs used to set the rate.

We proposed that states be required to use the MPFS as published by CMS. Medicare primary care incentive payments made under section 1833 of the Act, as amended by section 5501 of the Affordable Care Act, would not be included. Section 5501(a) of the Affordable Care Act amended the statute to provide for incentive payments for a subset of the codes covered by this regulation. The payments are not made as increases in fee schedule amounts and are not reflected in the MPFS.

Overarching and Fee for Service Comments

Comment: Most commenters strongly urged that states not be required to recognize Medicare place of service and geographic adjusters since Medicaid payment systems do not make these same adjustments. One commenter said that the use of geographic adjustments would perpetuate geographic inequities in payment that have resulted from the current method of specifying payment locales and for calculating geographic practice cost indices (GPCIs) in the Medicare program. As alternatives, commenters suggested that states be permitted or required to: use only one geographic or place of service schedule or to use weighted average rates; pay at the highest geographic rate in the state and; use a bench-mark statewide Medicare fee schedule or a national fee schedule set by CMS or otherwise determined by the state.

Response: We have considered the comments and the suggestions in light of the clear intent of the statute to enhance Medicaid beneficiary access to care through higher physician payments. In the interests of administrative simplification, the final rule does not require that states make site of service adjustments. Many states have instituted measures designed to reduce inappropriate use by beneficiaries of emergency departments for non-emergent services. We believe that the higher payment for primary care services provided for in this rule will encourage physician participation and will improve beneficiary access to services provided in the community setting. Therefore, this rule provides that states may reimburse all codes at the Medicare office rate as an alternative to making site of service adjustments.

For geographic adjustments, the final rule additionally permits states to either make all appropriate geographic adjustments made by Medicare, or to develop rates based on the mean over all counties for each of the E&M codes specified in this rule. In identifying this alternative, we balanced the desire on the part of states for administrative simplicity against the need to ensure that providers are reimbursed in accordance with the requirements of the statute. There are seventeen states that have multiple Medicare localities and of those seventeen, ten have only two localities. We reviewed various formulas utilizing the mean and median of rates. Our goal was to most closely match the rates that would be generated under the actual Medicare locality fee schedules. By using a single fee schedule based on the mean over all counties, the majority of states will see a reduction of less than two percent. States that will experience a larger impact can elect to use the actual Medicare locality adjusted fee schedule. The required state plan amendment for these changes must describe the methodology the state has chosen.

Comment: A number of commenters asked that CMS clarify that the increased payment to physicians may be made as a lump sum payment rather than as an add-on to the rate, pointing out that Medicare's primary care payment is paid as a lump sum on a quarterly basis.

Response: The higher payments may be made as either add-ons to existing rates or as lump sum payments. To ensure that physicians receive the benefit of higher payments in a timely manner, lump sum payments should be made no less frequently than quarterly.

Comment: One commenter stated that CMS needs to clarify the specific procedures and guidelines regarding how states and health plans should reprocess claims for supplemental payment to providers if the state chooses to provide increased payments retroactively.

Response: Because MMIS capabilities and payment processes vary by state and between health plans, we are permitting flexibility in the specifics of how these tasks are accomplished.

Comment: A number of commenters suggested that the MPFS be defined as including the primary care incentive payment authorized for the Medicare program by the statute (as amended by section 5501of the Affordable Care Act) to make up for the fact that pediatricians, in particular, do not receive payments under the Medicare primary care incentive program. These commenters disagreed with CMS's interpretation that the statute precludes the inclusion of these payments.

Response: As noted in the proposed rule, payments under section 5501 of the Affordable Care Act are not made as increases in fee schedule amounts and are not reflected in the MPFS. Therefore, this final rule requires that those payments be excluded when calculating the appropriated 2013 and 2014 Medicare fee schedule rates.

Comment: Many commenters asked that states be given flexibility to implement the program in phases, if necessary, and to make changes to rates retrospectively. They pointed out that the Medicare RVUs for the subsequent calendar year are not published until November, which does not give states enough time to incorporate the Medicare payment rates into fee schedules and contracts by January 1, 2013.

Response: We acknowledge that states will not have information on the final 2013 Medicare RVUs and on final regulatory requirements for the primary care payments until late in 2012. However, we do not have the authority to permit states to implement higher payments ''in phases''. The statute requires that higher payment be made for services furnished on or after January 1, 2013. However, under

regulations at § 430.20, states have until March 31, 2013 to submit a State Plan Amendment (SPA) that is effective on January 1, 2013. Additionally, it is common practice for states changing reimbursement rates to make retroactive adjustments to claims after a SPA has been approved. This procedure provides additional time for states to make system changes to reflect this final rule and the November 2012 publication of the Medicare 2013 RVUs.

Comment: One commenter stated that the final rule needs to clarify that the billing entity for the primary care provider must receive the higher payment. This comment was made in the context of salaried physicians working for a county provider.

Response: If services delivered by the county employed physician are actually reimbursed under the Medicaid state plan as physician services rather than clinic services, then the physician must receive the increased payment. If, as a condition of employment, the physician agrees to accept a fixed salary amount then we expect an appropriate adjustment to the salary to reflect the increase in payment. We caution governmental providers that services of a physician may be delivered under a variety of Medicaid benefit categories and that services offered by a county run clinic, in general, do not qualify for the enhanced federal match.

Comments Specific to Managed Care

Comment: CMS received many comments on the minimum payment requirement, ranging from concern that primary care providers would not actually receive higher payment to concern that monitoring payment distribution would be unduly burdensome for MCOs, PIHPs and PAHPs. One commenter suggested that CMS consider a MCO, PIHP or PAHP's obligation to have been met if the health plan's contracts with provider groups allowed for the increased payment. Another commenter suggested that states should be required to enact contract amendments that allow full pass through of the rate increase to primary care providers and describe how the MCO, PIHP or PAHP will verify, in the aggregate, the delivery of primary care services at the average enhanced rate.

Response: We recognize that states' managed care contracts with MCOs, PIHPs, and PAHPs vary and that, as a consequence, provider agreements vary as well. We continue to require that qualified providers receive the higher payment but in deference to these varying arrangements, we do not specify how this requirement must be met. We emphasize that in order for states to gain CMS regional office approval of their managed care contracts they must demonstrate that the higher payment will actually be passed on for services furnished by the primary care physicians designated in statute.

Comment: Some commenters urged CMS to provide flexibility to the states through their contracts with MCOs, PIHPs and PAHPs, to identify an appropriate and reasonable approach to passing through the increased payment when capitated amounts are inclusive of primary and specialty care services. Otherwise, tailoring each physician group increase will be administratively complex, costly, and contrary to the intent of the rule. Another commenter suggested that no administrative/documentation of payment should be required for the following delivery arrangements: (1) Health plan with exclusive contract with a single medical group in a specific geographic area to provide or arrange for professional medical services for the enrollees of the plan; (2) delivery system where Medicaid enrollees are not distinguished from others in terms of access to the same providers and services; and (3) physicians are paid salaries and receive a capitation rate without regard to payment source.

Response: We are sensitive to the issue of administrative burden and are providing flexibility to states with respect to the identification of the required payment in a managed care environment. As specified in § 438.804, the states shall receive approval of two methodologies, contract amendments, and rate certifications to implement this rule, and CMS will focus on the reasonableness and accuracy of the methods proposed by the state.

Comment: One commenter stated that the rule needs to clearly specify that a plan must increase payment to physicians in a managed care environment to meet the minimum payment standard even if a state is not eligible for 100 percent FFP for some portion of the increase (as in the case where a state has reduced payment rates below 2009 levels).

Response: We agree that this payment increase must take place regardless of whether some portion of the increase is not funded with 100 percent FFP.

Comment: A commenter states that the proposed rule fails to ensure that CMS or primary care physicians can determine whether or not the minimum payment requirement has been met. We were urged to require state level transparency in the implementation of the primary care payment increase.

Response: We understand that managed care payment is not necessarily transparent with respect to individual payment for certain services and require MCOs to supply encounter data to states. We expect that encounter data will be sufficient for the states to undertake verification activities. Additionally, MCOs, PIHPs and PAHPs are required by regulation and contract to ensure that eligible primary care providers receive the appropriate rate increase for primary care services rendered.

Comment: A commenter suggested that CMS needs to consider holding harmless health plans if the practice with which the primary care provider is affiliated fails to pass along the increased reimbursement to the affected providers.

Response: MCOs, PIHPs and PAHPs are required by regulation and contract to ensure that eligible primary care providers receive the appropriate rate increase for primary care services rendered. The structure of the health plan's provider network does not mitigate this responsibility.

Comment: One commenter indicated that, to the extent low income health pools (LIHPs) are included in the rule, a specific methodology would be required for PIHPs and MCOs to identify payment amounts. The data source for paid claims data would be from each individual LIHP because the LIHPs are not paid by a particular state's fiscal intermediary.

Response: We will not respond to state-specific comments in this rule, but will continue to work with states to address specific issues that may arise during the implementation process.

Comment: A commenter stated that methodologies used to develop capitation rates to assure the minimum payment need not be grounded in E&M codes, but could be more broadly defined by primary care services as currently defined by the state for managed care. The approach outlined in the proposed rule is problematic for these reasons: most states do not use E&M codes as basis to develop and adjust cap rates; and, due to variations in MCO, PIHP and PAHP payment methods, such as partial capitation, and the relative completeness of data submitted by providers, states do not consistently receive data necessary to affirm that specific E&M services have been delivered at the Medicare FFS rate. The commenter suggested that an alternative approach would be to allow states to define a methodology to estimate: (1) Aggregate volume and baseline payment rate of primary care services expected to be delivered to all

managed care beneficiaries by PCPs; and (2) the differential aggregate payment associated with increasing payment up to average Medicare levels. This methodology, asserts the commenter, would allow for existing assumptions and methodologies states use to develop their capitation rates. States would pass through associated capitation adjustment on a per month basis to their MCOs, PIHPs and PAHPs and use the associated financial transaction information to provide the necessary CMS 64 documentation for federal match.

Another commenter suggested the additional Medicare fee schedule payments be beyond the scope of the risk portion of the MCO, PIHP or PAHP contract. This would allow the amount claimed by the state at 100 percent FFP to be based on calculations made from retrospective review of encounter data.

Response: We will consider these suggestions during our review of states' rate setting documentation and MCO, PIHP and PAHP contracts. As stated throughout this rule, we are not prescribing a particular approach to delivering the enhanced payment to eligible primary care providers but the method must deliver an accurate service payment to eligible providers. However, where MCOs, PIHPs or PAHPs pay their contracted primary care providers on a fee-for-service basis, it is reasonable to expect that they will use the same approach to delivering the enhanced payment (that is, modifying their claims systems to reflect the 2013 and 2014 Medicare rates for eligible E&M codes for eligible providers) as the state will use to pay its fee-for-service providers.

Comment: A commenter stated that MCOs, PIHPs and PAHPs should not be required to make enhanced payments on a retroactive basis and observed that it is administratively complex to analyze service level claims to verify increased payment. Another commenter asked if there would be retroactive reconciliation when additional funding in the capitation rates differs from the actual cost of providing services.

Response: We agree that meeting the minimum payment standard set in statute can be administratively burdensome but emphasize that states must assure that MCOs, PIHPs and PAHPs are reimbursing services provided through managed care at the Medicare rate for the specified primary care services. This will be accomplished through review and approval by the CMS regional offices of states' managed care contracts. We believe the second commenter is asking about the effect on reconciliation when the actual cost of primary care services differs from the projected cost as expressed through the managed care rate. This question will be addressed on a case by case basis through our review of the managed care contracts and states' methods for identifying the rate differential.

Comment: A commenter stated that CMS should clarify that a mandatory payment rate does not equate to a mandatory payment and that health plans should retain the ability to deny claims for reasons unrelated to payment.

Response: We agree that a provider should be reimbursed the mandatory payment rate only when he or she has delivered services in accordance with the managed care contract and Medicaid requirements.

Comment: Some commenters believe that the proposed rule conflicts with § 438.6(c)(3)(i) which requires that actuarially sound rates be based on utilization and cost data derived from the Medicaid population because the 2009 cost data may not reflect the amount paid to the provider since MCO contracts are risk arrangements.

Response: The rule is not in conflict with the regulation at § 438.6(c)(3)(i) because the state has flexibility within § 438.6(c)(3) to use various sources of data to establish base costs and utilization trends including FFS data, MCO financial data or a combination of both.

Summary of Final Policy: This final rule removes the proposed requirement that states make site of service and geographic adjustments in paying at the applicable 2013 and 2014 Medicare rates. In the interests of administrative simplification, states need not make site of service adjustments but may reimburse all codes at the Medicare office rate, as opposed to the facility rate. With respect to geographic adjustments, states must either make all appropriate geographic adjustments made by Medicare, or may develop a rate based on the mean over all counties for each of the E&M codes specified in this rule. The required state plan amendment for these changes must describe the methodology the state has chosen. These requirements apply to fee for service and managed care delivery systems. Payments may be made as adjustments to rates or, if on a lump sum basis, no less frequently than quarterly. The 2013 and 2014 Medicare ''rate'' is defined as excluding payments made under section 5501 of the Affordable Care Act. Higher payment must be made for services provided on or after January 1, 2013, but existing state plan amendment procedures provide states with some flexibility in the timing of the payments. Flexibility in regard to timing of payment is extended to managed care delivery systems.

b. Payment for Services Unique to Medicaid

For services reimbursed by Medicaid but not Medicare, we proposed that payment would be made under a fee schedule developed by CMS and issued prior to the beginning of CYs 2013 and 2014. We proposed that rates for non-Medicare reimbursed services would be established using the Medicare CF in effect in CYs 2013 and 2014 (or the CY 2009 CF, if higher) and the RVUs recommended by the American Medical Association's (AMA) Specialty Society Relative Value Update Committee (RUC) and published by CMS for CYs 2013 and 2014. We solicited comments from states and others on the most appropriate way to set payment rates for services not reimbursed by Medicare.

Comment: Most commenters strongly supported CMS's proposed methodology for developing rates for codes not reimbursed by Medicare. One commenter suggested establishing rates for codes not reimbursed by Medicare using the same standards applied in Deficit Reduction Act of 2005 benchmark state plans (for example, Federal Employee Health Benefit Payment rates, State Employee Health Benefit Coverage).

Response: For purposes of uniformity and to lessen the administrative burden on states, this final rule specifies that we will develop the rates for E&M codes not reimbursed by Medicare.

Comment: A commenter requested that CMS make the fee schedule available to the states at a minimum of five months prior to January 1, 2013.

Response: We will develop this fee schedule and will make it publicly available. We are committed to making this information available as quickly as possible prior to January 1 of CYs 2013 and 2014. We understand that states need this and all other information timely to be able to administer payments appropriately.

Comment: One commenter urged that states be given the choice to use any Medicare conversion factor that has been in effect for at least three months.

Response: The statute requires that states use the 2013 or 2014 Medicare rates or, if greater, the rate that would be applicable if the conversion factor for the year involved were the conversion factor for 2009. There is no flexibility with respect to this requirement.

Summary of Final Policy: We will develop and publish rates for eligible E&M codes not reimbursed by Medicare. In determining the 2013 and 2014 rates, we will use the 2009 conversion factor,

if that factor in conjunction with the 2013 and 2014 RVUs results in rates that are higher than if the 2013 and 2014 conversion factors were used. The rates for Medicaid primary care services not reimbursed by Medicare must be incorporated into managed care contracts for those services covered by the contract.

c. Updates to Medicare Part B Fee Schedule

We recognized the potential for multiple updates to the MPFS in CYs 2013 and 2014. Those rates are published by CMS on or before November 1st of the preceding calendar year, but are subject to periodic adjustments or updates throughout the calendar year. In addition, the Medicare Part B rates vary by geographic location and site of service.

We proposed that states have the option of complying with the requirements of section 1902(a)(13)(C) of the Act by either adopting annual rates or by using a methodology to update rates to reflect changes made by Medicare during the year. That is, states could adopt the MPFS in effect at the beginning of CYs 2013 and 2014 (or, if the CY 2009 CF is higher, the CY 2013 or CY 2014 RVUs multiplied by the CY 2009 MPFS CF), and apply those rates throughout the applicable calendar year without adjustments or updates. Using this methodology, mid-year updates made to the MPFS during the respective calendar year would not be reflected in Medicaid payments. Alternatively, a state could elect to adjust Medicaid payments to reflect mid-year updates made to the MPFS, but the state's methodology would have to specify the timing for such adjustments.

Comment: Most commenters agreed that states should be given this flexibility. One commenter recommended that states be prohibited from changing rates throughout the year because this would cause confusion and undue burden to providers. Another commenter suggested that states should be required to use the fee schedule published in November of the preceding calendar year. One commenter suggested that states be required to update rates every 6 months, while another suggested that states be required to use any rate that had been in effect for at least 3 months. A number of commenters urged that states be required to make all adjustments as the Medicare fee schedule changes, pointing out that changes in the SGR after November could result in States using a lower fee schedule, thereby avoiding higher physician payments.

Response: We are sensitive both to concerns that requiring that states make multiple changes would be an administrative burden and to concerns that changes in the SGR could result in lower payments. We believe that the statutory requirement to use the 2009 Medicare conversion factor if it would result in higher Medicare rates in 2013 and 2014 was intended to offset the potential negative impact of changes in the SGR. Therefore, this final rule permits states flexibility in determining whether to, and how often to, update rates to conform to changes in the MPFS.

Summary of Final Policy: This final rule permits states flexibility in determining whether to, and how often to, update rates to conform to changes in the MPFS. This applies to fee for service and managed care payment.

3. State Plan Requirements (§ 447.410)

We proposed to require that states submit a SPA to reflect the fee schedule rate increases for eligible primary care physicians under section 1902(a)(13)(A) of the Act. The purpose of this requirement was to assure that when states make the increased reimbursement to physicians, they have state plan authority to do so and they have notified physicians of the change in reimbursement as required by federal regulations.

Comment: Commenters agreed that states should be required to amend their state plans. Many commenters asked that CMS develop a SPA template or, if not, specify the contents of the required SPA (for example, assurances required, specificity regarding use of the MPFS, covered codes).

Response: We will provide states with a SPA template. The template will require that states indicate: (1) Whether they will make site of service adjustments or reimburse all codes at the Medicare rate applicable to the office setting; (2) whether they will make all Medicare locality adjustments or develop a statewide rate per code that reflects the mean value over all counties of the Medicare rate; (3) identify the manner in which the state will make higher payment (that is, as a fee schedule or aggregate supplemental payment; and (4) describe the codes which will be paid by the state at the higher rates and the codes that have been added to the fee schedule since 2009. If states do not use HIPAA compliant codes, the SPA must also provide a crosswalk to the covered E&M codes.

Comment: Many commenters asked that CMS clarify that state plan rules at § 447.256(c) apply, meaning that the SPA may be effective on the first day of the calendar quarter in which it is submitted, giving states until March 31, 2013 to submit a SPA.

Response: Yes, those requirements apply.

Comment: A number of commenters asked that CMS permit states to submit SPAs that will automatically sunset higher payments made pursuant to this rule on December 31, 2014.

Response: We will permit sunset dates. The state and CMS must ensure that, in cases where a sunset date is employed, the rates that the state will revert to after December 31, 2014 are clearly described in the plan and that public notice for the SPA makes it clear that higher payments will end as of that date.

Comment: One commenter asked if states will be permitted to apply existing payment limitations, conditions and policies to the selected procedure codes.

Response: All limitations, conditions and policies that applied to the code prior to January 1, 2013 can be applied to the code after that date.

Comment: One commenter pointed out that CMS often takes 90 days or more to review and approve SPAs and asked whether the state should wait to implement the rate increase until the SPA is approved.

Response: The statute requires that states make higher payments for services provided on or after January 1, 2013. Our policy dictates that FFP is not available for services provided pursuant to an unapproved SPA. Therefore, as is the case with all rate changes, states can either make the higher payments to physicians and wait to submit claims for FFP until the SPA is approved, or can pay physicians at the 2012 Medicaid state plan rates and make supplemental payments once the SPA is approved.

Comment: One commenter believes that public access to the SPA is important to ensuring provide participation and suggested amending the proposed state plan requirement at § 447.410 to indicate that the state must make this information accessible to the public through a Web site or other reasonable means.

Response: Public notice of changes in state plan methodologies in Medicaid is already required at § 447.205. In addition, copies of approved state plan amendments are available through state Medicaid agencies.

Comment: Several commenters recommended that we require states to notify health plans and providers within a specified timeframe after approval of the SPA. One commenter stated that clarification is needed regarding

obligations and responsibilities for MCOs managing the Medicaid program in a state that does not yet have an approved SPA by January 1, 2013.

Response: The SPA will describe methods and procedures relative to fee for service payments. The status of the SPA will not affect a state's ability to negotiate with managed care organizations. Notification to MCOs and providers of changes necessitated by this rule will be handled through normal procedures and processes by the state.

Summary of Final Policy: We will develop a SPA template for use by states in implementing the requirements of this final rule. SPAs should be submitted and will be reviewed in accordance with existing federal requirements at § 447.256 (and by reference § 430.20). States may apply existing payment limitations and policies to services paid pursuant to this rule. Managed care payment policies are not affected by this provision.

4. Availability of Federal Financial Participation (FFP) (§ 447.415)

Section 1905(dd) of the Act allows states to receive 100 percent FFP for expenditures equal to the difference between the Medicaid state plan rate for primary care services in effect on July 1, 2009, and the Medicare rates in effect in CYs 2013 and 2014 or, if greater, the payment rate that would be applicable using the CY 2009 Medicare CF. To claim the enhanced federal match, states must make payments to specified physicians at the appropriate MPFS rate and must develop a method of identifying both the rate differential and eligible physicians for services reimbursed on an FFS for service basis and through managed care plans. States must be able to document the difference between the July 1, 2009 Medicaid rate and the applicable Medicare rate for specified providers that is claimable at the 100 percent matching rate. This requirement applies also to services provided to individuals eligible for both Medicaid and Medicare. This means that increased FFP will be available also for higher Medicaid payments for Medicare cost sharing for individuals who are eligible for both programs.

Comment: A number of states indicated that they have lowered rates since July 1, 2009. Under the provisions of the proposed rule, they will not be eligible for 100 percent FFP for the difference between the 2009 rate and their current, lower, rates and asked for relief in the final rule. One commenter suggested that such states be permitted to ''present the case to CMS for approval of 100 percent funding for the total increase when it can be shown that the state did not make such a decrease with any expectation or intent that it would be used to restore rates''.

Response: The statute provides for 100 percent FFP for the difference between the July 1, 2009 Medicaid state plan rates and the appropriate 2013 and 2014 Medicare rates. States that lowered physician rates after 2009 will receive FFP at the state's regular FMAP rate for the difference between the lowered rates and the Medicaid rates in effect as of July 1, 2009. We have no authority to grant requests for exemptions from this requirement.

Comment: One commenter asked that the final rule clarify that providers have no less than 12 months from the date of SPA approval to file a claim. That commenter also asked that the final rule confirm that the state will receive 100 percent FFP for claims for services rendered during CYs 2013 and 2014 even if they are adjudicated after 2014.

Response: This rule does not change Medicaid timely claims submission and payment requirements. Section 447.45 applies to all claims submitted under this rule, that is, 100 percent FFP will be available for services provided between January 1, 2013 and December 31, 2014 that are processed in accordance with these requirements.

Comment: Two commenters indicated that the rule does not address system changes that states will need to make. One commenter noted that states will not have time to submit Advanced Planning Documents (APDs) for CMS prior approval for enhanced FFP for those changes. The commenters requested that CMS grant retroactive ''prior approval'' for such APDs.

Response: We do not grant ''retroactive prior approvals'' of APDs. However, we will work with states to promptly facilitate system changes necessitated by this final rule.

Comment: One commenter suggested that CMS phase down the increased payment to primary care practitioners (PCPs) in the same manner as matching for the expansion populations under the Affordable Care Act. They believe that ''a precipitous drop in the PCP payment increase could create access issues''.

Response: The statute does not permit such a phase-down.

Comment: One state asked how services eligible for both regular FFP and 100 percent FFP will be reported to CMS.

Response: We will provide states with reporting instructions before the end of the first calendar quarter of 2013. This guidance will be provided for both fee for service and managed care delivery systems.

Comment: One commenter wanted to know if primary care case management (PCCM) fees paid in either the baseline period or in 2013 and 2014 should be included in the calculation of the rate differential.

Response: We clarify that PCCM payment is outside the calculation of the rate differential.

Comment: A number of commenters asked if the 100 percent FFP is based on actual, documented expenditures or based on the actuarial per member per month (PMPM) assumptions built into adjusted capitation rates, including nonclaim components.

Response: States can claim 100 percent FFP based on the CMS approved methodology for identifying the rate differential. Depending on the best data available this may result in an imputed payment differential that is based on actual claims or actuarial assumptions.

Comment: One commenter asked whether state and local taxes associated with the increased fee schedule would be eligible for the enhanced match.

Response: Enhanced federal matching funds are available only for the difference in payment between the Medicaid state plan rate in effect July 1, 2009 and the applicable Medicare rates in CYs 2013 and 2014. If the nonfederal share of the rate in effect during the baseline period was funded by state and local taxes then that portion of the payment would continue to be matched at the state's regular FFP. This applies to FFS and managed care reimbursement.

Comment: We received a request for clarification as to whether an increase in managed care premiums for the following non-claim related components would be eligible for 100 percent FFP: the Federal Health Insurer Fee, premium related taxes imposed by states, underwriting gain and administrative expenses.

Response: We are clarifying that non-claim related costs are excluded for purposes of 100 percent FFP. The statute narrowly defines the scope of the enhanced match to the differential between the Medicare rate and 2009 baseline rate for the direct provision of specified primary care services delivered by eligible primary care providers.

Summary of Final Policy: States will receive 100 percent FFP for the difference between the July 1, 2009 Medicaid state plan rates and the appropriate CY 2013 and 2014 Medicare rates. States that lowered physician rates after 2009 will receive FFP at the state's regular FFP rate for the difference between the lowered rates and the

Medicaid rate in effect as of July 1, 2009. Medicaid timely claims submission and payment requirements at § 447.45 apply to all claims submitted under this rule, that is 100 percent FFP will be available for services provided between January 1, 2013 and December 31, 2014 that are processed in accordance with these requirements. No phase-down of higher payments or FFP is permitted. Enhanced federal match is available for the payment differential in managed care.

a. FFP in Payments for Individuals Eligible for Both Medicare and Medicaid

When a service is provided to an individual who is eligible for Medicare and Medicaid, Medicare reimburses the physician 80 percent of its fee schedule rate while Medicaid covers the cost-sharing amounts. Currently, states have two options for such payments consistent with section 1902(n) of the Act. A state may pay the provider the full amount necessary to result in aggregate payment to the provider equal to the MPFS rate (the full Medicare cost sharing amount), or only the amount (if any) to result in aggregate payment equal to the state's Medicaid rate. For example, under the second option, if the Medicare allowed amount is $100 and the Medicaid rate is $75, then Medicare pays 80 percent of the allowed amount, or $80, and there is no additional amount paid by Medicaid. Historically, most states have chosen to pay providers only up to the lower Medicaid rate.

In CYs 2013 and 2014, the Medicaid rate for primary care services by the specified physicians will equal the Medicare rate. As a result, these physicians should receive payment up to the full Medicare rate for primary care services and 100 percent FFP will be available for the full amount of the Medicare cost sharing amount that exceeds the amount that would have been payable under the state plan in effect on July 1, 2009.

Comment: Most commenters were supportive of these provisions of the rule. A number of commenters indicated that payment of crossover claims poses a significant administrative challenge because not all states' enrollment and adjudication processes mirror Medicare's and they may have limited ability to capture all details needed on crossover claims to limit payment by subspecialty. One commenter suggested that CMS require 100 percent of such claims to be paid by Medicare. Another commenter noted that the proposed rule does not require states to pay cost sharing amounts.

Response: The Medicaid requirements applicable to claims for services for beneficiaries who are dually eligible for Medicaid and Medicare are not changed by this rule. States must comply with all requirements for payment of claims for services provided to Medicaid beneficiaries who are also eligible for Medicare.

Comment: One commenter recommended that states that enter into Duals Special Needs Plans (DSNPs) be required to amend contracts to ensure that providers receive the enhanced rate. Currently, these contracts provide for $0 cost sharing as they are associated with the Medicaid rate.

Response: DSNPs are Medicare managed care plans and are not subject to the requirements of this rule. However, states are responsible for ensuring that payments for Medicaid enrollees of DSNPs reflect the appropriate payment increase.

Comment: One commenter recommended that CMS permit states to develop a methodology to identify what the difference in the capitation rate would be for crossover claims and to claim enhanced FFP for the difference, similar to the process proposed for managed care at § 438.804.

Response: We agree that a state must have the ability to identify the 2009 baseline rate for primary care services and the managed care rate differential eligible for 100 percent FFP. We will permit a state up to 3 months after January 1 of CY 2013 to submit the methodologies for our review and approval as specified in § 438. We expect this methodology to account for managed care payment for services delivered to all beneficiaries covered by Medicaid, including beneficiaries in CHIP Medicaid expansion programs and those beneficiaries also eligible for Medicare.

Summary of Final Policy: This rule does not in any way negate the need for states to comply with all Medicaid requirements applicable to payment for services provided to Medicaid beneficiaries who are also dually eligible for Medicare. In managed care environments, states will be granted flexibility in determining the portion of the capitated payment that is related to such beneficiaries. However, the methodology must be approved by CMS.

b. Identifying the July 1, 2009 Payment Rate

For the purpose of identifying the differential between the Medicaid rate and the Medicare rate, we proposed to define the Medicaid ''rate'' under the approved Medicaid state plan as the final rate paid to a provider inclusive of all supplemental or increased payments paid to that provider. For example, many states currently pay physicians affiliated with academic medical centers the Medicaid state plan rate plus a supplemental amount that together equal the average amount paid by commercial third party payers. Therefore, in calculating the rate differential, these states would determine the CY 2009 rate inclusive of any supplemental payment.

Comment: The majority of commenters requested that incentive payments, bonus payments and performance-based supplemental payments be excluded from the definition of the base payment.

Response: Incentive payments, bonus payments and performance-based supplemental payments are only paid to those certain physicians who meet specified goals or criteria. They are not part of the statewide fee schedule rates and we agree that they should be excluded from the determination of the 2009 base rate.

Comment: Many commenters urged CMS to exclude other supplemental payments made on a lump sum basis from the definition of the base rate, pointing out the administrative burden of linking those payments to individual codes and eligible physicians. In practice, this would consist of the supplemental payments up to the average commercial rate made to physicians associated with academic medical centers. They stated that CMS excluded the Medicare primary care bonus payment, which is made as an aggregate payment, from the definition of the MPFS, and suggested that Medicaid supplemental payments made as lump sum payments be excluded from the 2009 base following the same logic.

Response: We do not agree that volume-based payments such as those made up to the average commercial rate should be excluded from the determination of the 2009 base rate. The CMS-approved methodologies for determining those supplemental payments are calculated on a code-specific basis even when payments are aggregated and paid on a lump-sum basis. Since the code-specific calculation is performed before the SPA methodology is approved, states do have the data necessary to determine the rate for each code inclusive of the supplemental payment. In addition, the methodologies that have been approved for those payments provide that the base Medicaid payment in addition to the supplemental payment up to the ACR are equal to or significantly greater than Medicare rates. Were the supplemental

payments to be ignored, physicians in those settings would receive disproportionately high compensation with no additional impact on access. We do not believe that is in keeping with the intent of the statute.

Comment: One commenter urged that CMS clarify how health plans should report to the state the supplemental and increased payment for individually billed codes made under the approved state plan in effect July 1, 2009. Otherwise, the state will not know what incentive payments were made to the impacted providers.

Response: We understand that the commenter is asking how health plans should report ''catch up'' payments to providers for the increase in primary care payments to the Medicare rate as specified under this final rule. States should specify in encounter data reporting requirements how health plans should reflect those payments.

Summary of Final Policy: This final rule defines the 2009 Medicaid base payment as excluding incentive, bonus and performance-based supplemental payments. Other volume-based payments, particularly those associated with academic medical centers, must be included in determining the 2009 base rate. This policy applies to fee for service and managed care payment.

c. Federal Funding for Increased Payments for Vaccine Administration

Prior to CY 2011 vaccine administration, billing codes did not permit additional vaccine administration payments for vaccines with more than one vaccine/toxoid component. All providers, including those participating in the VFC program, received one payment per vaccine regardless of the number of vaccine/toxoid components. In the proposed rule, we clarified that qualifying physicians, excluding those participating in the VFC program, must receive additional payments during CYs 2013 and 2014 for vaccines with multiple vaccine/toxoid components administered to Medicaid beneficiaries.

Section 1928(c)(2)(ii) of the Act provides that administration fees for vaccines provided under the VFC program cannot exceed the cost of administration as determined by the Secretary for that program. An additional concern for VFC vaccines is that, under the terms of the VFC program, providers can still only bill a flat fee per vaccine given by injection or by intranasal or oral routes, regardless of the number of vaccines/toxoid components, and must use only code 90460. This is consistent with section 1928(c)(2)(C)(ii) which permits the provider to impose an administration fee based on the cost of administering a qualified pediatric vaccine, and does not authorize different fees based on the type of vaccine. To permit providers participating in the VFC program to benefit from the provisions of the Affordable Care Act, we proposed that States be required to reimburse VFC providers at the lesser of the 2013 and 2014 Medicare rates or the maximum regional VFC amount in those years. States would qualify for 100 percent FFP for these increased reimbursements.

In the proposed rule, we provided a formula for states to impute the 2009 rates due to the coding change that took effect on January 1, 2011. In addition, we stated that qualifying providers who provide vaccines to children enrolled in Medicaid who receive vaccines through the VFC program cannot be paid for additional vaccine/toxoid components of a combination vaccine.

Comment: A number of commenters disagreed with CMS' proposal not to reimburse providers for additional vaccine/toxoid components of combination vaccines using code 90461. One commenter stated that this provision falls short of the statutory standard to the extent that it allows states to pay less than is required by the 2011 component-based code methodology currently used by Medicare. Another commenter said that CMS should pay for the additional vaccine/toxoid components in combination vaccines because each vaccine/toxoid component protects against a different disease. Two commenters also expressed concern that proceeding with the proposed policy could result in a disincentive for providers to comply with optimal medical practice and result in more shots for children.

Response: We agree with commenters in part. We agree that additional payment can be made for additional vaccine/toxoid components in combination vaccines using code 90461. But we disagree that this methodology is appropriate for vaccines furnished through the VFC program. While preparing the proposed rule, we considered a number of alternative approaches for enhanced payment for vaccine administration within the VFC program. This included paying an increased amount for administration of additional vaccine/toxoid components in combination vaccines using code 90461. That approach was not selected in part because we believe that it was not the intent of the Affordable Care Act to supersede the VFC provision, which does not give CMS the authority to make multiple payments for a single vaccine administration. Therefore, we believe that the requirement that under VFC there cannot be multiple payments for a single vaccine applies to the Affordable Care Act. As such, we are not changing the policy in the final rule from what was published in the proposed rule, and providers will be reimbursed at the lesser of the 2013 and 2014 Medicare rates or the maximum regional VFC amounts in those years. In making this determination, we also considered that the payments at issue are not for the vaccine ingredients, but only for vaccine administration. We received no information that indicated that administration of multiple antigen vaccines was more costly than administration of single antigen vaccines.

We are concerned by the comments that this policy could result in additional shots for children if providers were to use single component vaccines where a combination vaccine exists. Under the VFC statute at section 1928(c)(2)(B)(i) of the Act, VFC providers are required to comply with the Advisory Committee for Immunization Practices (ACIP) schedule regarding the appropriate periodicity, dosage, and contraindications applicable to pediatric vaccines. It is important that vaccines are administered following the ACIP recommendations and that combination vaccines are used if recommended. If necessary, we will work with states to ensure that children receive appropriate vaccines and receive as few shots as are necessary following the ACIP schedule. As a practical matter, CDC orders and provides few single antigen vaccines through the VFC program when combined antigen drugs are available. In addition, section 1903(i)(15) of the Act provides that no payment shall be made ''with respect to any amount expended for a single-antigen vaccine and its administration in any case in which the administration of a combined-antigen vaccine was medically appropriate (as determined by the Secretary) * * *.'' So we believe states will have some incentive to monitor and oversee the appropriate use of combined antigen vaccines.

Comment: CMS received a comment asking if a state could have the flexibility to pay at the greater of the 2013 and 2014 Medicare rates or the maximum regional VFC rates instead of the lesser of those two rates. CMS also received a number of comments expressing confusion as to whether this policy applies to qualified providers or to all VFC providers.

Response: We adopted the lesser of the Medicare rates or the maximum

regional VFC amounts because the VFC statute prohibits payment above the regional maximum ceiling and because it is consistent with Medicare policy which limits provider payment to the lesser of the fee schedule amount or provider charges. Therefore states do not have the flexibility to pay at the greater of the two amounts instead of the lesser of the two. This policy is consistent with the larger intent of this provision of the Affordable Care Act to increase payments to primary care providers within the framework of the Medicare program.

This policy applies only to qualified physicians. If a non-qualified physician provides a vaccine to a VFC-eligible child enrolled in Medicaid, the physician will be reimbursed for the administration fee at the rate in the corresponding state plan.

Comment: Three states submitted comments expressing concern that the proposal not to recognize additional vaccine/toxoid components under the VFC program will create an administrative burden for States because providers would be paid at different rates.

Response: Although the proposed policy will result in variable rates for providers, we do not believe there will be an administrative burden for states specific to the increased payments. It is correct that the policy to not recognize additional vaccine/toxoid components only applies to the VFC program. However, because only vaccines given to those under age 19 are eligible for payment for additional antigens, and all Medicaid enrollees under age 19 qualify for VFC, there will not be an administrative burden as there will not be any variation in payment rates. We expect that there will be few situations where a state would have to establish different payments to providers for administration fees for children enrolled in Medicaid, or where a payment would be made for code 90461.

Comment: CMS received one comment that addressed the formula for imputing the 2009 rate for code 90460 that was established because of the new codes that went into effect in 2011. Specifically, the commenter recommended that CMS revise the formula to instead use the payment rate for deleted code 90465 for the new code 90460 and the payment rate for deleted code 90466 for new code 90461. The commenter suggested eliminating the reference to deleted codes 90467 and 90468 because there is no crosswalk to these codes.

Response: We agree that code 90465 should be used to determine the 2009 rate, and that codes 90467 and 90468 should not be used. However, code 90465 was only for children younger than 8 years of age and the new code 90460 is for children through age 18. Therefore, states need to use claims volume for code 90465 and code 90471 to impute the payment amount in the base period for the current code 90460. Code 90471 is also included because prior to January 1, 2011, code 90471 was used for children above age 8. This change is demonstrated in the following example:

- 90465 = $10 × 0.70 service volume = $7.00
- 90471 = $10 × 0.30 service volume = $3.00
- Total cost equals $10.00 for the new, single code, 90460.

Comment: Several commenters expressed concern that their state does not currently use the immunization administration code and instead uses the product code so that the state has vaccine-specific data.

Response: This issue was discussed in the proposed rule. States that do not currently use the immunization administration code, or did not use it in 2009, will need to identify the CY 2009 payment for vaccine administration separate from the vaccine itself. We understand that using the product code provides vaccine specific data, however, since we will only issue additional payment based on the immunization administration code, all states will need to submit data using the correct codes. We will provide future assistance to states on ways to modify the immunization administration codes so that they can be used properly but still capture vaccine-specific information.

Summary of Final Policy: This final rule defines the policy for additional payments for qualifying providers under the VFC program and how to establish the 2009 Medicaid rate for vaccine administration. Because the immunization administration codes changed in 2011, states will need to determine the payment amount from other codes based on service volume. The service volume of code 90465 and of the pediatric claims for code 90471 will need to be imputed to determine the new payment amount for code 90460.

In addition, VFC providers will be reimbursed at the lesser of the 2013 and 2014 Medicare rates or the maximum regional VFC amount in those years.

5. Primary Care Service Payments Made by Managed Care Plans, and Enhanced Federal Match (§ 438.6 and § 438.804)

We proposed to implement the managed care requirements through a state-by-state review of managed care contracts and applicable procedures. We will review managed care contracts to ensure that they—

- Provide for payment at the minimum Medicare primary care payment levels;
- Require that eligible physicians receive direct benefit of the payment increase for each of the primary care services specified in this rule. This requirement must be met regardless of whether a physician is salaried, or receives a fee for service or capitated payment. We emphasize that increased payment must correspond directly to the volume and payment amounts associated with the primary care services specified in this rule;
- Require that all information needed to adequately document expenditures eligible for 100 percent FFP is reported by MCOs, PIHPs, and PAHPs to the states which, in turn, will report these data to CMS; and
- Specify that states must receive from MCOs, PIHPs and PAHPs data on primary care services which qualify for payment under this rule. The managed care reporting requirements would ensure that states have data on increased provider payments necessary to justify any adjustments to the capitation rates paid by the state under the contract.

We solicited comment on these provisions and additional suggestions on how to ensure that managed care plans provide the necessary data to the state, as well as how to ensure and monitor that managed care plans appropriately pass on to physicians the portion of the increased capitation rate that is attributable to the primary care rate increase.

States have expressed concern about their ability to align capitated payment made as of July 1, 2009 to payment made for services provided in CYs 2013 and 2014 for the purpose of claiming increased FFP. We recognize the particular challenges inherent in identifying the payment differential eligible for 100 percent FFP for primary care services provided by managed care plans because such payments are not necessarily linked to individual services and physicians. We believe that the most reasonable way to apply this provision for managed care rates is to do the following:

Step I: Identify the proportion of total capitation linked to primary care.

Step II: Identify the fee schedule amount incorporated into the actuarial model for primary care services represented by the proportion of payment for primary care services. Here, we assume the visit rate equals $25.

Step III: Determine the annualized cost built into the actuarial model for primary care. Here we assume 8 visits annually. $25 per visit rate × 8 visits annually = $200.

Step IV: Determine the per visit cost discounted for volume. $200/12 = $16.67 per member per month.

In this example, $16.67 equals the imputed amount of the monthly payment made on a fee for services basis for an individual primary care service. The state will compare this amount to the Medicare rate paid in CYs 2013 and 2014 to determine the payment differential eligible for 100 percent federal matching funds.

Specifically, we proposed that states would be required to submit the methodology they intend to use to identify the increment of the capitation payment attributable to increased provider rates to CMS for approval prior to the beginning of CY 2013. Further, we propose that, absent approval of its methodology from CMS, states would not be able to claim the enhanced Federal match for capitation payments to managed care plans.

We solicited additional comments on how states might best meet these requirements.

Comment: A number of commenters expressed concern about the short timeframe for implementing new managed care contracts, developing revised rate certifications, and identifying the rate differential eligible for 100 percent FFP, given the obstacles of obtaining historic claim and encounter data.

Response: We are cognizant of the amount of planning and activity that must occur at the state, federal, health plan, and provider levels to implement the increase in primary care provider payments in CY 2013. Therefore, we will extend the deadline for CMS approval of all necessary documentation into CY 2013 in accordance with the following guidelines. States must submit the methodologies for identifying the 2009 baseline rate and the rate differential eligible for 100 percent federal match to CMS no later than the end of the first quarter of CY 2013. These requirements are specified in § 438.804 as modified from the proposed rule. Implementation of the increased payments for eligible primary care services to designated primary care providers is contingent upon CMS approval of the aforementioned methodologies, any necessary contract amendments, and certification of rates that take this rule into account. We will approve all required documents in a timely manner. In the interim, the state and contracting MCOs, PIHPs, and PAHPs have the option of issuing payment for primary care services in accordance with existing contracts for CY 2012 or under contracts executed under standard contracting schedules for CY 2013 that do not account for the increased payments. Once the state receives CMS approval of the methodology for calculating the primary care rate differential, certified rates, and contract amendments, the state will adjust their rates previously paid to the MCOs, PIHPs and PAHPs to reflect the enhanced payment. All eligible claims that were claimed and paid in CY 2013 prior to CMS approval will be re-adjudicated and the MCO, PIHP or PAHP will direct the full amount of the enhanced payment to the eligible provider. The MCO, PIHP or PAHP must remit the enhanced payment to eligible primary care providers without any effort from the provider. We will review managed care contracts for this assurance.

Comment: A commenter asked whether certification (of the rate) is needed if the methodology is to be submitted separate from the rate certification.

Response: We anticipate that states will first receive CMS approval of the baseline and payment differential methodologies, and then receive concurrent approval of managed care contracts. Section 438.804(a)(1) requires that the states submit the methodologies for determining the 2009 baseline rate and the payment differential for CMS review no later than the end of the first quarter of CY 2013. Submission of the above-mentioned methodologies does not negate the requirements of § 438.6(c). Again, we emphasize that contracts approved after January 1 must be effective for services provided on and after January 1 of CYs 2013 and 2014. We have awarded a technical assistance contract to a firm with actuarial expertise and experience with rate setting activities across the states to develop a framework for states in developing the methodologies required under this rule. Written guidance and informational calls will be made available before CY 2013.

Comment: A commenter urged that health plans should be provided with 90 days notice prior to the implementation of reimbursement changes.

Response: Although we agree that states should notify health plans in a timely manner of changes in reimbursement, adding a federal notification requirement for the state to the health plan is beyond the scope of this rule and exceeds the normal and customary role of the federal government in the relationship between the state and the health plan.

Comment: One commenter suggested that CMS should clarify that the managed care payment will be based on FFS or base utilization data used for rate setting. A commenter also noted that developing a reasonable estimate of the increased amount paid for primary care services was difficult due to lack of encounter data as of July 1, 2009. Other commenters requested guidance on how to develop the baseline 2009 rate for primary care services when populations may not have been enrolled in MCOs, PIHPs or PAHPs in 2009. Other commenters requested clarification as to whether the four-step process provided in the proposed rule for identifying the rate differential is a preferred approach.

Response: We acknowledge the variance that exists among the states in terms of the types of encounter, claim and pricing information available from MCOs, PIHPs and PAHPs for rate setting purposes, and the complexity entailed in defining the baseline service rate for populations that may not have been in managed care delivery systems in 2009. We expect that, where feasible, the state will use the same methodology for fee-for-service payments through MCOs that is provided for direct fee-for-service payments from the state. In cases where this is not possible, however, we do not prescribe a uniform approach to identifying the 2009 baseline but we have revised § 438.804(a) to add the new § 438.804(a)(1)(i) to require states to submit the methodology for the 2009 baseline rate in conjunction with the methodology used to identify the rate differential as specified in § 438.804(a)(1)(ii). The four-step process outlined in the proposed rule is one suggested approach for states that would find it produces an accurate result based on reasonable and documented data and assumptions available. As stated throughout the rule, we will continue a dialogue with states on valid and reasonable approaches to defining the 2009 baseline rate and identifying the rate differential required under § 438.804(a)(1)(i) and (ii). We reserve the right to request and inspect the supporting data used by the state and actuaries to develop the methodologies required under § 438.804(a)(1)(i) and (ii).

Comment: A commenter urged that CMS should not increase payments only to MCOs that had been paying for the Medicaid primary care services at less than the Medicare rates as this would result in rewarding low paying plans.

Response: The statute applies equally across all eligible providers for all of the services specified in this rule. This may

result in increased payment to MCOs, PIHPs and PAHPs that previously had reimbursed providers less than the Medicare rate. However, we expect that physicians—not the MCOs, PIHPs or PAHPs—will receive direct benefit of the higher payment.

Comment: Several commenters requested general guidance if the enhanced payment to primary care providers should be disseminated on a retroactive or prospective basis and other commenters urged CMS to provide overall flexibility in this process. For example, the American Academy of Actuaries asked CMS to consider a number of approaches, including (1) an add-on payment to the PMPM based on a retrospective review of eligible primary care utilization; (2) full risk capitation; (3) prospective capitation with some type of risk sharing that incorporates retrospective reconciliation to the documented expenditures; and (4) non risk payment with retrospective reconciliation. Another commenter recommended that CMS impose a threshold for enhanced reimbursement that is based on encounter data submitted to the states' MMIS.

Response: We appreciate the amount of feedback and thoughtful suggestions received from our request for comment on how the enhanced payment is made to eligible primary care physicians. Because claims and payment processes vary by state and between health plans, we are permitting flexibility in the specifics of how these tasks are accomplished. Should a state obtain approval of the required methodologies, the MCO, PIHP or PAHP contract amendments, and rate certifications after January 1 of 2013 and 2014, the state will need to clarify to CMS how it will implement payment retroactively to the beginning of the year. We expect to address retroactive claims processing as part of CMS's ongoing dialogue with the states.

Comment: One commenter asked whether a state's adherence to the documentation requirements specified in § 438.6(c)(4) were sufficient to meet the documentation requirements provided under the new § 438.6(c)(5)(vi)(B). Additionally, another commenter queried whether the documentation requirement in § 438.6(c)(5)(vi)(B) sufficiently described CMS's oversight role to ensure that payments are made in accordance with this final rule.

Response: The documentation requirement in the new § 438.6(c)(5)(vi)(B) is more expansive, therefore, a state may not assume that it has met the new requirements by satisfying those of the existing managed care regulation. In deference to the wide variation in states' current oversight and reporting mechanisms for health plans, we will permit states to specify the documentation needed from health plans to substantiate that the enhanced primary care rate was delivered to eligible primary care providers. The health plans must make such documentation available to the state for verification of payments made as well as make such documentation available for audit or reconciliation processes. However, in response to the comment about our oversight role, we have modified the language in § 438.6(c)(5)(vi)(B) to require health plans to provide sufficient documentation so that the state and CMS can ensure that complaint payments have been made in accordance with this rule.

Comment: One commenter noted that there is no explicit reference in the proposed rule to the data certification requirements at § 438.604.

Response: We believe that a specific reference to the data certification requirements at § 438.604 is not warranted because those requirements are not being modified by this rule. Further, we believe that the documentation required under this section falls under the scope of § 438.604.

Comment: We received a number of comments expressing concern about the projected overall impact of this payment on the future of doing business under managed care delivery systems. One commenter stated that in CYs 2013 and 2014 MCOs, PIHPs and PAHPs may find contracting with specialists more difficult when these providers receive less than the Medicare rate. Conversely, providers were concerned that MCOs, PIHPs and PAHPs would reduce payment for primary care services after the 2-year period and believed that states should be mindful of this.

Response: We expect this rule to have positive effects on payment rates for primary care physicians serving Medicaid patients that will justify the operational changes required to implement the increased rates.

Comment: A commenter stated that CMS oversight and enforcement of actuarial soundness policies should ensure that rate adjustment increase to plans do not result in an inappropriate decrease in other factors used in rate setting methodology. Plans must provide access to all information used to make adjustment for this provision.

Response: We will exercise oversight and enforcement of appropriate policies through our review and approval of managed care contracts and certification of the actuarially sound rate.

Comment: One commenter stressed that health plans must be given the right to appeal new health plan capitation rates to an unbiased third party if they believe they do not meet actuarial soundness requirement.

Response: The ability to negotiate capitation rates remains between states and health plans and this rule does not affect any established process, or create a new process, for a health plan to appeal revised capitation rates devised for purposes of implementing this rule.

Summary of Final Policy: We recognize the implementation challenges for identifying the 2009 baseline rate and the payment differential eligible for 100 percent federal financial participation, as well as appropriate methods for delivering the payment to eligible providers contracted with MCOs, PIHPs and PAHPs. To that end, we have extended deadlines for states to submit the abovementioned methodologies as required by § 438.804(a)(1) into CY 2013 and necessary contract amendments and rates may be approved by CMS within that CY. The regulations clearly provide that the state has the flexibility in determining the 2009 baseline rate and the rate differential to comply with this rule, but the approach taken must be based on reasonable and documented data sources available to the state to accurately define these amounts to the fullest extent possible. We will review and approve the methodologies and refer to these methodologies to approve MCO, PIHP and PAHP contract amendments and rates necessary to implement this rule. This rule does not require a specific method for the MCOs, PIHPs or PAHPs to make the enhanced payment for primary care services to eligible providers, but the approach taken must ensure that the eligible primary care provider receives the full benefit of the enhanced payment. In deference to the wide variation in states' current oversight and reporting mechanisms for health plans, we will permit states to specify the documentation needed from health plans to substantiate that the enhanced primary care rate was delivered to eligible primary care providers. The health plans must make such documentation available to the state for verification of payments made as well as make such documentation available for audit or reconciliation processes. As stated throughout this rule, we will continue a dialogue with the states on implementation challenges that may arise.

B. Vaccine Administration Under the Vaccines for Children (VFC) Program

1. General Statement

On May 11, 2012, we issued a proposed rule (77 FR 27671) in the **Federal Register** titled ''Medicaid Program; Payments for Services Furnished by Certain Primary Care Physicians and Charges for Vaccine Administration under the Vaccines for Children Program''. In that proposed rule, we specified that we would add 42 CFR part 441 subpart K, § 441.500 through § 441.515, to codify the requirements of the Vaccines for Children Program. However, on May 7, 2011, we issued a final rule (77 FR 26828) in the **Federal Register** titled ''Medicaid Program; Community First Choice Option'', which codified subpart K, § 441.500 through § 441.590. Therefore, we are adding the provisions to codify the requirements of the Vaccines for Children Program as subpart L, § 441.600 through § 441.615.

This final rule adds 42 CFR part 441 subpart L to codify the requirements of the Vaccines for Children Program. CMS is finalizing the general requirements of the VFC program in this final rule at § 441.610. Federally-purchased vaccines under the VFC Program are made available to children who are 18 years of age or younger and who are any of the following:

- Eligible for Medicaid.
- Not insured.
- Not insured for the vaccine and who are administered pediatric vaccines by a federally-qualified health center (FQHC) or rural health clinic (RHC).
- An Indian, as defined in section 4 of the Indian Health Care Improvement Act.

Under the VFC program, vaccines must be administered by program-registered providers. Section 1928(c) of the Act defines a program-registered provider as any health care provider that—

- Is licensed or authorized to administer pediatric vaccines under the law of the state in which the administration occurs without regard to whether or not the provider is a Medicaid-participating provider.
- Submits to the state an executed provider agreement in the form and manner specified by the Secretary.
- Has not been found, by the Secretary or the state to have violated the provider agreement or other applicable requirements established by the Secretary or the state.

Section 1928 of the Act requires each state to establish a VFC Program (which may be administered by the State Department of Health) and include this program in the state plan (§ 441.605) under which certain specified groups of children are entitled to receive qualified pediatric immunizations without charge for the cost of the vaccine.

In the October 3, 1994 **Federal Register**, we published a notice with comment period entitled, ''Charges for Vaccine Administration Under the Vaccines for Children (VFC) Program'' (59 FR 50235) (hereinafter referred to as the ''October 1994 VFC notice'') that set forth, by state, the interim regional maximum charges for the VFC program. These charges represented the maximum amount that a provider in a state could charge for the administration of qualified pediatric vaccines to federally vaccine-eligible children under the VFC Program. This final rule updates those fees.

In accordance with section 1928(c)(2)(C)(ii) of the Act, § 441.615(e), we proposed that physicians participating in the VFC program can charge federally vaccine-eligible children who are not enrolled in Medicaid the maximum administration fee (if that fee reflects the provider's cost of administration) regardless of whether the state has established a lower administration fee under the Medicaid program.

Section 441.615(e) provides that there will be no federal Medicaid matching funds available for administration of vaccines to children not enrolled in the Medicaid program. A provider may only bill Medicaid for the administration of a vaccine if the child is enrolled in Medicaid.

Of the 171 comments received in response to the proposed rule, 21 of them addressed the updated administration fee schedule in the VFC program.

Comment: One comment questioned the codification of the VFC program and stated that this represented major changes in the VFC program.

Response: The intent of this section of the final rule is not to create new requirements for states or to change any rules of the VFC program, but instead to codify existing rules and update the administration fee rates. All states currently have established pediatric vaccine distribution programs in place that meet the requirements of section 1928 of the Act, and therefore, states are not required to change their existing state plan to reflect the codification of the VFC program. Submission of a new SPA is only necessary if the state chooses to change the amount that it pays Medicaid providers for the administration fee.

Comment: Two commenters discussed the impact of the updated fee schedule on the uninsured and underinsured. The first commenter recommended that uninsured children be exempt from paying administration fees and the second recommended that VFC providers continue to have flexibility to provide VFC vaccines at no administrative cost or at reduced cost to uninsured children.

Response: While we acknowledge the commenter's concern, under section 1928 of the Act, we do not have the authority to exempt uninsured children from administration fees. Providers continue to have the flexibility to determine the administration fee they will collect from families of uninsured and underinsured children, as long as the administration fee does not exceed the state's regional maximum administration fee. However, section 1928(c)(2)(C)(iii) of the Act provides that providers cannot deny administration of VFC vaccines to a vaccine-eligible child due to the inability to pay the administration fee.

Comment: Several comments expressed support of the updated regional maximum administration fee schedule. None of the comments were critical of the updated fee schedule or the methodology used to update the fee schedule, or provided alternative suggestions.

Response: Based on the support of the methodology used to update the fee schedule and the acknowledgement that an updated fee schedule is needed, we are finalizing the updated fee schedule as proposed.

Comment: One commenter suggested that we link the regional maximum administration fee to the Medicare Economic Index, and publish the fee schedule annually.

Response: The purpose of this final rule is to update the fee schedule, which has not been updated since 1994.

Comment: Two commenters suggested that CMS consider establishing a minimum payment rate for providers.

Response: The establishment of a minimum payment level for VFC providers goes beyond the scope of what was included in the proposed rule.

Comment: Multiple commenters questioned whether states will continue to have the authority to set their payment rates under the Medicaid program at a rate that is lower than the State's regional maximum administration fee.

Response: Updating the fee schedule will not impact states' ability to establish payment rates under the VFC program. States continue to have the flexibility to establish their payment rate for the VFC program at any level that does not exceed the newly updated

regional maximum administration fee. If a state wishes to change its payment rate, it needs to submit a SPA to CMS. Much of the confusion related to state flexibility to establish payment rates is due to the requirements in the primary care payment increase section of this rule which requires that qualifying providers are paid at the lesser of the Medicare rate or the updated state regional maximum administration fee in 2013 and 2014. While states do maintain the flexibility to set the reimbursement rate for the VFC program, qualifying primary care providers who administer vaccines to children enrolled in Medicaid under the VFC program are required to be paid at the lesser of the Medicare rate or the updated State regional maximum administration fee for vaccine administration for those 2 years.

Summary of Final Policy: We are finalizing the updated regional maximum VFC ceilings as proposed, as shown in Table 1.

TABLE 1—REGIONAL MAXIMUM ADMINISTRATION FEE BY STATE

State	Current regional maximum fee	Updated regional maximum fee
Alabama	$14.26	$19.79
Alaska	17.54	27.44
Arizona	15.43	21.33
Arkansas	13.30	19.54
California	17.55	26.03
Colorado	14.74	21.68
Connecticut	16.56	23.41
Delaware	16.55	22.07
District of Columbia	15.13	24.48
Florida	16.06	24.01
Georgia	14.81	21.93
Guam	.....	23.11
Hawaii	15.71	23.11
Idaho	14.34	20.13
Illinois	16.79	23.87
Indiana	14.47	20.32
Iowa	14.58	19.68
Kansas	14.80	20.26
Kentucky	14.17	19.93
Louisiana	15.22	21.30
Maine	14.37	21.58
Maryland	15.49	23.28
Massachusetts	15.78	23.29
Michigan	16.75	23.03
Minnesota	14.69	21.22
Mississippi	13.92	19.79
Missouri	15.07	21.53
Montana	14.13	21.32
Nebraska	13.58	19.82
Nevada	16.13	22.57
New Hampshire	14.51	22.02
New Jersey	16.34	24.23
New Mexico	14.28	20.80
New York	17.85	25.10
North Carolina	13.71	20.45
North Dakota	13.90	20.99
Ohio	14.67	21.25
Oklahoma	13.89	19.58
Oregon	15.19	21.96
Pennsylvania	15.76	23.14
Puerto Rico	12.24	16.80
Rhode Island	14.93	22.69
South Carolina	13.62	20.16
South Dakota	13.56	20.73
Tennessee	13.70	20.00
Texas	14.85	22.06
Utah	14.52	20.72
Vermont	13.86	21.22
Virginia	14.71	21.24
Virgin Islands	15.09	21.81
Washington	15.60	23.44
West Virginia	14.49	19.85
Wisconsin	15.02	20.83
Wyoming	14.31	21.72

III. Provisions of the Final Regulations

This final rule incorporates many of the provisions of the proposed rule. Those provisions of this final rule that differ from the proposed rule are as follows:

- Section 438.6(c)(5)(vi)(B) has been modified to clarify our oversight role by requiring health plans to provide sufficient documentation so that both the state and CMS can ensure that complaint payments have been made in accordance with this rule.
- Section 438.804(a)(1) has been changed from a description of the 2009 baseline rate to a general statement of the two methodologies the states are required to submit to CMS for review and approval to implement the payment increase to primary care providers.
- Section 438.804(a)(1)(i) replaces the description of the 2009 baseline payment as provided in § 438.804(a)(1) in the proposed rule to clarify that the states must submit a valid and reasonable methodology for identifying the provider payments that would have been made by the MCO, PHIP or PAHP for specified primary care services furnished as of July 1, 2009. This change is in recognition of the varying sources of data available to the states and the challenges associated with determining the rate for primary care services in 2009 for populations that have transitioned from fee-for-service to managed care delivery systems after 2009. We will need to review and approve the methodology for determining the 2009 baseline rate for specified primary care services to ensure that the data sources used are reasonable, reliable, and accurate to the fullest extent possible.
- Section 438.804(a)(1)(ii) replaces the description of the methodology to identify the rate differential between the amount paid as of July 1, 2009 for specified primary care services and the rate required under this rule. This requirement was designated as § 438.804(a)(2) under the proposed rule. The reference to ''managed care provider'' was removed and replaced with ''MCO, PIHP or PAHP'' for consistency with 42 CFR part 438.
- Section 438.804(a)(3) has been revised and redesignated as § 438.804(a)(2) to indicate that the methodology for identifying the 2009 baseline rate and the differential in payment between the provider payments that would have been made by the MCO, PIHP or PAHP on July 1, 2009 and the amount needed to comply with the contractual requirement under § 438.6(c)(5)(vi) must be submitted to CMS for approval by the end of the first quarter of CY 2013. This is in recognition of the amount of planning and activity that must occur at the state, federal, health plan and provider levels to implement the increase in primary care provider payments in CY 2013.
- A new § 438.804(a)(3) has been added to clarify that the methodologies required under the section will be used by CMS in reviewing necessary MCO, PIHP and PAHP contract amendments and rates to implement the enhanced payment to primary care providers under this rule.
- Section 447.400(a) has been revised to permit recognition of physician specialties and subspecialties by the American Board of Physician Specialties (ABPS) and the American Osteopathic Association (AOA) as well as the American Board of Medical Specialties, which was the only Board referenced in the proposed rule. This change recognizes the fact that these three Boards are the three nationally recognized physician certification Boards.
- Section 447.400(a)(2) has been revised to require physicians to self-attest that they are appropriately Board certified or that 60 percent of their Medicaid claims are for eligible E&M codes. This lessens the burden on State Medicaid agencies which, under the provisions of the proposed rule, were required to use these measures to verify the eligibility for higher payment of all physicians who self-attested to eligibility.
- A new § 447.400(b) has been added, specifying that, at the end of CY 2013 and CY 2014, the Medicaid agency must review a statistically valid sample of physicians who received higher payments to verify they met the requirements for such payment. Section 447.400(3) has been deleted because Medicaid agencies need no longer verify the self-attested eligibility of the physician.
- A new § 447.400(d) has been added to require that states collect and report to CMS data on the impact of the higher rates on physician participation. That data will assist Congress in determining determine whether or not to extend the provisions of this rule beyond the end of CY 2014.
- Section 447.405(a)(1) has been revised to require Medicaid agencies to pay eligible providers in CYs 2013 and 2014 at the Medicare part B fee schedule rate that is applicable either to the specific site of service or to the office setting. States must also either make all Medicare locality adjustments or may pay a statewide rate per E&M code based on the mean Medicare rate across counties. The final rule makes these changes in recognition of the administrative burden to states associated with the need to make all site of service and geographic adjustments.
- Section 447.410 has been revised to add a new requirement that Medicaid agencies identify in the required state plan the eligible codes that will be paid at the Medicare rate in CYs 2013 and 2014 that were not paid under the state plan as of July 1, 2009. This is to assist in ensuring that eligible codes are not added solely for purposes of receiving 100 percent FFP. This section also requires that the state plan specify the methodology the state will use to identify the 2013 and 2014 Medicare rates.
- Section 447.415(b) has been revised to specify that, in calculating the 2009 Medicaid base rate, incentive, bonus and performance-based payments may be excluded. This is because these payments are not part of statewide fee schedule rates, but are paid only to physicians who meet specific goals or criteria. However, volume based payments, such as those made up to the average commercial rate, must be included since those payments, even when paid as aggregate payments, are based on code-specific calculations.
- Section 447.410(d) has been revised to clarify that bundled payments exclude encounter and per diem rates. This clarifies that physician services provided at sites such as clinics or nursing homes which are reimbursed as part of the encounter or NF per diem and not under a physician fee schedule are not eligible for higher payment.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

To derive average costs, we used data from the U.S. Bureau of Labor Statistics for all salary estimates. The salary estimates include the cost of fringe benefits, calculated at approximately 35 percent of salary, which is based on the Bureau's June 2011 Employer Costs for Employee Compensation report.

In our May 11, 2012, proposed rule, we solicited public comment on each of the section 3506(c)(2)(A)-required issues for the following information collection requirements (ICRs). PRA-related comments were received as indicated below.

A. ICRs Regarding Contract Requirements (§ 438.6)

In § 438.6(c)(3)(v) and (c)(5)(vi), states are required to modify managed care contracts and accompanying capitation rates through which MCOs, PIHPs or PAHPs will comply with the requirements of the Affordable Care Act. There is a one-time burden to the state for amending such contracts for the following provisions: (1) To assure that the level of payment is consistent with 42 CFR part 447, subpart G; (2) to assure that the specified physicians (whether directly or through a capitated arrangement) receive an amount at least equal to the amount set for and required under part 447; and (3) to assure that the state receives sufficient documentation regarding those adjusted payments.

The one-time burden associated with the requirements under § 438.6(c)(3)(v) and (c)(5)(vi) is the time and effort it would take each of the 37 state Medicaid programs with MCOs, PIHPs or PAHPs and the District of Columbia (38 total respondents) to amend an average of three managed care contracts. The associated requirements and burden estimates have been approved by OMB under OCN 0938–0920. Section 438.6(c)(3)(v) and (c)(5)(vi) would not impose any new or revised reporting or recordkeeping requirements and, therefore, does not require additional OMB review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The burden estimates approved under OCN 0938–0920 take into account the number of modifications required to managed care contracts by the states on an annual basis due to changes in federal law and the operations of a state's Medicaid program. As the amount of activity that would require contract modifications may vary across the states, the approved burden estimates accommodate that variation. Therefore, the one-time contract modification required by this rule fits within the existing estimates.

B. ICRs Regarding Primary Care Provider Payment Increases (§ 438.804(a)(1) and (2))

In § 438.804(a)(1) and (2), states are required to submit the methodologies they intend to use to develop a baseline for primary care service payments in 2009 as well as the differential between that baseline and the CY 2013 and 2014 rate to CMS for review and approval no later than the end of the first quarter of CY 2013. Further, we indicate that we will use those approved methodologies to review and approve managed care contracts and rates that are compliant with this provision.

The burden associated with the requirements under § 438.804(a)(1) and (2) is the time and effort it would take each of the 37 state Medicaid programs and the District of Columbia (38 total respondents with managed care delivery systems) to develop both methodologies, as well as managed care capitation rates which reflect the increased payments to implement this section. We received comments maintaining that the proposed rule had significantly underestimated the costs of implementing this provision in a managed care delivery system. In response, we are revising the burden estimates that were set out in the proposed rule. The task of developing both methodologies will involve a one-time effort on the part of financial, legal and management staff, as well as significant contractual actuarial resources. Most of the 38 states use contracted actuarial firms to develop managed care capitation methodologies and rates. Since the development of the 2009 baseline and CYs 2013–2014 rate differentials require actuarial analysis, we have estimated those contractual costs. Once the methodologies are developed by each respondent's contracted actuary, each respondent will need to review and approve them prior to submission to CMS.

We estimate that it will take approximately 100 hours of contractual actuarial services per respondent at a cost of $5,398 to complete the data and actuarial analysis to develop these methodologies at a total cost of $205,124 (38 × $5,398). It will also take 10 hours per respondent at a cost of $482.86 to review and validate these methodologies in order to submit them to CMS at a total cost of $18,348.68 (38 × $482.86). In deriving these figures, we used the following hourly labor rates and estimated the time to complete this task: $53.98/hr and 100 hours for contracted actuarial staff; $49.07/hr and 2 hours for legal staff to review the methodology for compliance with the statute ($98.14); and $48.09/hr and 8 hours for managerial staff to review and submit these methodologies to CMS ($384.72). The total one-time burden amounts to $223,473 ($205,124 + $18,349).

C. ICRs Regarding General Requirements—Provider Agreements (§ 441.605(b))

This requirement is exempt from the PRA since we expect to receive fewer than 10 submissions (annually) from providers, if any. The requirement that providers must have provider agreements in place in order to participate in the VFC program has been in effect since the program was implemented in 1994. The provision in this regulation is merely codifying the requirement and no further action is necessary in regard to providers who are currently participating in the VFC program.

D. ICRs Regarding Administrative Fee Requirements (§ 441.615(d))

This requirement is exempt from the PRA since we expect to receive fewer than 10 submissions (annually) from states. The requirement that a state submit a state plan was a requirement when the VFC program was first established in 1994, and all states submitted state plans at that time. A state now only submits a state plan amendment related to the VFC program when it makes a change to the state's administration fee. In 2011, only two states submitted state plans that made changes to the state's administration fee under the VFC program. Even with the publication of the updated fee schedule, we do not anticipate that many states will make changes to their administration fee.

E. ICRs Regarding Primary Care Services Furnished by Physicians With a Specified Specialty or Subspeciality (§ 447.400(a), (b), and (d))

In § 447.400(a), physicians are required to self-attest that they are Board certified in an eligible specialty or subspecialty or that 60 percent of the claims that they submit are for eligible E&M codes. In § 447.400(b), at the end of CY 2013 and CY 2014, the state must review a statistically valid sample of physicians who received higher payments to verify that they meet the one requirement to which they attested.

The burden associated with the requirements under § 447.400(a) and (b) is the time and effort it will take each of the 50 Medicaid Programs and the District of Columbia (51 total respondents) to establish a protocol for physician self-attestation and to conduct

and review a statistically valid sample of ''eligible'' physicians once in each of CYs 2013 and 2014. In the proposed rule we estimated that it would take 0.5 hours to determine whether a physician may receive payment under the Affordable Care Act. In this final rule, we assess the burden based on MSIS data from the fourth quarters of FY 2008 and 2009 which showed an average of 2,245 physicians per state who currently bill, but whose eligibility for increased payment would need to be verified by the Medicaid agency. We increased this number by 10 percent to account for participation by new physicians for a total of 2,470 physicians. The reported burden, which relies on a review of each physician qualifications, represents CMS's best estimate of the cost to sample data on physicians who self-attested. We relied on the data reported above in the absence of information about how each state plans to implement its sampling methodology.

We used the following hourly labor rates and estimated the time to complete each task: 0.5 hours for a state's Medicaid office and support staff working in the medical billing area to retrieve and assess claims for an individual physician; or 0.5 hours for administrative staff to review the Board certification status of a physician. Costs associated with these staff are reported at a cost of $14.12 for each half-hour derived from $28.24/hr each and 2,470 physicians for an estimated cost of $34,876.40 per state ($14.12/hr × 2,470 responses/state) or $1,778,696.40 total ($34,876.40 × 51 states).

While proposed in the proposed rule, this final rule removes the provision that would have required states to verify the self-attestations of all physicians by confirming Board certification or an appropriate claims history. In this final rule, states must annually sample (in a statistically valid manner) the physicians who receive higher payment to ensure that they are either Board certified or that 60 percent of the codes they bill to Medicaid are those codes identified in this rule. We are not able to estimate this burden with greater precision due to lack of data about the varying methods states will use to fulfill this requirement (see discussion under preamble section A. *Payments to Physicians for Primary Care Services;* 1. Primary Care Services Furnished by Physicians with Specified Specialty and Subspecialty (§ 447.400); a. Specified Specialties and Subspecialties). Therefore, we are not modifying our estimate of the impact of this section of the rule.

In § 447.400(d) the state is required to submit to CMS the information relating to participation by physicians as well as the E&M codes. The form and timeframe for such submission has yet to be determined by CMS.

F. ICRs Regarding State Plan Requirements (§ 447.410)

In § 447.410, states will be required to submit a SPA to reflect the fee schedule rate increases for eligible primary care physicians under section 1902(a)(13)(C) of the Act. They will also be required to submit a SPA that reflects the payment increase for vaccine administration. The purpose of this requirement is to assure that when states make the increased reimbursement to providers, they have state plan authority to do so and they have notified providers of the change in reimbursement as required by federal regulations. In accordance with § 447.205, public notification prior to the effective date of a SPA must be made whenever a state proposes a change to its methods and standards for setting payment rates for services. Consequently, the notification burden is included in the following estimate.

The burden associated with the one-time requirement under § 447.410 is the time and effort it would take each of the 50 state Medicaid programs and the District of Columbia (51 total respondents) to modify the Medicaid state plan to reflect payment consistent with the requirements in section 1902(a)(13)(C) of the Act. This will require the review, preparation, approval, and submission of a CMS-provided SPA template. We estimate that it will take state staff working 48 hours to complete all of the tasks associated with the review, preparation, approval, and submission of the SPA template. The estimated cost is $1,606.95 per state ($35.71/hr × 45 hr) or $81,954.45 total ($1606.95 × 51) for tasks completed by non-management staff working on SPA preparation. We estimate that this task will also require 3 hour for state-employed legal staff at $49.07/hr or $147.21 (per response) for a total of $7,507.71 ($147.21 × 51). The combined total for cost associated with SPA preparation, including non legal and legal staff employed by the state, is $89,462.16 ($81,954.45 + $7,507.71).

The ongoing burden for states is the determination of the updated fee for service rate in CY 2014. We estimate that it will take state staff working 20 hours to set the new rate in accordance with the approved state plan amendment for this payment. The estimated cost is $607.07 ($35.71/hr × 17 hr) per state or $30,960.57 total ($607.07 × 51) for tasks completed by non-management staff working on SPA preparation. We estimate that this task will also require 3 hours for state-employed legal staff at $49.07/hr or $147.21 (per response) for a total of $7,507.71 ($147.21 × 51). The combined total for cost associated with SPA preparation, including non legal and legal staff employed by the state, is $38,468.28 ($30,960.57 + $7,507.71).

G. Summary of Annual Requirements and Burden Estimates

TABLE 2—ANNUAL RECORDKEEPING AND REPORTING REQUIREMENTS AND ASSOCIATED BURDEN ESTIMATES [1]

Regulation section(s)	OMB Control No.	Respondents	Responses	Burden per response (hours)	Total annual burden (hours)	Labor cost of reporting ($)	Total cost ($) (rounded)
§ 438.804(a)(1) and (2).	0938–1170	38	38 (total)	110	4,180	223,472.68	223,473
§ 447.400(a) and (b)	0938–1170	51	2,470 (per state) or 125,970 (total).	.50	1,235 (per state) or 62,985 (total).	34,876.40 (per state) or 1,778,696.4 (total).	1,778,696
§ 447.410 (SPA amendments).	0938–1148	51	51 (total)	48	2,448	89,462.16	89,462
§ 447.410 (amending FFS rate).	0938–1148	51	51 (total)	20	1,020	38,468.28	38,468
Total					70,633	2,130,099.52	2,130,100

[1] There are no capital or maintenance costs incurred by any of the collections. Therefore, the capitol cost column has been omitted from the table.

H. Submission of PRA-Related Comments

We have submitted a copy of this final rule to OMB for its review of the rule's information collection and recordkeeping requirements. These requirements are not effective until they have been approved by the OMB.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access our Web site at *http://www.cms.hhs.gov/Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

We invite public comments on these potential information collection requirements. If you comment on these information collection and recordkeeping requirements, please submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, (CMS–2370–F) Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov.*

V. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this final rule as required by Executive Order 12866 (September 30, 1993, Regulatory Planning and Review), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (September 19, 1980; Pub. L. 96–354) (RFA), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated an ''economically'' significant rule, under section 3(f)(1) of Executive Order 12866. Accordingly, we have prepared a Regulatory Impact Analysis (RIA) that, to the best of our ability, presents the costs and benefits of the rulemaking. We solicited comment on the RIA analysis provided. In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2012, that threshold is approximately $139 million. This rule does not contain mandates that will impose spending costs on state governments in the aggregate of $139 million. The cost for increasing payment for primary care services in CYs 2013 and 2014 will be borne by the federal government, which will provide 100 percent matching funds equal to the difference between the Medicaid state plan rate in effect July 1, 2009 and the Medicare rate implemented in CY 2013 and 2014, or the rate using the CY 2009 CF, if higher. The Affordable Care Act requires higher payment to physicians for primary care services but does not impose increased costs on states. For the provisions associated with the charges for vaccine administration under the VFC program, the proposals will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. As indicated, this final rule will not have a substantial effect on state and local governments.

B. Statement of Need

This final rule will implement provisions of the Affordable Care Act that require payment by state Medicaid agencies of at least the Medicare rates in effect in CYs 2013 and 2014 or, if higher, the rate using the CY 2009 CF for primary care services furnished by a physician with a specialty designation of family medicine, general internal medicine, or pediatric medicine. Also, this final rule will implement the statutory payment provisions uniformly across all states, defines, for purposes of enhanced federal match, eligible primary care physicians, identifies eligible primary care services, and specifies how the increased payment should be calculated. Finally, this rule provides general guidelines for implementing the increased payment for primary care services delivered by managed care plans.

C. Overall Impact

The aggregate economic impact of this final rule is an estimated $5.600 billion in CY 2013 and $5.745 billion in CY 2014 (measured in constant 2012 dollars). In CY 2013, the federal cost is approximately $5.835 billion with $235 million in state savings. In CY 2014, the federal cost is approximately $6.055 billion with $310 million in state savings. The state savings are derived from the projected increases in reimbursement rates expected to occur between 2009 and 2013 through 2014, in the absence of the Affordable Care Act, which will now be paid for by the federal government. Absent the legislation, the projected increases in the reimbursement rates would be split between the federal government and states. This aggregate economic impact estimate includes the requirement that states reimburse specified physicians for vaccine administration at the lesser of the Medicare rate or the VFC regional maximum during CYs 2013 and 2014, which is estimated at $975 million in federal costs. The federal costs for funding that increase, in State payments during CYs 2013 and 2014, are estimated at $495 million and $480 million, respectively. This also includes the impact on Medicaid-expansion CHIP expenditures; total CHIP expenditures are estimated to increase by $145 million in CY 2013 and again in CY 2014, reflecting an increase in federal CHIP expenditures of $155 million and a decrease in state CHIP expenditures of $10 million in each year.

Overall, there is a net increase of $165 million in the impact estimates of the final rule versus the proposed rule. This includes a $290 million increase in the estimates due to the inclusion of the costs associated with the primary care payment increase for enrollees in the Medicaid-expansion CHIP plans. Furthermore, this impact is partially offset by a decrease of $130 million as a result of the additional flexibility provided to states to determine the scope of the geographic adjustment to the MPFS. Lastly, there is a $5 million increase in the cost estimate for vaccine administration related to VFC provided in the final rule versus the proposed rule.

Differences in the estimates provided in the final rule, versus those in the proposed rule, are mainly attributable to the inclusion of the Medicaid-expansion CHIP expenditures, as well as changes to the policy that allow states to either use the Medicare physician payment locality factors to determine the rates or

to develop a methodology to calculate mean or median Medicare rates to use statewide. The impacts presented in the proposed rule assume that states would pay primary care physician service rates that included the different Medicare locality factors.

Overall, the estimated economic impacts are a result of this final rule providing states the ability to increase payment for primary care services without incurring additional costs (with the exception of states that did or would have reduced primary care physician service reimbursement rates in their Medicaid programs between 2009 and 2014). We anticipate higher payment will result in greater participation by primary care physicians, including primary care subspecialists, in Medicaid thereby helping to promote overall access to care. At this time it is not known whether states will be willing or have the ability to sustain this level of payment to providers beyond CY 2014.

D. Detailed Economic Analysis

1. Anticipated Effects on Medicaid Recipients

We anticipate this final rule will have a positive effect on Medicaid beneficiaries by increasing the availability of services through financial incentives to primary care physicians. The exact number of beneficiaries that will benefit is not known, however, we believe it will be substantial because this rule directly affects payment for a type of service which is a key component of the Medicaid program. Additionally, we believe primary care physicians will be encouraged to accept more Medicaid beneficiaries into their practices as a result of increased payment.

We believe that this provision of the regulation will positively affect the availability of vaccination services as well. Currently, approximately 5 states reimburse the regional maximum for vaccine administration set by the VFC program. This final rule will require states to reimburse specified physicians for vaccine administration at the lesser of the Medicare rate or the VFC regional maximum during CYs 2013 and 2014.

Finally, this rule will positively affect people who are dually eligible for benefits under the Medicare and Medicaid programs by increasing payment to physicians who serve this population. Specifically, Medicaid will pay higher amounts to providers. We anticipate that increased payment will promote greater access to primary care services for dually eligible beneficiaries.

2. Anticipated Effects on Other Providers

We anticipate this final rule will increase physician participation in Medicaid as most states reimburse physicians at well below the Medicare rates. Recently, as states have experienced budgetary constraints, they have sought to address this by reducing payments to providers, including physicians. This final rule will ensure that in CYs 2013 and 2014, physicians receive the higher Medicare rate for the specified primary care services.

In addition, this final rule will impact states and providers who provide immunizations under the Medicaid program because it will require that such providers be reimbursed at the lesser of the 2013 or 2014 Medicare rate or the Regional Maximum VFC Administration Fee in CYs 2013 and 2014. This rule also raises the maximum rate that states could pay providers for the administration of vaccines under the VFC program in subsequent years. The updated Regional Maximum Administration Fees included in this final rule are the maximum amounts that a state could choose to reimburse a provider for the administration of a vaccine under the VFC program after the provisions of the primary care payment increase expire at the end of CY 2014. States have the flexibility to set the rate that they will reimburse providers, and can therefore choose to set it at the state's regional maximum fee or at any other amount below the regional maximum amount. It is not expected that all states will choose to implement the increase.

The impact of this final rule on the federal government is therefore connected to states' decisions as to whether to increase the amount that they pay providers for the administration of vaccines after CY 2014. That is, if no states choose to increase the administration fee for providers, there will be no additional costs incurred by the federal government.

The same is true for states. There will be no impact of this final rule on a state unless the state chooses to increase the amount that it reimburses providers for the administration of vaccines under the VFC program. It is estimated that if all states were to reimburse providers at the maximum administration fee, the total cost to states and the federal government would be $75 million. Of this, the federal share is estimated to be $45 million.

Children enrolled in the VFC program who are Medicaid eligible will not incur any additional costs as a result of this final rule as there are no out-of-pocket expenses related to the VFC program for Medicaid eligible children.

Families of children who are enrolled in the VFC program because they are either uninsured or do not have insurance that covers vaccines will be impacted by this regulation. Uninsured and underinsured individuals receiving vaccines through the VFC program will continue to pay a single administration fee for any vaccine provided. The provider will also receive a single administration fee for any vaccine provided, regardless of the number of vaccine/toxoid components, and will not receive the Medicare administration rate for those services. Providers can bill the families of those children at the state's regional maximum rate for the administration of a vaccine. As a result, if the updated rates were to become effective, those families could be billed at the published rate for that state. However, section 1928(c)(2)(B)(iii) of the Social Security Act says that ''[t]he provider will not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parent to pay an administration fee.''

Therefore, providers will benefit from the regulation as they can charge and receive the state's regional maximum rate for their patients who are enrolled in the VFC program because they are either uninsured or do not have insurance that covers immunizations. A provider will not receive an increased administration fee for Medicaid-eligible children unless a state chose to increase the amount that it pays providers under the Medicaid program.

3. Anticipated Effects on the Medicaid Program Expenditures

Table 3 provides estimates of the anticipated Medicaid program expenditures associated with increasing payment for primary care services. CMS's Office of the Actuary (OACT) developed estimates for the impact of this section of the Affordable Care Act, which were initially published in April 2010, (*https://www.cms.gov/ActuarialStudies/downloads/PPACA_2010-04-22.pdf*). Initially, projections of Medicaid spending on primary care physician services by FFS Medicaid and Medicaid managed care plans were created. For this, OACT developed assumptions of (1) what share of Medicaid physician spending was for primary care and (2) what share of managed care spending was for physician services, relying on several studies on physician service utilization and expenditures. OACT then projected spending for 2013 and 2014 based on

the projections of Medicaid physician spending in the President's Fiscal Year 2013 Budget. (The original estimates that appeared in the April 2010 estimates were based off of the President's Fiscal Year 2010 Budget Mid-Session Review.) To determine the impact of using Medicare physician payment rates for Medicaid payments, OACT compared the ratio of Medicaid rates to Medicare rates, based on a study of Medicare and Medicaid physician payment rates across all states. Finally, OACT projected growth in Medicaid physician payments and the rates prescribed by the Affordable Care Act, based on Medicare payment rates; these estimates were revised to incorporate the actual CY 2011 CF (75 FR 73169). OACT assumed that the volume of physician services covered by Medicaid would increase by 5 percent in managed care plans and by 10 percent in fee-for-service programs over 2013 and 2014 as a result of higher payments and expected increases in physician participation in Medicaid. Additionally, these changes were estimated to result in a slight decrease in projected state spending as future projected Medicaid payment rate increases would be covered by increased federal matching funds in 2013 and 2014. The studies and data sources used for developing these estimates included: S. Zuckerman, ''Trends in Medicaid Physician Fees, 2003–2008,'' *Health Affairs,* 28 April 2009; the American Medical Association; the Medical Group Management Association; and the Bureau of Labor Statistics.

As a result of the changes to the policy that allows states to either use the Medicare physician payment locality factors to determine the rates or to develop a methodology to calculate the mean over all counties for each E&M code to use statewide, the estimates have been revised since the proposed rule. The estimates in the proposed rule reflect the expected impacts of the rule assuming that states would pay primary care physician service rates that included the different Medicare locality factors. As states now have the option to develop a methodology using a mean over all counties based on the different locality payment rates within a state, the estimates have changed to reflect the different options states might use.

OACT has reviewed several possible methods states might consider using to determine the mean rates. The states' decisions to use the rate based on the Medicare locality rate or the mean rate measured over all counties may result in impacts ranging from $11.185 billion over CY 2013 and CY 2014 to $11.495 billion over the two years. It is assumed for the purposes of this rule that the expected cost would be equal to the median of this range, as no assumptions have been made for which states (with multiple Medicare physician payment localities) would choose each methodology.

TABLE 3—FEDERAL AND STATE MEDICAID AND CHIP IMPACTS FOR PAYMENT INCREASES TO PRIMARY CARE PROVIDERS DURING CALENDAR YEARS 2013 THROUGH 2014 (MILLIONS OF 2012 DOLLARS)

	CY 2013	CY 2014
Federal Share*	$5,835	$6,055
State Share	−235	−310
Total	5,600	5,745

(* Federal cost estimates reflect the additional $495 million and $480 million in CYs 2013 and 2014, respectively, as a result of states reimbursing specified physicians for vaccine administration at the lesser of the Medicare rate or the VFC regional maximum.)

The Medicare payment rates used in this estimate were the actual 2009 MPFS and the current statute projections of the CYs 2013 and 2014 MPFS.

In addition, it should be noted that these estimates are based on the current statute which includes a significant projected reduction to payment rates in the CY 2013 MPFS under the Sustainable Growth Rate (SGR) formula. Every year since 2003, the Congress has passed legislation overriding projected cuts that otherwise would have resulted from the SGR formula. Furthermore, it is possible that the Congress may enact legislation that averts the currently projected reduction in MPFS rates for 2013 which would affect the CYs 2013, and 2014 rates that are being used to estimate the payment impacts in this rule. Consequently, if the Congress enacts legislation resulting in increased payment rates to replace the payment rate reduction called for under the SGR formula in CYs 2013, and 2014, and in turn the CYs 2013 or 2014 rates exceed the rates calculated using the CY 2009 CF, then this would result in higher costs for the CYs 2013 and 2014 Medicaid physician payments presented in this rule. Additionally, other changes to the CF in these years may also affect the costs of this section. Therefore, currently it is not possible to accurately estimate the impact of these potential future changes, since definitive action, if any, by the Congress regarding the MPFS CF is unknown.

Other changes made in the final rule increase the uncertainty regarding these estimates. In the final rule, states are no longer required to verify the self-attestation of all physicians that they are eligible for the higher payment rates. As a result, the review of a sample of the self-attesting physicians may find some physicians who are ineligible. To the extent that more physicians may self-attest as being eligible than would have been determined eligible by the state, there may be additional costs; the potential additional costs have not been quantified here.

It is important to note that, consistent with the proposed rule, these estimates do not include any impact related to the impact of the expansion of Medicaid eligibility beginning in 2014 as provided by the Affordable Care Act. It is expected that the costs related to this rule would be even greater in 2014 than those listed in Table 3, as Medicaid enrollment increases with the new eligibility standards, as well as with efforts to simplify Medicaid enrollment and outreach efforts to enroll people in Medicaid, CHIP, and the Health Insurance Exchanges. As these new enrollees utilize primary care physician services that would be eligible for higher reimbursement rates, there would be additional costs related to this rule. These costs would dependent upon several factors, including: The number of new enrollees in 2014; the amount of primary care physician services the new enrollees utilize; the extent to which new enrollees participate in managed care Medicaid plans or in fee-for-service Medicaid; and the number of new enrollees in each state, as the impacts vary widely across the states. Furthermore, the cost would be highly dependent on which states elect to expand Medicaid eligibility in 2014, which is not known at this time. We further emphasize the uncertainties

associated with this estimate, especially regarding the participation of states in the Medicaid eligibility expansion.

4. Anticipated Effects on States

The federal government will provide 100 percent matching funds for the difference between the Medicaid state plan rate in effect July 1, 2009 and the Medicare rate in CYs 2013 and 2014 or the rate using the CY 2009 Medicare CF, if higher. Therefore, we believe this final rule will result in a positive effect on states, since it reduces their expenditures for primary care services. State savings are estimated at $235 million and $310 million in CYs 2013 and 2014, respectively. However, for Medicaid state plan rates below the 2009 level, states will be required to reimburse the non-federal share of that portion, so as to return to the 2009 level of payment. We are unable to accurately quantify the impact of this effect on states, since there is not a precise relationship between any of the Medicaid state plan rates and the Medicare rates.

5. Anticipated Effects on Small Entities

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organization, and small governmental jurisdictions. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business and having revenues of less than $7.0 million to $34.5 million in any 1 year. (For details, see the Small Business Administration's Table of Size Standards at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*). For purposes of the RFA, approximately 95 percent of physicians are considered to be small entities. Individuals and states are not included in the definition of a small entity.

We anticipate that this regulation will primarily impact individual physicians and state Medicaid agencies. This final rule requires states to increase payment for primary care services without incurring additional state cost. As previously noted, we anticipate that this higher payment will impact physicians by encouraging greater participation by primary care physicians, including primary care subspecialists, in Medicaid, thereby helping to promote overall access to care. Therefore, the Secretary has determined that this final rule will not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. This rule will not have a significant impact on small rural hospitals because it only affects physicians. We are not preparing an analysis for section 1102(b) of the Act because the Secretary has determined that none of the provisions in this final rule will have a significant impact on the operations of a substantial number of small rural hospitals.

E. Alternatives Considered

This section provides an overview of the issues addressed in the final rule and the regulatory alternatives considered. In identifying the issues and developing alternatives, we consulted with states and other interested stakeholders such as primary care specialists and policy makers. We solicited comment on the assumptions and analyses presented in the Alternatives Considered section. Detailed analysis on the alternatives considered to the provisions in the final rule is provided in the responses to comments in section II.

1. Eligible Providers

The statute specifies that increased payment may be made for primary care services furnished by a physician with a primary specialty designation of family medicine, general internal medicine or pediatric medicine. In the proposed rule, we included related subspecialists and used Board certification or subspecialty recognition by the American Board of Medical Specialties (ABMS) and a supporting history of codes billed in the absence of Board certification as a means of identifying eligible primary care physicians. We considered permitting physicians to qualify for payment based solely on self-attestation. The final rule CMS continues to recognize subspecialists related to the primary care specialists specified in the statute as eligible for this payment. We accept Board certification by the ABMS, American Osteopathic Association and ABPS. We permit payment based on self-attestation alone but, to promote program integrity, we are requiring that states, at the end of each of CYs 2013 and 2014, review a statistically valid sample of providers who received higher payment to verify that they either were appropriately Board certified or that 60 percent of their claims during that period were for the identified E&M codes. Comments on this aspect of the final rule and our responses may be found in section II.A.1.a.

2. Payment Made Under the Physician Benefit as a Physician Service

This rule clarifies physician services to mean any service delivered under the physician services benefit at 1905(a)(5)(A) of the Act. First, we considered whether the statute limited increased payment to services provided only by physicians. In the Medicaid program, a significant proportion of primary care services are actually rendered by advance practice nurses, and other types of independently practicing nonphysicians. We recognize the importance of these nonphysician practitioners in the provision of primary care services in many states. However, section 1902(a)(13)(C) of the Act limits eligibility for higher payment to services provided by physicians. Next we considered whether the statute limited increased payment to services provided directly by physicians. Medicaid regulations at § 440.50 define ''physician services'' as services provided by or under the personal supervision of a physician. Therefore, we concluded that, in light of the important role of these practitioners in delivering primary care to Medicaid beneficiaries and the regulatory definition of a ''physician service,'' those services delivered under the personal supervision of a specified primary care physician could qualify for the increased payment. This meant that specified primary care services rendered by nonphysicians such as advanced practice nurses and other nonphysician professionals qualified for payment when billed under the Medicaid enrollment number of any designated primary care specialist or subspecialist.

Due to the limited data available, we are unable to accurately estimate the impacts representing the inclusion of services provided by practitioners under the supervision of a physician. All such services are billed under the supervising physician's billing number and are reported as physician services to CMS making it impossible to determine the impact of this proposal.

In the final rule, higher payment is still limited to the qualified physicians and advanced practice professionals practicing under their personal supervision. However, services no

longer need to be billed under the physician's billing number, as long as the physician has professional responsibility for the services provided. The comments we received on this topic and CMS responses are found in section II.A.1.b.

We also considered whether services provided by physicians in settings such as FQHCs, RHCs, or clinics would be eligible for increased payment. In Medicaid ''physician services'' is a distinct benefit from other benefits such as the FQHC, RHC or clinic benefits. We estimated that the inclusion of services provided by physicians in settings such as FQHCs, RHCs, or clinics for increased payment would result in an aggregate federal cost of approximately $755 million for CYs 2013 and 2014. In the final rule, we continue to believe that only those services reimbursed pursuant to a physician fee schedule and through the Medicaid state plan as a physician service are eligible for higher payment. In section II.A.1.b. we provide more detail about comments and our responses.

3. Eligible E&M Services

The statute requires enhanced payment for E&M services/codes. The proposed rule specified the E&M Codes eligible for the increased payment. They include all primary care E&M codes, including some codes not recognized for payment by Medicare. Because the statute requires payment at the Medicare rate, we considered not extending the requirement for increased payment to codes not reimbursed by Medicare. However, many of those codes represent services provided to children. While Medicare covers relatively few children, payments for services provided to children constitute a larger proportion of Medicaid expenditures. We therefore included these additional codes because they represent core primary care services that are important to the Medicaid program.

We estimated that approximately 6 to 7 percent of all expenditures on services eligible for the increased payment rates are for services not covered by Medicare. Furthermore, we believed that a corresponding amount of the federal costs associated with this final regulation would be related to these services, reflecting an impact range of $655 million to $765 million over CY 2013 and 2014. As a result, the final rule specifies that all E&M codes identified in the proposed rule are eligible for higher payment. Rates for codes not reimbursed by Medicare will be developed by us based on a calculation of the CF and RVUs that are published by us. Comments and alternatives considered regarding this section of the rule are presented in section II.A.2.b.

4. Eligible Vaccine Administration Services

The statute specifies payment at the CY 2013 and 2014 Medicare rate for certain vaccine administration billing codes or their successor codes. A state may receive 100 percent FFP for the difference between the Medicaid rate as of July 1, 2009 and the Medicare rates in CYs 2013 and 2014 or the rate using the CY 2009 CF, if higher. In 2011, the coding structure for vaccine administration changed such that two codes replaced four of the specified codes. Moreover, the four deleted codes represented vaccine administrations by various routes (for example, intranasal vs. injectable) to children under 8. However, new code 90460 represents the initial vaccine/toxoid administered through all routes to children through age 18 while code 90461 represents payment for additional vaccines/toxoids administered. This rule finalizes a method for imputing a vaccine administration rate in 2009 for code 90460. The 2009 rate would equal the average payment amount weighted by volume of codes 90465 and 90471. The 2009 value for code 90461 would be $0, since there was no payment for additional vaccines/toxoids prior to 2011. We received one comment on this proposed methodology, which led to a revision of the formula.

In 2009, approximately 20 states used a bundled rate to reimburse vaccines and vaccine administration, complicating the identification of the rate differential. This rule clarifies that, for any bundled rate payments such as this, states must correctly identify the rate differential for the included primary care service only (in this case, vaccine administration). We added this provision in the interest of promoting program payment integrity but defer to the states to develop a methodology. Also, providers administering vaccines under the VFC program will be reimbursed the lesser of the Medicare rates in 2013 or 2014 or the Regional Maximum Administration Fee per vaccine. This final rule does not change the statutory requirement in section 1928(c)(2)(C) of the Act that a qualified physician administering a vaccine obtained from the VFC program is limited under the VFC provider agreement to charging an amount for vaccine administration that is no more than the VFC maximum allowable charge. A more detailed analysis of the alternatives considered for increased payments for vaccine administration under the VFC program is discussed in the response to comments in section II.A.4.c.

5. Method of Payment

Section 1902(a)(13)(C) of the Act requires payment in CYs 2013 and 2014 of the current Medicare rate, unless the rate set using the CY 2009 CF was higher. Historically, Medicare has issued multiple updates to its MPFS within a single year. This rule continues to permit states to either adopt the MPFS in effect at the beginning of CYs 2013 and 2014 or the rate using the CY 2009 CF, if higher, or a methodology to update rates to reflect changes made by Medicare during the year. It permits states to either make site of service adjustments or pay at the Medicare office rate. It requires states to either make all Medicare locality adjustments or to pay a statewide median rate over all counties. A discussion of the alternatives considered and comments received can be found in sections II.A.2.a. and c.

6. VFC Administration Fee Increase

We considered a number of options when determining to update the average national administration charge portion of the formula used to calculate the VFC administration fee. These options included using the Medicare Economic Index (MEI), Consumer Price Index (CPI) or the Gross Domestic Product Deflator. We determined the best option is to utilize the MEI, which is a price index used by CMS to update Medicare physician payments. The MEI reflects input price inflation experienced by physicians inclusive of the time period when the national average was established in 1994. Therefore, we believe that input prices associated with this specific type of physician-provided service are consistent with overall input prices.

The economic impact associated with updates to the regional maximum charges for the VFC program is estimated at $75 million per year. The federal cost of this total is approximately $45 million per year. These estimates assume that every state will increase its reimbursement rate to the new VFC maximum fee.

7. Implementation of Payment Provision in Managed Care Delivery System

Section 1932(f) of the Act requires the application of the provisions of section 1902(a)(13) of the Act to managed care organization contracts and payments. The complexity of such an application was reviewed in several different areas—the varied scope of primary care providers that operate within managed care plans; identifying both the 2009

baseline payments for affected primary care services to managed care organizations as well as the amount of managed care capitation payments that would be eligible for 100 percent federal match; and the documentation that states must collect from managed care plans to verify that the Medicare rate is paid to eligible providers in CY 2013 and 2014.

The final rule require states to submit to us two methodologies, one for determining the 2009 baseline and the other for identifying that proportion of managed care capitation rates that represents the difference between the 2009 baseline rates and the applicable CY 2013 and 2014 Medicare rates. Both methodologies must be valid and reasonable and must acknowledge and accommodate each state's current rate-setting framework.

Finally, we considered specifying the documentation that states must collect from managed care plans to ensure that primary care providers are the beneficiaries of these increased payment rates. However, in deference to the wide variation in states' current oversight and reporting mechanisms for MCOs, PIHPs, and PAHPs, the final rule requires states to specify the documentation needed from health plans to substantiate that primary care payment increases were made to eligible providers by the managed care plan.

F. Accounting Statement and Table

As required by OMB's Circular A–4 (available at *http://www.whitehouse.gov/omb//circulars_a004_a-4/*), in Table 4 we have prepared an accounting statement illustrating the classification of the federal and state Medicaid and CHIP impacts for the payment increases to primary care providers and VFC, as a result of the provisions in the final rule.

TABLE 4—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES FOR FEDERAL AND STATE MEDICAID AND CHIP IMPACTS FOR PAYMENT INCREASES TO PRIMARY CARE PROVIDERS AND VFC DURING CALENDAR YEARS 2013 THROUGH 2014

[Millions of 2012 dollars]

Category	Transfers			
Annualized monetized transfers		Discount rate		Period covered
	0%	7%	3%	CYs 2013–2014.
Primary Estimate	$5,945	$5,941	$5,943	
From/To	Federal Government to Medicaid Providers			
Category		Transfers		
Annualized monetized transfers		Discount rate		Period covered
	0%	7%	3%	CYs 2013–2014.
Primary Estimate	−$273	−$271	−$272	
From/To	State Governments to Medicaid Providers			

In accordance with the provisions of Executive Order 12866, this final regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 438

Grant programs-health, Medicaid, Reporting and recordkeeping requirements.

42 CFR Part 441

Aged, Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Reporting and recordkeeping requirements.

42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and recordkeeping requirements, Rural areas.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 438—MANAGED CARE

■ 1. The authority citation for part 438 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. Section 438.6 is amended by adding new paragraphs (c)(3)(v) and (c)(5)(vi) to read as follows:

§ 438.6 Contract requirements.

* * * * *

(c) * * *

(3) * * *

(v) For rates covering CYs 2013 and 2014, complying with minimum payment for physician services under paragraph (c)(5)(vi) of this section, and part 447, subpart G, of this chapter.

* * * * *

(5) * * *

(vi) For CYs 2013 and 2014, and payments to an MCO, PIHP or PAHP for primary care services furnished to enrollees under part 447, subpart G, of this chapter, the contract must require that the MCO, PIHP or PAHP meet the following requirements:

(A) Make payments to those specified physicians (whether directly or through a capitated arrangement) at least equal to the amounts set forth and required under part 447, subpart G, of this chapter.

(B) Provide documentation to the state, sufficient to enable the state and CMS to ensure that provider payments increase as required by paragraph (c)(5)(vi)(A) of this section.

* * * * *

■ 3. Section 438.804 is added to read as follows:

§ 438.804 Primary care provider payment increases.

(a) For MCO, PIHP or PAHP contracts that cover calendar years 2013 and 2014, FFP is available at an enhanced rate of 100 percent for the portion of the expenditures for capitation payments made under those contracts to comply

with the contractual requirement under § 438.6(c)(5)(vi) only if the following requirements are met:

(1) The state must submit to CMS the following methodologies for review and approval.

(i) The state develops a reasonable methodology, based on rational and documented data and assumptions, for identifying the provider payments that would have been made by MCO, PIHP or PAHP for specified primary care services furnished as of July 1, 2009. This methodology can take into consideration the availability of data, and the costs and burden of administering the method, but should produce a reliable and accurate result to the fullest extent possible.

(ii) The state develops a reasonable methodology, based on rational and documented data and assumptions, for identifying the differential in payment between the provider payments that would have been made by the MCO, PIHP or PAHP on July 1, 2009 and the amount needed to comply with the contractual requirement under § 438.6(c)(5)(vi). This methodology can take into consideration the availability of data, and the costs and burden of administering the method, but should produce a reliable and accurate result to the fullest extent possible.

(2) The state must submit the methodologies in paragraphs (a)(1)(i) and (ii) of this section to CMS for review no later than the end of the first quarter of CY 2013.

(3) CMS will use the approved methodologies required under this section in the review and approval of MCO, PIHP or PAHP contracts and rates consistent with § 438.6(a).

(b) [Reserved]

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

■ 4. The authority citation of part 441 is revised to read as follows:

Authority: Secs. 1102, 1902, and 1928 of the Social Security Act (42 U.S.C. 1302).

■ 5. Subpart L is added to read as follows:

Subpart L—Vaccines for Children Program

Sec.

441.600 Basis and purpose.
441.605 General requirements.
441.610 State plan requirements.
441.615 Administration fee requirements.

Subpart L—Vaccines for Children Program

§ 441.600 Basis and purpose.

This subpart implements sections 1902(a)(62) and 1928 of the Act by requiring states to provide for a program for the purchase and distribution of pediatric vaccines to program-registered providers for the immunization of vaccine-eligible children.

§ 441.605 General requirements.

(a) Federally-purchased vaccines under the VFC Program are made available to children who are 18 years of age or younger and who are any of the following:

(1) Eligible for Medicaid.

(2) Not insured.

(3) Not insured with respect to the vaccine and who are administered pediatric vaccines by a federally qualified health center (FQHC) or rural health clinic.

(4) An Indian, as defined in section 4 of the Indian Health Care Improvement Act.

(b) Under the VFC program, vaccines must be administered by program-registered providers. Section 1928(c) of the Act defines a program-registered provider as any health care provider that meets the following requirements:

(1) Is licensed or authorized to administer pediatric vaccines under the law of the state in which the administration occurs without regard to whether or not the provider is a Medicaid-participating provider.

(2) Submits to the state an executed provider agreement in the form and manner specified by the Secretary.

(3) Has not been found, by the Secretary or the state to have violated the provider agreement or other applicable requirements established by the Secretary or the state.

§ 441.610 State plan requirements.

A state plan must provide that the Medicaid agency meets the requirements of this part.

§ 441.615 Administration fee requirements.

(a) Under the VFC Program, a provider who administers a qualified pediatric vaccine to a federally vaccine-eligible child, may not impose a charge for the cost of the vaccine.

(1) A provider can impose a fee for the administration of a qualified pediatric vaccine as long as the fee does not exceed the costs of the administration (as determined by the Secretary based on actual regional costs for the administration).

(2) A provider may not deny administration of a qualified pediatric vaccine to a vaccine-eligible child due to the inability of the child's parents or legal guardian to pay the administration fee.

(b) The Secretary must publish each State's regional maximum charge for the VFC program, which represents the maximum amount that a provider in a state could charge for the administration of qualified pediatric vaccines to federally vaccine-eligible children under the VFC program.

(c) An interim formula has been established for the calculation of a state's regional maximum administration fee. That formula is as follows: National charge data × updated geographic adjustment factors (GAFs) = maximum VFC fee.

(d) The State Medicaid Agency must submit a state plan amendment that identifies the amount that the state will pay providers for the administration of a qualified pediatric vaccine to a Medicaid-eligible child under the VFC program. The amount identified by the state cannot exceed the state's regional maximum administration fee.

(e) Physicians participating in the VFC program can charge federally vaccine-eligible children who are not enrolled in Medicaid the maximum administration fee (if that fee reflects the provider's cost of administration) regardless of whether the state has established a lower administration fee under the Medicaid program. However, there would be no federal Medicaid matching funds available for the administration since these children are not eligible for Medicaid.

PART 447—PAYMENTS FOR SERVICES

■ 6. The authority citation for part 447 continues to read as follows:

Authority: Section 1102 of the Social Security Act (42 U.S.C. 1302).

■ 7. Subpart G is added to read as follows:

Subpart G—Payments for Primary Care Services Furnished by Physicians

Sec.

447.400 Primary care services furnished by physicians with a specified specialty or subspecialty.
447.405 Amount of required minimum payments.
447.410 State plan requirements.
447.415 Availability of Federal financial participation (FFP).

Subpart G—Payments for Primary Care Services Furnished by Physicians

§ 447.400 Primary care services furnished by physicians with a specified specialty or subspecialty.

(a) States pay for services furnished by a physician as defined in § 440.50 of this chapter, or under the personal supervision of a physician who self-attests to a specialty designation of family medicine, general internal medicine or pediatric medicine or a

subspecialty recognized by the American Board of Medical Specialties (ABMS), the American Board of Physician Specialties (ABPS) or the American Osteopathic Association (AOA). A physician self-attests that he/she:

(1) Is Board certified with such a specialty or subspecialty and/or

(2) Has furnished evaluation and management services and vaccine administration services under codes described in paragraph (b) of this section that equal at least 60 percent of the Medicaid codes he or she has billed during the most recently completed CY or, for newly eligible physicians, the prior month.

(b) At the end of CY 2013 and 2014 the Medicaid agency must review a statistically valid sample of physicians who received higher payments to verify that they meet the requirements of paragraph (a)(1) or (2) of this section.

(c) Primary care services designated in the Healthcare Common Procedure Coding System (HCPCS) are as follows:

(1) Evaluation and Management (E&M) codes 99201 through 99499.

(2) Current Procedural Terminology (CPT) vaccine administration codes 90460, 90461, 90471, 90472, 90473 and 90474, or their successor codes.

(d)(1) The state must submit to CMS, in such form and at such time as CMS specifies, information relating to participation by physicians described in paragraph (a) of this section and the utilization of E&M codes described in paragraph (c) of this section (whether furnished by or under the supervision of a physician described in paragraph (a)) of this section for the following peri—s—

(i) As of July 1, 2009, and

(ii) CY 2013

(2) As soon as practicable after receipt, CMS will post this information on *www.Medicaid.gov*.

§ 447.405 Amount of required minimum payments.

(a) For CYs 2013 and 2014, a state must pay for physician services described in § 447.400 based on:

(1) The Medicare Part B fee schedule rate that is applicable to the specific site of service or, at the state's option, the office setting and is also adjusted for either the specific geographic location of the service or reflects the mean over all counties of the rate for each E&M code. If there is no applicable rate, the rate specified in a fee schedule established and announced by CMS (that is, the product of multiplying the Medicare CF in effect at the beginning of CYs 2013 or 2014 (or the CY 2009 CF, if higher) and the CY 2013 and 2014 relative value units (RVUs).

(2) The provider's actual billed charge for the service.

(b) For vaccines provided under the Vaccines for Children Program in CYs 2013 and 2014, a State must pay the lesser of:

(1) The Regional Maximum Administration Fee; or,

(2) The Medicare fee schedule rate in CY 2013 or 2014 (or, if higher, the rate using the 2009 conversion factor and the 2013 and 2014 RVUs) for code 90460.

§ 447.410 State plan requirements.

The state must amend its state plan to reflect the increase in fee schedule payments in CYs 2013 and 2014 unless, for each of the billing codes eligible for payment, the state currently reimburses at least as much as the higher of the CY 2013 and CY 2014 Medicare rate or the rate that would be derived using the CY 2009 conversion factor and the CY 2013 and 2014 Medicare relative value units (RVUs). The amendment must:

(a) Identify all eligible codes that the state will reimburse at the Medicare rate in CYs 2013 and 2014.

(b) Identify all codes that were not reimbursed under the Medicaid program as of July 1, 2009.

(c) Specify either that the state will make all adjustments applicable to the specific site of service or, at the state's option, the office setting and will also either adjust for the specific geographic location of the service or pay rates that reflect the mean over all counties of the rate for each E&M code. The state must specify the formula that the state will use to determine the mean rate for each E&M code.

§ 447.415 Availability of Federal financial participation (FFP).

(a) For primary care services furnished by physicians specified in § 447.400, FFP will be available at the rate of 100 percent for the amount by which the payment required to comply with § 447.405 exceeds the Medicaid payment that would have been made under the approved state plan in effect on July 1, 2009.

(b) For purposes of calculating the payment that would have been made under the approved State plan in effect on July 1, 2009, the state must exclude incentive, bonus, and performance-based payments but must include supplemental payments for which the approved methodology is linked to volume and payment for specific codes.

(c) For vaccine administration, the state must impute the payment that would have been made for code 90460 under the approved Medicaid state plan. The imputed rate for July 1, 2009, for code 90460 equals the payment rates for codes 90465 and 90471 weighted by service volume.

(d) For any payment made under a bundled rate methodology, including bundled rates for vaccines and vaccine administration, the amount directly attributable to the applicable primary care service must be isolated for purposes of determining the availability of the 100 percent FFP rate. Bundled rates, for purposes of this provision, do not include encounter and per diem rates.

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program).

Dated: September 12, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: October 2, 2012.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

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